

R E P O R T O F A N A A U P
S P E C I A L C O M M I T T E E

HURRICANE KATRINA
AND NEW ORLEANS
UNIVERSITIES



CONTENTS

I. Introduction 61

II. Louisiana State University Health Sciences Center 66

III. University of New Orleans 74

IV. Southern University at New Orleans 81

V. Loyola University New Orleans 88

VI. Tulane University 101

VII. Overall Observations 119

VIII. Overall Conclusions 120

IX. Addendum 124

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I. INTRODUCTION

The devastation that Hurricane Katrina inflicted on the universities of New Orleans in late August 2005 is undoubtedly the most serious disruption of American higher education in the nation's history.¹ This was hardly the first time that collegiate facilities had been destroyed and academic programs halted; one need only recall the savage tornadoes that leveled buildings at Central State University (Ohio) and Gustavus Adolphus College (Minnesota), or the earthquake that destroyed much of California State University, Northridge, or the effect of the September 11, 2001, attacks on lower Manhattan campuses such as Pace University and Borough of Manhattan Community College.

Yet Hurricane Katrina was different in far more than sheer magnitude of damage, although that measure alone would distinguish it from any previous calamities. No earlier disaster destroyed virtually an entire community, not only depriving affected institutions of usable facilities, but also depleting severely the student population, leaving faculty and staff without homes, teaching hospitals without patients, and so on through an unprecedented litany of woes. One could not in good conscience undertake such an inquiry as this one without acknowledging the uniqueness of the experience from which New Orleans's universities are only now beginning to recover.

Part of what made Katrina so disruptive to higher education was the impossibility of anticipating its force and effect. Since intense storms are all too familiar along the Gulf Coast, the community was theoretically prepared even for a Category Five hurricane, including water that might breach the levees—but not for the complete destruction of critical sections of those levees. Although most New Orleans universities had adopted and disseminated plans for closure by the eve of the

storm's landfall, and some had even begun to evacuate students to higher ground, the worst that seemed likely was a brief period of disruption. Tulane University, for example, announced the weekend before the hurricane that it would be closed through the following Thursday, apparently planning a return to normal operations within the week. Even the day after the storm had hit and severe initial damage was manifest, Tulane continued to express publicly the hope that classes could resume by September 7.

What actually befell New Orleans higher education on August 29 far exceeded even the worst fears. While facilities at the two "uptown" private institutions (Tulane University and Loyola University New Orleans) suffered less physical damage than did the inundated buildings at Southern University at New Orleans, the Louisiana State University Health Sciences Center, the University of New Orleans, Xavier University, and Dillard University, electricity and communications were down throughout the city. Although most of the universities had made some provision for remote backup of electronic data systems, gaining access to those records and files proved a daunting task well after the water had subsided.

Gradually it became clear that the affected campuses would have great difficulty reopening in the near future. By the end of the first week of September, both Tulane and Loyola (the two most nearly intact campuses) announced that they would not reopen for any part of the fall semester. Students were encouraged to enroll elsewhere, if possible; dozens of campuses in adjacent states and much farther afield did find places for New Orleans students—though usually on the understanding that when their home institutions reopened they would return. Roughly a month after Katrina, the Gulf Coast prepared for another disaster as Hurricane Rita neared shore, but this time the New Orleans area was mercifully spared; major damage was confined to the coastal region of western Louisiana and east Texas, notably the several campuses of Lamar University.

The impact and cost of Katrina can be quantified, although numbers fail to capture the many other dimensions of devastation. Louisiana's Commissioner of Higher Education, Dr. E. Joseph Savoie, reports that 84,000 students and 15,000 faculty members were initially displaced by the hurricane. The state's public institutions of higher learning suffered between \$500 and \$600 million in damage, lost more than \$150 million in revenue and tuition, and suffered \$75 million in immediate budget cuts. Another assessment reported a total direct revenue loss of \$229 million by Louisiana's

1. The text of this report was written in the first instance by members of the Special Committee and approved by that body for submission to Committee A on Academic Freedom and Tenure. With the approval of Committee A, the report in draft form was subsequently sent to the chief administrative officers of the universities at which investigations had been authorized, to the chief officers of the AAUP chapters and of the senates and other relevant faculty bodies, to faculty members who sought the Association's assistance, and to other persons directly concerned in the report. In light of the responses received, and with the editorial assistance of the Association's staff (which assisted the Special Committee throughout the process), this final report has been prepared for publication.



public colleges and universities, virtually all of it in the immediate New Orleans area. Although the monetary losses of the private institutions are harder to quantify, comparable estimates emerged in the ensuing months.

The far deeper harm defies quantification or physical description. For faculty and staff who lacked not only telephone and Internet access but also places to live after their homes had been destroyed, the measure of loss seems incalculable. For scientists who eventually returned to their flooded laboratories only to find that years—even decades—of research had been destroyed, the impact of the storm is well beyond even the most sympathetic conjecture. Throughout the first year following the hurricane, a brave hope that as many as 60 percent of former residents of the city had remained or returned eventually yielded to the grim reality that only two-fifths were present. And for those who had remained or returned, much of the city still lacked electricity and even water, making survival a challenge and postponing indefinitely any prospect of a return to normal, pre-storm conditions.

Nothing approaching the magnitude of Hurricane Katrina may ever have affected American higher education, and the Special Committee fervently hopes there will never again be a comparable challenge. Still, disaster and devastation can hardly be dismissed from the planning process. Whether it is tornadoes in Ohio and Minnesota, earthquakes and fires in California, hijacked aircraft destroying buildings in New York, or floods along the Gulf Coast and in Florida, the threat is inexorable. Many institutions of higher learning have taken note of these disasters, and have undertaken some form of emergency planning. Typically such plans focus chiefly on the physical and financial effects of natural or man-made catastrophes. The Special Committee's concern, however, is more with the academic and personnel consequences to which substantially less attention seems to have been devoted. In that spirit, and with the benefit of what the committee has learned about the experiences of the New Orleans institutions, at the outset it offers a few suggestions that may be helpful to other colleges and universities as they prepare for contingencies one hopes they will never face.

First, each institution of higher learning—whether or not it could be termed “disaster prone”—should develop and periodically review an emergency plan. Such a plan should presuppose the total breakdown of all traditional communications and information systems, as well as mandatory evacuation of campus facilities. Copies of the plan should be retained by members

of the governing board, senior administrators, and faculty and student leaders.

Second, the development of such plans should provide an occasion for renewal of the institution's, the board's, and the administration's commitment to academic freedom and due process, including a recognition of the stresses and pressures upon those abiding values that may result from a major disaster or emergency. Thus the reaffirmation should include a “notwithstanding” or “no matter what” corollary.

Third, the disaster plan should specify the steps that might become prudent or unavoidable in the event of a prolonged inability of the institution to function. The circumstances that might occasion major changes in programs or personnel should be anticipated and potential changes should be examined in the context of existing university policies—thus reducing the need that, as will be seen, some of the New Orleans administrations apparently felt to abandon preexisting policies without indicating why they could not adhere to emergency procedures that were already on the books. Wherever the existing policy fails to provide adequate guidance to address a major crisis, revision should be undertaken in more tranquil times.

Fourth, simulated previews of emergency conditions might be undertaken, perhaps on an annual basis. The governing board should participate in reviewing and responding to plausible case studies of such eventualities, thus preparing for the real challenge they would very much hope to avoid. The administration and the essential faculty consultative bodies should preview their respective roles in coping with such a challenge, anticipating how they would interact in the event that such consultation might be needed under the worst imaginable conditions. While one cannot doubt the need for prompt and decisive action by the New Orleans universities in the days after Katrina, the course actually followed in each case will be seen as having had a regrettably hit-or-miss quality that might have been avoided by such simulation.

Fifth, emergency communications and information systems should be in place ahead of any critical need for their use. The Special Committee was favorably impressed with Loyola's electronic database backup in Chicago, while noting the unexpected difficulty of accessing that resource with telephone lines and other communication systems so gravely disrupted by Katrina. Whether the solution is satellite-based communications or generator-driven support systems, each institution should have an emergency alternative in readiness.

Sixth, the Special Committee would urge colleagues across the country to study carefully the experiences of the New Orleans universities as they will be recounted here, and consider how each of our own institutions would respond, could respond, and should respond to a comparable challenge. Faculty consultative committees, for example, should review their assigned roles in exigent times, including emergency communication channels through which to reach the chief academic officer and other university officials with whom contact would be vital.

The foregoing suggestions look to the future and to steps that colleges and universities could take in advance of a calamitous event. The central concerns of this report, however, relate to the actions taken by the governing authorities of New Orleans universities in response to Hurricane Katrina. The Special Committee recognizes and acknowledges that the unique and catastrophic circumstances brought about by the hurricane required immediate, drastic, and far-reaching actions. At the same time, there were choices to be made and alternative ways to proceed. The choices actually made are not immune from examination, evaluation, and criticism. The Special Committee does not accept the view stated or implied by various administrators that, given the crisis, they were justified in everything they did, and that to question any of their actions is to fail to observe the best interests of the institutions and higher education in New Orleans. As will be seen in each of the individual reports that follow, there is much to examine, question, and criticize.

* * * * *

Faculty members at New Orleans institutions initiated contact with the Association very soon after the hurricane. General Secretary Roger Bowen made two trips to the area and met during the fall and winter with groups of affected professors. In March 2006, Committee A chair David Hollinger authorized appointment of this Special Committee to address both the particular responses of each of the affected universities (most especially the impact of those responses on faculty rights and interests) and broader issues that had arisen in the storm's aftermath. The goal of such an inquiry would include gaining a better understanding of what had been a traumatic experience for the New Orleans academic community, recommending potentially ameliorative and preventive measures, and assessing the extent to which the responses of the universities adhered to the values and standards of the academic profession. A broader hope was to offer to the American


academic community useful guidelines for preserving academic freedom and due process under the most adverse conditions.

The Special Committee first met in Washington, D.C., on May 24, 2006, to review the scope of its daunting task and to assign responsibility for specific activities. In the ensuing weeks, a large and growing quantity of information was analyzed. Arrangements were made for committee members to go to New Orleans in mid-August, two or three at a time and accompanied by staff, to hold more than fifty interviews with faculty members from the various universities. Information gleaned from the interviews, added to previously available documentation, correspondence with administrative officers, and other written accounts, presented concerns relating to academic freedom and tenure of sufficient magnitude to warrant authorization by the Association's general secretary of formal investigations. He authorized investigation, with members of the Special Committee serving as the investigators, in the cases of the Louisiana State University Health Sciences Center, the University of New Orleans, Southern University at New Orleans, Loyola University New Orleans, and Tulane University.² Specific investigations were not undertaken either at Xavier University or at Dillard University, although at both institutions catastrophic damage occurred and a significant portion of faculty and staff lost their positions. At Xavier, where AAUP inquiries revealed that after the hurricane the president took the extraordinary action of releasing all members of the faculty and then reinstating those whom the administration wished to retain, and where the Special Committee became aware of deficiencies in appeal procedures and in shared governance that preceded Katrina and have been allowed to continue, no specific case emerged that could be pursued to investigation. No one at Dillard sought the Association's assistance.

The full Special Committee met in New Orleans during the final week in August, as that community marked the first anniversary of Katrina. It began its stay with a lengthy tour, arranged by Commissioner Savoie and conducted by the Louisiana National Guard, of the most

2. A parallel investigation, of issues raised in the dismissal of a single faculty member at Our Lady of Holy Cross College, proceeded separately from the Special Committee's undertaking because the dismissal at this New Orleans institution, across the Mississippi River from the others, suffered no flooding and the dismissal was not a direct consequence of the hurricane. The report of the investigation was published in the January–February 2007 issue of *Academe*.





severely devastated areas of the region. This experience was deeply sobering for those of us who were able to participate. Over the course of two days, the committee assessed the results provided by its individual members and staff of their interviews with faculty members from the city's universities, and the committee spent a most productive evening hearing from the leaders of the Louisiana AAUP state conference and of the AAUP chapters in New Orleans and nearby about what the region's universities and their faculties had endured. Through the good offices of Commissioner Savoie, the Special Committee on its final day met with the chancellors of the University of New Orleans, the LSU Health Sciences Center, and Southern University at New Orleans, along with attorneys and several other officials of the statewide Board of Regents, of the LSU System, and of the Southern University System, as well as one community college representative. The presidents of the two private universities authorized for investigation, Loyola New Orleans and Tulane, declined proposed meetings with the Special Committee before receiving the committee's report.

* * * * *

Following the Special Committee's New Orleans meetings, subgroups prepared separate reports on issues and findings at the five universities where investigations had been authorized. The five included the city's three public universities: the LSU Health Sciences Center, the University of New Orleans, and Southern University at New Orleans.

The statewide coordinating body for public higher education is the Louisiana Board of Regents, with Commissioner of Higher Education Savoie as its chief executive officer. The board of regents oversees four systems, each governed by its own board of supervisors: Louisiana State University (which includes its flagship component in Baton Rouge and its two New Orleans components, the LSU Health Sciences Center and UNO); Southern University (the historically black system, which includes its flagship component, also in Baton Rouge, and its New Orleans component, SUNO); the University of Louisiana (consisting of eight institutions at various Louisiana locations); and the Louisiana Community and Technical College System. The current president of the Louisiana State University System is William L. Jenkins, and Ralph Slaughter currently serves as the Southern University System's president.

The chief administrative officer at the LSU Health Sciences Center at the time of Hurricane Katrina was

Chancellor John Rock. Shortly thereafter he was succeeded in that office by Chancellor Larry H. Hollier, who also continued to serve as dean of the School of Medicine. Chancellor Timothy P. Ryan, who previously had been dean of the College of Business, has headed the UNO administration since October 2003. The SUNO administration when Katrina struck was headed by Interim Chancellor Robert B. Gex. He was followed in January 2006 by Chancellor Victor Ukpolo, who had been the Southern University System's vice president for academic and student affairs.

As will be seen in the chapters that follow, the LSU Health Sciences Center, UNO, and SUNO all had institutional regulations governing financial exigency and the resulting termination or interruption of faculty appointments that provided many, though by no means all, of the procedural safeguards called for in applicable AAUP-recommended standards. Common to all three was the abandonment following Katrina of the existing financial exigency regulations in favor of new regulations under which procedural protections were sharply reduced. In the cases of the LSU Health Sciences Center and SUNO, this was done through adoption by their respective boards of supervisors on the same day (November 18, 2005) of virtually identical declarations of "force majeure" (to be discussed in detail in the chapter on the LSU Health Sciences Center that immediately follows), with implementing regulations superseding what were in existing board bylaws and faculty handbooks. In the case of UNO, the regulations were changed five months later, when on April 21, 2006, the LSU System's board of supervisors, rather than declare "force majeure" for that institution, adopted a "Declaration of Financial Exigency" with implementing procedures that superseded the existing financial exigency provisions. Whether under the rubric of "force majeure" or financial exigency, a faculty appointment could be disrupted through "termination" (permanent separation), "layoff" (termination pending potential recall), or "furlough" (temporary unpaid leave that, however, as with "layoff," could become permanent). At all three of these public universities, the involuntary separations were implemented through placement on "furlough," which at least at the LSU Health Sciences Center and SUNO are apparently destined in significant number to be permanent. A more detailed treatment of these general terms will be found below in chapter III on the University of New Orleans.

The two private New Orleans institutions where investigations were authorized are the Jesuit Roman Catholic Loyola University New Orleans with the Reverend Kevin

W. Wildes serving as its president and the nonsectarian Tulane University under the presidency of Scott S. Cowen. A prominent feature first at Tulane and then at Loyola (and also at UNO in the public sector) was an administration-sponsored master plan for renewal and long-range development. Common to Loyola and Tulane was the retention of existing faculty regulations rather than their replacement as was done at the three public-sector institutions. As will be seen in the following reports, the Tulane regulations largely but not entirely track AAUP-recommended standards in key respects, and the Loyola regulations adhere fully to these standards. The differences between the Tulane and the Loyola situations are considerable, however. At Loyola, unlike Tulane, financial exigency was not declared or seriously argued, and appointments were subjected to termination on grounds of discontinuance of programs because of educational considerations. How closely the Tulane administration has adhered to the institution's own regulations is an issue occasioning debate, while the Loyola administration has provided scant evidence or argument in support of its assertions that it has abided by the applicable university regulations. Another noticeable difference is in the faculty's attitude toward the administration. While the Special Committee did not discern widespread faculty support for the actions of the Cowen administration at Tulane, it was struck by the massive faculty opposition at Loyola, punctuated by successive "no confidence" votes, regarding the administration of President Wildes.

Each of the report's chapters on the individual institutions includes available information on the numbers of full-time faculty subjected to layoff or furlough. With isolated exceptions, information on the numbers of adversely affected part-time faculty has been elusive to obtain, and the Association has not been advised of any specific New Orleans cases involving a part-time appointment and potential AAUP concern. The Special Committee is well aware, however, that the damage to academic careers resulting from Katrina extended in no small measure to part-time faculty members and indeed to academic staff members in positions not carrying faculty status.

The five chapters, which now follow, begin with the three public universities (the LSU Health Sciences Center, UNO, and SUNO) and end with the two in the private sector (Loyola and Tulane). They have been reviewed and approved for publication by the Special Committee and by Committee A, which under its regular procedures will in turn report on them to the Association's next annual meeting in June 2007. They form the core of this general report.



II. LOUISIANA STATE UNIVERSITY HEALTH SCIENCES CENTER

A. Background

The Louisiana State University Health Sciences Center in New Orleans houses the medical school and other health-related programs of the state's flagship public university. Its oldest and by far its largest component, the School of Medicine, was founded in 1931. The present organizational structure of the Health Sciences Center, which dates to 1965, consists of five additional schools—Dentistry, Nursing, Allied Health Professions, Graduate Studies, and Public Health—and nine Centers of Excellence, including centers for neuroscience, aging, and molecular and human genetics. According to the institution's mission statement, the Health Sciences Center's purpose is "to provide education, research, and public service through direct patient care and community outreach," which includes the provision of medical services to "the indigent and uninsured," particularly through the operation of several public hospitals throughout Louisiana. Prior to the late August 2005 onslaught of Hurricane Katrina, student enrollment was approximately 2,800. Data provided the Special Committee by the chancellor's office indicate that at that time the full-time Health Sciences Center faculty numbered approximately 1,000, of whom 678 held appointments in the School of Medicine. The full-time medical school faculty, which will be the focus of this chapter, consists of both scientific personnel and those with primarily clinical responsibilities, with categories of appointment including non-tenure-track, tenure-eligible, and tenured positions.

Funding for the LSU Health Sciences Center has come from multiple sources. State of Louisiana appropriations have accounted for approximately 40 percent of income, while a significant portion has come from patient fees generated by the faculty for the university through work in New Orleans hospitals. Other funds have come from tuition, from research contracts, and from gifts and grants.

B. The Impact of the Hurricane

Along with virtually everything else in New Orleans, the LSU Health Sciences Center was forced to suspend its operations in the aftermath of Hurricane Katrina. The storm forced students and faculty to abandon their homes and offices. The basements of all the Health Sciences Center's buildings and all first floors were flooded following the storm, causing severe damage to electrical, mechanical, and communications equipment, and the lack of air conditioning and refrigeration that resulted from this damage ruined perishable and other sensitive

items. Of New Orleans's nine hospitals, Charity and University Hospitals, which served as the main training grounds for medical school residents, closed as a result of the hurricane's effects. Three others closed temporarily, and two more operated on a reduced schedule. The massive exodus of the city's population following the storm dispersed students, staff, and faculty over a large area and led to a sharp decline in the patient pool that required the Health Sciences Center's services, with an attendant, immediate, and sharp loss of revenue. Despite these obstacles and harsh realities, the Commission on Colleges of the Southern Association of Colleges and Schools, the regional accrediting body, renewed the LSU Health Sciences Center's accredited status for the ensuing ten years after receiving an updated report.

Within four weeks of Katrina, many of the instructional activities of the Health Sciences Center were back in operation in Baton Rouge and in hospitals elsewhere in Louisiana. Faculty were instructed to be available for work and, when necessary, to be prepared to commute to Baton Rouge or other worksites. Faculty who did not return when instructed to do so were warned that they faced the prospect of being discharged, but those who did return were not assured of being retained. (As was the case at other New Orleans universities, communication with the dispersed faculty took place through e-mail announcements, an emergency Web site, and the cooperation of outside organizations.) The majority of the Health Sciences Center's schools resumed classes in New Orleans within six months, and after one year, all but the School of Dentistry, which suffered the most severe damage from the storm, were operating again, though at lower levels than before the hurricane. With the continuing closure of Charity and University Hospitals, medical school residents had been training at a variety of clinical locations throughout Louisiana, but the partial reopening of University Hospital at the end of November 2006 promised, according to media reports, the return of students and medical residents to New Orleans. The administration estimated that at least 90 percent of the students returned or were expected to return to the Health Sciences Center.

C. Declaring "Force Majeure" and Placing Faculty on Furlough

Salaries and benefits continued to be paid to all faculty in the wake of the hurricane while the university was closed and when it was only partially reopened in September, October, and into November 2005. On November 22, how-



ever, three months after Katrina, the LSU Board of Supervisors approved a “force-majeure exigency plan” for the Health Sciences Center to address “circumstances arising directly or indirectly as a result of those hurricanes [Katrina and Rita].” Citing the disruption of “revenue streams which no longer exist because they were generated by hospitals and clinical practices in New Orleans which have been destroyed, closed, or are non-operational,” the plan declared the administration’s right in an emergency situation to abrogate the protections associated with tenure and the institution’s own regulations regarding standards for notice of termination of appointment and of nonreappointment.

According to the board’s “findings”:

The Regulations previously adopted by the Board and upon which all related employment contracts are predicated recognize that the time periods for notice of termination or non-re-appointment *are predicated upon ordinary circumstances* (“ordinarily”) and are not controlling during a circumstance such as that in which [the Health Sciences Center] finds itself as a result of the effects of Hurricanes Katrina and Rita [emphasis added].

The plan described the “procedure for program modification”: “The Chancellor shall determine how many and what type of positions are currently needed, can be funded, and have work to be done”; in making these decisions, he “shall consult with the deans, department heads and, as reasonable under the circumstances in his determination, faculty members.” In large part, these determinations meant deciding which faculty members would be placed on “furlough” status, defined as “temporary leave without pay” that “may lead to eventual termination.”

The administration proceeded to place on furlough status members of the Health Sciences Center’s School of Medicine faculty, some tenured and some nontenured but all prior to the expiration of their existing appointments, removing them from the payroll as of December 1, 2005.³ The placements on furlough were confined to

3. The “force-majeure” plan offered an additional justification for not paying salaries to furloughed faculty members: such payment would contravene Article VII, Section 14 of the Louisiana constitution, which prohibits “the donation of public funds.” The plan interprets the provision as prohibiting payment of salary to employees for whom no work is available. This is a legal assertion on which the Special Committee takes no position.

the School of Medicine. The numbers the Special Committee has received from the chancellor’s office reveal that fifty-one full-time medical faculty (and another thirty-four part-time) were furloughed as of December 1, 2005, and an additional ten (plus two part-time) were furloughed subsequently.

Faculty members report having received written notification of their furloughs only days before, and sometimes on or after, the effective date of December 1, providing them with virtually no notice of the impending termination of their positions, salaries, and health benefit payments by the university. The letters notifying faculty members that they were to be furloughed were worded alike:

Dear _____,

As you well know, these are challenging times for the School of Medicine. Hurricane Katrina has had a devastating effect on our New Orleans campus and operations. Moreover, the financial impact of the storm and lost revenues with the closure of many school and clinical facilities and programs in the metropolitan area and with the economic downturn in the entire state of Louisiana is unparalleled in the history of the school. As a consequence, each department has worked with the school leadership to develop a plan for financial remediation.

You will be placed in a furlough status effective December 1, 2005; it is not clear at this time how long you might remain in this status or if you will eventually be terminated. We made the decision to place you on furlough after careful deliberation. The reason that you will be furloughed is due to the absence of the existence of a revenue stream dedicated to or based on your work, and also from the loss of revenue from both clinical and residency supervision funding.

You do have the right to have this decision reviewed. The review process is outlined in detail in the Force Majeure Exigency Plan approved by the LSU Board of Supervisors on November 18, 2005, and is posted on the [Health Sciences Center] Emergency Website. There are deadlines to observe for both levels of potential review, so please note the date that you received this communication. You will also need to make your request for review in writing to the Vice-Chancellor for Academic Affairs, Joseph M. Moerschbaecher, PhD. Mail your request to his



attention at [Health Sciences Center], 2323 Kenilworth Parkway, Baton Rouge, LA 70808.

Additionally, as furlough status will likely affect your benefits, you should contact Human Resource Management at 225-334-1614 or 225-334-1622; in particular, you should pay attention to the circumstances that may arise relative to your health insurance coverage. You will receive an individualized benefits summary from HRM under separate cover.

As these letters implied, the “force-majeure” plan allowed for brief windows of appeal to the chancellor and then to the system president, whose decision would be final. A faculty member put on furlough status who wished to contest the decision had only five working days from the receipt of notice to request a review of the decision by the vice chancellor for academic affairs and the appropriate dean. The vice chancellor would review the appeal and make a recommendation to the chancellor, who would decide either to uphold the furlough or rescind it. If the faculty member wished to appeal the written decision of the chancellor, he or she had three working days to apply for a review by the LSU System president. Even under the limited appeals procedure provided by the administration’s plan, faculty members report what appeared to them to have been perfunctory action in upholding of furlough decisions by Chancellor Hollier (who was also, previously, the dean who had issued many of the furlough notices). Five of the furloughed professors provided the Association with copies of letters of intent to appeal that they went on to address to LSU System president Jenkins.

In addition to the short or nonexistent notice and the absence of severance pay in lieu of notice, furloughed faculty were told, effective immediately, to give up their offices, their access to e-mail accounts, their parking permits, and indeed the right to unescorted access to their previous office space. The administration has stated that the advantage to faculty members of furlough was that they could continue health benefits, by paying both the employee’s and the university’s shares of premiums due. The apparent advantage to the employer was the relief from the obligation to pay its share of the benefits without having to issue notice of termination.

Faculty members had been called upon to defend their programs to an accrediting team from the Accreditation Council for Graduate Medical Education visiting the university in mid-November. They did so successfully, and were nonetheless given furlough notices within days thereafter. No programs were elimi-

nated. Affected faculty members called on only shortly beforehand to speak on behalf of their programs state that they had no reason to believe that their jobs were in jeopardy.

The furloughed medical school professors who communicated with the AAUP, some through the Association’s statewide Louisiana Conference and others by calling on the national staff directly, provided the staff with accounts of their own cases and a good deal of written material about the events at the Health Sciences Center and the administration’s actions. Subsequently the staff engaged in extensive correspondence with the administration.

The Special Committee has had access to all of these communications. Members of the committee met in New Orleans with approximately a dozen members of the Health Sciences Center’s faculty, including officers of the local AAUP chapter and both furloughed and retained individuals, and a fortnight later the committee met with Chancellor Hollier.

D. A Benchmark for Evaluating the Placements on Furlough

Prior to the devastating events of August 2005, the LSU Health Sciences Center had rules and procedures concerning faculty obligations and rights that were set forth in detail in the faculty handbook. Key provisions for the present discussion are those concerning termination or reduction of the appointment rights of faculty members in the face of financial exigency and program modification or discontinuance. These are the provisions rendered inoperative by the invocation of “force majeure,” and they merit close reading:

CRITERIA

[The Health Sciences Center] may terminate or reduce the contractual rights of faculty members when the Chancellor, upon authority of the President and Board of Supervisors, determines that it is necessary (1) to alleviate a financial exigency within the Health Sciences Center or subunit thereof, or (2) to effect a reorganization or elimination of an academic program of the institution. *Financial exigency is defined as the critical, pressing, or urgent need on the part of the University to reorder its monetary expenditures in such a way as to remedy and relieve the state of urgency within the University* [emphasis added].

RETRENCHMENT PLAN

In the event of financial exigency or the need to reorganize or eliminate an academic program, the Chancellor of [the Health Sciences Center] will appoint an ad hoc committee of faculty and administrators to institute an orderly and consistent plan of retrenchment. Dismissal of faculty will only be initiated after all alternative means of alleviating the financial crisis have been exhausted or deemed inadequate. This retrenchment plan may be administered on a school-wide, departmental or program basis.

Termination of faculty members in order to alleviate a financial exigency shall be in the following order:

.. Faculty on term appointments, starting with the most recently appointed and then proceeding in reverse order of seniority.

.. Tenured faculty on continuous appointments, starting with the most recently appointed, and then proceeding in reverse order of seniority.

For the purposes of this retrenchment plan, seniority shall mean total years of service at [the Health Sciences Center] as determined by the retirement system.

EXCEPTIONS TO THE RETRENCHMENT PLAN

Department Heads or other administrators who wish to make specific exceptions to the Retrenchment Plan can appeal to the Dean of the appropriate school, who will act upon a recommendation made by an ad hoc committee of faculty members appointed by the Dean of the School.

NOTICE

[The Health Sciences Center] shall provide written notice no fewer than thirty (30) calendar days prior to the intended date of termination. This written notice shall specify the cause of the termination, or reduction of time, provide a summary description of the facts relied on by the Health Sciences Center to make the decision, and a reference to the faculty member's rights to file an appeal pursuant to Handbook Section 10.10. Written notice shall be sent by certified U.S. mail, return receipt requested.

ALTERNATIVE POSITIONS

Faculty members whose employment time is terminated or reduced due to retrenchment will be eligible to transfer to any vacant [Health Sciences

Center] faculty position for which he is qualified, subject to the terms and conditions of employment attendant to that position. A faculty member's qualification for a vacant position shall be determined by the Dean of the appropriate school, after consultation with the Department Head involved, and approved by the Chancellor. A faculty member who exercises the rights accorded under this section and who is determined by the Dean of the school to be qualified for a vacant position will have a preemptive right to the position consistent with the retrenchment plan.

RECALL

If vacancies become available, faculty terminated under the retrenchment plan will be recalled in the reverse order of dismissal. Faculty will be eligible for recall up to one year after dismissal. Exceptions to this order can be appealed by the Department Head to the Dean of the appropriate school, who will act upon a recommendation made by an ad hoc committee of faculty members appointed by the Dean of the school.

The "force-majeure" plan, as noted above, declared that the university's financial exigency regulations "are predicated upon ordinary circumstances," but the clear language of those regulations belies that declaration. They state that a "financial exigency is defined as the critical, pressing, or urgent need on the part of the university to reorder its monetary expenditures in such a way as to remedy and relieve the state of urgency within the university." Plainly this text does not describe "ordinary circumstances," and just as plainly the effects and impact of the hurricanes fit within these "criteria," placing the university as they did in a "state of urgency."

The Special Committee notes that the university's existing financial exigency policy already limited the rights of faculty when compared to applicable AAUP-supported standards. Regulation 4c of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure* provides procedures supplementing the provision in the 1940 *Statement of Principles on Academic Freedom and Tenure* that termination of an appointment because of financial exigency should be demonstrably bona fide. Regulation 4c calls for the meaningful participation of faculty in the declaration of a financial emergency, for the right of a faculty member notified of termination to a full hearing before a faculty committee, for the



right of first refusal of a suitable new position for a period of three years, and for severance pay or notice based on length of service, from a minimum of three months for a first-year faculty member to at least one year following eighteen months of service. But why even the procedures and protections already provided in the institution's regulations for alleviating a financial crisis were completely bypassed in favor of a declaration of "force majeure" has not been explained by the administration and is not apparent to the Special Committee.

E. The "Force-Majeure" Policy

A first major consequence of the "force-majeure" provisions put in place in November 2005 was the replacement of the long-established and mandated role of faculty in decisions regarding educational policy and faculty competence with the virtually total discretion of deans and the chancellor to decide which members of the faculty and what academic programs to retain in the reemergent Health Sciences Center.

These new procedures gave no heed to key aspects of the institution's own regulations in the following respects:

1. Essentially no consultation with the faculty about the nature and extent of the financial crisis
2. Furlough decisions, potentially leading in some instances to de facto termination, made without faculty consultation and apparently without deference to length of service and tenure
3. Decisions made without acknowledgment of eligibility of potentially furloughed faculty to a preemptive right to transfer to other positions for which they were qualified
4. Decisions made without acknowledgment of rights of furloughed faculty to be recalled as positions became available in the next year

Under the "force-majeure" provisions, assuming that termination of faculty appointments was required, how should the deans and chancellor have decided who was to be furloughed and who retained? The "force-majeure" document specifies two unassailable general criteria: the needs and requirements of the institution and the value an individual provides toward meeting these. Presumably these have traditionally been the bases for recruiting, promoting, and, where appropriate, granting tenure to individuals, as well as for identifying and developing programs and curricula. Not relying on these, the "force-majeure" document added seven other criteria (here stated in somewhat abbreviated form):

1. The existence of a revenue stream dedicated to or based on the work of the particular individual
2. The individual's specific clinical, research, or teaching skills
3. The individual's recent performance and productivity
4. The individual's history of productivity
5. The individual's long-standing commitment and contributions to the institution
6. Evidence of the individual's "outstanding" service in the immediate aftermath of the hurricane
7. Other relevant and compelling considerations

The Special Committee was subsequently informed by the chancellor's office that additional criteria considered included the individual's ability to contribute to the recovery of the LSU Health Sciences Center and his or her geographic location (in-state or out-of-state) after Katrina.

Here the devil is in the details. Because no weights are assigned to the criteria, which replaced the presumptions based on tenure and seniority, the discretion of the administrator is, in fact, unlimited: anyone with less than perfect performance on any one of these criteria could be furloughed or, alternatively, have that deficiency overlooked in favor of other criteria.

The criteria themselves are suspect. Some introduce considerations, such as past and recent performance and productivity, that call for judgment about the relative merit of faculty members, thereby raising the prospect of furloughing professors on the grounds of fitness of performance and thus their release for cause. Others seem to allude to considerations that defy specification (for example, one's "long-standing commitment to the institution"), while one criterion—evidence of "outstanding" service after the hurricane struck—seems to be wholly impressionistic.

It is perhaps not surprising that Dr. Hollier, who seems to have had major responsibility for most of the furlough decisions in his roles as dean of the School of Medicine and then as acting chancellor, referred to a different formulation. He told the Special Committee that his decisions about who was to be furloughed were based on three considerations:

1. If a faculty member did not want to come back to work (this apparently was inferred if the faculty member did not show up when instructed to be available for assignment)
2. If there was no longer work for the faculty member to do, owing to the decreased demand caused by the closing of hospitals
3. If there was work, but no funding

While here nominally relying on financial considerations, the dean still had considerable discretion regarding who could be designated for furlough. For example, if the Health Sciences Center had the need and sufficient funds to support six faculty members with given skills, and ten fully qualified individuals were available, any four of the ten could be designated as redundant.

The Special Committee is unable to determine the actual bases for the furlough decisions that were made because it does not have a full list of those furloughed and because no specific reasons were given to the individuals furloughed at the time of their notice. The lack of stated reasons for the furloughs seriously complicated the task of anyone contesting the decision in his or her case.

The individual professors who met with committee members offered a variety of speculations about the reasons for the decisions. In the limited number of cases about which the Special Committee has specific information, no single consistent pattern is discernible. Faculty speculations, untested in any hearing procedure, do little more than testify to the overall unsatisfactory nature of the process employed. The unfettered discretion of a few administrators in a matter of days replaced the years of considered decision-making in shaping the nature of the university's faculty and curriculum.

F. The Necessity and Propriety of Invoking "Force Majeure"

Beyond the issue of the effect of the "force-majeure" policy on faculty appointments is the issue of whether invoking the policy was at all necessary, an issue to which the Special Committee now turns.

The "force-majeure" policy, emanating from the office of the LSU System's general counsel, employs a legal term derived from French contract law but which has close counterparts in the United States and in other developed legal systems. In brief, "force majeure" refers to a doctrine that releases a party from a contractual obligation when an unforeseen event renders a contract impossible to perform. As one commentator explains,

little, if anything, is abstractly unforeseeable . . . [a fire, a hurricane, a strike, legislation] . . . The

test which is applied is that the event must have been unforeseeable by a reasonable person at the time of the contract and in the circumstances in which it was made.⁴

As a result, contracts often contain "force-majeure" clauses to deal with such contingencies.

The LSU Health Sciences Center policy rested upon the principle that employment contracts, including contracts of tenure, are "predicated upon ordinary circumstances." Even though hurricanes and floods are a foreseeable occurrence in New Orleans—witness the several institutions that had purchased insurance against those contingencies—the impact of Katrina was physically to disable the university's medical facilities and significantly to depopulate the city. Consequently, instruction in neither the basic sciences nor in clinical practice could proceed in those facilities nor, to the extent that the medical faculty were compensated out of patient fees, were adequate funds being generated. The performance of many of the faculty's contractual obligations had been rendered largely impossible by this event.

The LSU System, as has been noted, did have in place a policy designed to deal with financial exigency. Its provisions, like the "force-majeure" policy, allowed for furloughs and layoffs as well as termination and, also like the "force-majeure" policy, gave the administration considerable discretion in deciding whom to separate. Moreover, adopting a concept deeply rooted in the 1940 *Statement of Principles*, the invocation of financial exigency would have brought in its train such common understandings as a requirement that there be no less drastic alternative to separation, a significant role for the faculty in adopting and applying criteria governing separation, a strong presumption in favor of the tenured faculty in deciding whom to retain, full due process to ensure the fairness of the decisions, and significant post-termination economic protections. The effect of the "force-majeure" policy was to obviate the applicability of these common understandings and of parallel university policies. Thus the question is not whether Katrina rendered some contracts for professorial service impossible to perform, but whether it rendered impossible the observance of existing rules that would seem to apply to just such a situation.

The legality of reliance on a "force-majeure" declaration is of course a matter for judicial determination. Whatever the outcome of any litigation, however, it is unlikely to undo the damage to the status and the careers of many of those faculty members most directly

4. Barry Nicholas, "Force Majeure in French Law," in *Force Majeure and Frustration of Contract*, ed. Ewan McKendrick, 2d ed. (London: Lloyds of London Press, 1995), 21, 24.



affected. Necessarily, the Special Committee is called upon to address this question not as a matter of law but from the perspective of academic policy and sound practice.

Under the 1940 *Statement*, a bona fide financial exigency allows for the termination of faculty appointments during their term under “extraordinary circumstances” where no less drastic action will suffice. Similarly, under the LSU financial exigency policy, “furlough, layoff, or termination of tenured faculty, non-tenured faculty [or others] before the end of their contract term *will be handled* in accordance” with this policy. (Emphasis added.) The text would seem rather plainly to apply to post-Katrina action.

Further, financial exigency is defined by LSU’s policy as the lack of the resources necessary to support the “existing programs and personnel ... without substantial impairment” of the campus’s ability to maintain the quality of its programs. This may be the consequence of lack of funds or “the substantial threat of deterioration of faculties due to a lack of resources,” among other things. The list of conditions that might result in the inadequacy of facilities and the lack of funds does not mention natural disaster; but, obviously, the list of the reasons for a financial exigency is not exhaustive, nor could it be. The policy merely supplies some possible reasons why there might be such lack of work or lack of funds as to allow terminations without being preclusive of others. It is the critical lack of work or funds that the financial exigency policy addresses. In essence, the university’s provision for financial exigency *is* a “force-majeure” policy.⁵

At the time the “force-majeure” announcement was circulated for consideration and approval, Chancellor Rock, in a November 14, 2005, memorandum to Vice Chancellor for Academic Affairs Joseph Moerschbaecher, expressed his strong disapproval of the furlough of tenured faculty without pay. He recognized that fur-

loughs would likely lead to ultimate separation, and he suggested the availability of alternative ways to compensate for the losses in revenue. He further emphasized the need for transparency and due process in an effort to maintain a scholarly environment.

The Special Committee does not find that the former chancellor’s views have been persuasively refuted, or that the wholesale bypassing of the existing rules has been justified. The crisis, to the university and to New Orleans and its population, was indeed devastating, and it required an orderly and adequate response. But there were available alternatives, and the administration seems to have chosen one that was antithetical to the institution’s own rules and the traditions of faculty involvement in university governance and decision-making. Indeed, this committee cannot discount the view, expressed by a number of Health Sciences Center faculty, that the “force-majeure” plan seems to have provided the opportunity to use the genuine need for prompt action as an excuse to restructure and reconfigure the university and its faculty in ways that were desired by the small number of administrators with the newly conferred authority to do so.⁶

G. Steps toward Recovery

As hospitals reopen, as students return, and as outside groups respond to the disasters of the hurricane with gifts, grants, and other assistance, a situation that once, perhaps, threatened the continuing viability of the LSU Health Sciences Center now seems much more hopeful. This is reflected in news stories about the university, in the statements made by the administration in its internal publications and announcements, and in formal actions. General Counsel Lamonica has informed the

there simply was not enough money to continue the same levels of employment as before the storms; there was not employment which produced the funds. Much of the faculty of [the Health Sciences Center] is devoted primarily to clinical duties, or to research which involves the treatment of patients in clinical settings. The patients were largely gone from New Orleans for months after the storms, and they still have not, and may never, return in the same numbers as before. LSU did not need, and could not afford to maintain, a faculty large enough to service a city of almost half a million people after the population dropped to something much less than that. Without work for them to do or money with which to pay them, LSU had no choice but to issue the furloughs it did.

5. LSU System general counsel P. Raymond Lamonica, responding to a draft text of the Special Committee’s report, stated that

LSU has amply and repeatedly explained why the normal provisions of financial exigency were inadequate fully to respond to ... the unique and, as the report itself admits, unprecedented destruction caused by hurricanes Katrina and Rita.

6. Asserting the lack of an alternative to the prompt placement of scores of faculty on furlough, General Counsel Lamonica wrote that at the Health Sciences Center

Association of an announcement at the final board of supervisors meeting for 2006 that, while the “force-majeure” exigency plan remains in effect, no more furloughs under the plan will be imposed. The Health Sciences Center administration has notified the Association that, despite a faculty sharply reduced from its pre-Katrina size (as of early January 2007, a total of 752 full-time faculty and 218 part-time), nine furloughed School of Medicine professors have been reinstated to active faculty service, a tenth has been brought back to a nonfaculty position, and discussions on reinstating seven to ten additional furloughed professors are proceeding or planned. Others who were furloughed have retired or resigned. Remaining on involuntary furlough as of early January 2007, however, were twenty-two full-time (and twenty-four part-time) members of the faculty.

administration has effectively terminated the appointments of the furloughed professors without having respected tenure rights and afforded academic due process as called for in the 1940 *Statement of Principles on Academic Freedom and Tenure* and the Association’s derivative Regulation 4c.

H. Conclusions

1. The administration of the Louisiana State University Health Sciences Center discarded the institution’s existing financial exigency procedures, without adequately explaining why it deemed them inadequate, in favor of a new “force-majeure” plan. It thereby set aside standards in closer conformity with those set forth in the 1940 *Statement of Principles on Academic Freedom and Tenure*. It did so without having consulted with the faculty, thus depriving the faculty of its appropriate role as called for in the Association’s *Statement on Government of Colleges and Universities* and in Regulation 4c of its *Recommended Institutional Regulations on Academic Freedom and Tenure*.
2. The administration proceeded under the “force-majeure” plan to place a large number of professors on furlough with virtually no notice. In selecting those to be furloughed and in implementing the furloughs, the administration acted at odds not only with applicable Association-supported standards but also with the existing Louisiana State University procedures on financial exigency: it unilaterally decided whom to furlough; it paid scant if any deference to tenure rights and length of service; and it paid no discernible heed to rights to relocation in an alternative suitable position.
3. Some amelioration of the damage inflicted by the furloughs has been achieved through instances of reinstatement. In those cases where the actions are likely to be permanent, however, the



III. UNIVERSITY OF NEW ORLEANS

A. Background

Founded by the Louisiana legislature as a branch of Louisiana State University with a liberal arts program for commuting undergraduates, the institution that rapidly became the University of New Orleans opened its doors in 1958 on an abandoned U.S. Navy air station on the shore of Lake Pontchartrain. By the eve of the events to be discussed, UNO had grown into a comprehensive metropolitan university, the largest campus after Baton Rouge in the LSU System. It enrolled 17,250 students and had a full-time faculty numbering 560 members.

Hurricane Katrina's damage to campus buildings was substantial, estimated at more than \$100 million, but not nearly as severe as the devastation in the immediately adjacent areas where students, faculty, and staff resided. The Federal Emergency Management Agency had promised to have 489 trailers available for housing by late January 2006, when the main campus reopened, but it took until the end of the spring before most of them were in place and functioning. Despite these adverse conditions, UNO managed to organize and operate some classes during that fall 2005 term, offering online courses as early as October and using facilities just outside the city together with space on the Baton Rouge campus, thereby continuing the education of approximately 7,000 students. In contrast to the payless furloughs imposed that fall at the other public New Orleans universities, all full-time UNO faculty members continued to be paid, regardless of the closing down of classrooms and laboratories.

The administration's ability and willingness to keep salary commitments was apparently not an indication of financial health, however. UNO's income from state funding was considerably less than that received by other Louisiana public universities. In dollar terms, according to one estimate, UNO was slated for 2006 to receive \$21.5 million less than the average amount for a university under the statewide formula funding level. UNO had barely reopened on its main campus in January, with a student enrollment of 11,600 rather than the 16,000 who would normally have enrolled for the spring semester, when its administrative officers, while anticipating a balanced budget for the 2005–06 academic year, warned of the need for drastic reductions for 2006–07.

Long-range planning for UNO, dating back to 2004, gave way to the administration's *University of New Orleans Restructuring Plan 2006–07*. A draft text dated February 27, 2006, gained wide circulation among the faculty. It called for specific cuts in programs

and particular sums to be saved through resulting personnel cuts. Many professors could see from the draft that they were destined for release, and indeed administrative superiors told them so. Accompanying the Restructuring Plan was another document, *UNO Exigency Guidelines for Hurricane Katrina Disaster*. The LSU Board of Supervisors would have to declare a state of financial exigency and approve recommended changes in academic programs before the documents would become operative.

Several UNO faculty members sent copies of the documents to the Association, seeking advice and assistance. After discussing aspects of the documents with those who provided them, the staff on March 31 wrote at length to Chancellor Ryan to convey a number of concerns. The concerns included a criterion for deciding who was to be released of "meritorious performance, of which tenure may be an indicator," thus allowing release to be determined through a perception of relative merit and assigning to tenure the weight of only one among a number of factors to be considered. Other concerns were silence in the documents regarding notice or severance salary in terminating appointments and a review procedure with no provision for a hearing before a faculty committee but only for a meeting with the administrators who contributed to the decision and with the burden resting on the notified faculty member to convince those administrators that their decision was inappropriate.

The administration invited comments from the faculty and others on the documents, and a somewhat revised draft of the Restructuring Plan was issued on April 25. The review panel in a contested case of release would no longer be confined to administrators but would now consist of two faculty members together with the provost, the dean, and the department chair.

B. Declaring Financial Exigency and Imposing Furloughs

On April 21, on the recommendation of Chancellor Ryan, the LSU Board of Supervisors approved a "Declaration of Financial Exigency" at the University of New Orleans, stating that "the financial resources of the UNO campus are not sufficient to support the existing programs and personnel of the campus without substantial impairment of the ability of the campus to maintain the quality of its programs and services." The declaration projected that UNO would lose about \$10 million in tuition revenue from reduced enrollment (estimated at under 15,000) for the fall 2006 semester;

and it noted that the state of Louisiana in December 2005 had permanently reduced its annual operating budget for UNO by \$6.47 million. The combined losses, according to the declaration, meant a total reduction of approximately \$16.5 million in the university's financial resources, representing a loss of 12.8 percent of pre-Katrina revenues.

Chancellor Ryan provided the board of supervisors with the Restructuring Plan on May 3, and on or about May 16 the administration issued notifications of placement on furlough to selected members of the faculty, the large majority of them with tenured appointments, who served in programs "slated for elimination or modification."

As to defining the actions as a "furlough," the April 21 Declaration of Financial Exigency provided that faculty and staff members in a program being modified or discontinued could be "furloughed, laid off, or terminated." As stated in the declaration,

1. "*Furloughed*" means the employee is placed on temporary leave without pay status before the end of the employee's contract term.
2. "*Layoff*" means the employee is temporarily dismissed before the end of the employee's contract term.
3. "*Terminate*" means the employee is permanently separated from the institution. Both furloughs and layoffs may lead to eventual termination.

"Termination" differs from the first two categories in requiring action by the LSU Board of Supervisors under established procedures before it can be implemented, while the final authority in implementing a furlough or layoff rests with the LSU System president. Under the Declaration of Financial Exigency at UNO, furloughs and layoffs both required three months of notice before going into effect (the mid-May notifications of placement on furlough led to removal from the payroll in mid-August, or in late September for those who pursued the appeal process to the LSU System president), and the procedures for appeal were identical. Any practical difference between furlough ("temporary leave without pay") and layoff ("temporarily dismissed"), at least at UNO, is not apparent to the Special Committee.⁷

7. For discussion of furloughing as a means of reducing faculty positions at the other New Orleans public universities, see chapter II of this report, on the LSU Health Sciences Center, and chapter IV, on Southern University at New Orleans.

As to the number notified of placement on furlough, an initial estimate attributed to the administration, based on the cuts specified in the draft Reconstruction Plan dated February 27, had been a reduction by eighty-three positions from the 560 full-time pre-Katrina faculty positions. Chancellor Ryan was quoted in the April 20, 2006, *Times-Picayune* as stating that seventy-eight professors would have to be laid off and that thus far twenty-nine had left voluntarily. An unexpectedly large number of faculty resignations and retirements occurred that spring and into the summer, leading to advertising in several instances for new faculty appointments. The Special Committee appreciates that the random nature of those voluntary departures could have decimated some academic areas and thus necessitated new appointments. Still, one would have thought the unexpected departures would be grounds for reconsideration in many instances of intended notifications of placement on furlough. The administration submitted recommendations for the authorization of specific furloughs to the board of supervisors on May 3, followed by supplementary recommendations on May 24. The mid-May notifications were widely reported as having been issued to thirty-five to forty members of the faculty, but it is known that several of the recipients had already arranged to resign or retire. On the eve of final action by the board of supervisors on June 1 and 2 to approve the furloughs, Provost Fredrick Barton reported the number as sixteen, but he called it a "flexible" number because yet more faculty members might still decide to leave UNO on their own.

The letters of notification, identical in all cases so far as the Special Committee can determine, stated that the furloughs were the result of downsizing and restructuring through "the elimination and/or modification of academic programs" that were identified in an enclosed copy of the board's Declaration of Financial Exigency.⁸ The notifications identified seven criteria used in evaluating the academic programs. Five criteria were then listed for identifying faculty members not

8. The downsizing included the elimination of various degree programs in Economics; Human Performance and Health Promotion; Film, Theater, and Communications Arts; Mathematics; Music; and English. Additionally, "reduced instruction" was to occur in Education, Engineering Management, Anthropology, English Composition and Literature, Fine Arts, Foreign Languages, Philosophy, Sociology, Biology, Computer Science, Earth and Environmental Sciences, Physics, Psychology, Mathematics, and Public Administration.



in programs slated for elimination as subject to furlough. These, which in broad intent resemble the seven criteria invoked at the LSU Health Sciences Center, were

1. being the source of “a revenue stream”;
2. having skills that “would be difficult to replace”;
3. having a record of “past performance and productivity”;
4. fitness for retention in an alternative UNO position; and
5. “other relevant and compelling institutional considerations.”

The notifications, however, did not include the identification of specific shortcomings that led to the recipient’s having been selected for furlough while other faculty members within their programs were being retained. Individuals who wished to contest being furloughed complained that they were handicapped in preparing an appeal if the reasons for their having been singled out were withheld from them. The presidents of the AAUP chapter and of the UNO Federation of Teachers sent a joint letter to Chancellor Ryan urging that the affected professors be provided, prior to an appeals hearing, with written specific reasons for having been selected for furlough. Those notified received no further explanation, however, before hearings were held.

Responding to a letter informing him of the composition of the AAUP Special Committee and its plans for meetings, Chancellor Ryan wrote to the Association’s staff on May 29. He reviewed the devastation wrought by Hurricane Katrina on New Orleans in general and the physical, financial, and academic damage suffered by UNO in particular. Discussing the restructuring that was in process, he asserted that the faculty had been involved “in every stage” of the decision making, that evidence of a bona fide financial exigency requiring the furloughs could be demonstrated, that “eliminating weaker programs in order to sustain and eventually enhance stronger programs” was necessary for “UNO’s financial and academic viability,” and that UNO’s focus must be on its programs that are most vital to the task of rebuilding New Orleans, which “has become a critical part of the university’s mission.” As to the adversely affected faculty members, the chancellor wrote, they are receiving “adequate notice and an opportunity to respond,” but “protracted appeal procedures” would have a negative impact on the university. Quoting the 1940 *Statement’s* precept that “institutions of higher education are conducted for the common good,” Chancellor Ryan concluded with the hope that the Special Committee would see its charge as an opportunity to assist UNO and the other universities affected by

Katrina, because “it would be truly unfortunate if AAUP chose this difficult time to advance the cause of a few over the common good of our community as a whole.”

Responding to the chancellor on June 12, the staff questioned whether “the common good” (which the AAUP certainly joins in supporting) is truly affected adversely by upholding the rights of the “few.” With those facing furlough having become fewer and fewer, the staff expressed hope that the administration might succeed over the ensuing weeks in reducing the relative handful of prospective involuntary terminations still further, or indeed in eliminating the category altogether.

C. Appealing the Furloughs

The chancellor’s office has not stated how many of those notified of placement on furlough submitted an appeal, but faculty sources have indicated that at least ten did so. Hearings were held during the course of June by a panel of three administrators (the provost, the cognizant dean, and the cognizant chair, or their designees) and two members of the faculty’s elected Policy Committee. The minutes of a June 27 meeting of the Policy Committee summarize reports from those attending the hearings that the environment was cordial or civil, that deans were supposed to have told those notified specifically why they had been selected for furlough and that some deans had done so but others had not, and that members of the hearing panel had been informed about how the hearings would be conducted but that this information had not been shared with the appealing faculty members. Hearing panels were reported as having discussed statements made by the appellant after he or she had left the room and could no longer refute what a dean or chair had said. Appellants complained about faculty peers being a minority on the panels, but there was no record of dissenting votes, which would suggest that a different composition of the panel might have led to a different outcome. Despite these serious concerns, the chair of the Policy Committee stated in conclusion that “the process was less unpleasant than expected and as good a process as we could have.”

By letters of July 7, 2006, Chancellor Ryan informed each of those who had appealed that he was adopting a recommendation by the hearing panel and thereby sustaining the decision to place the faculty member on furlough. He recounted the appellant’s objections to the decision and provided a brief reason for disregarding them, and he stated that transfer to an alternative UNO position had been considered but that a suitable position could not be identified. He concluded by reminding the recipient of opportunity within the next twenty days

to submit a request for review of the decision to the LSU System president and by offering assurance that every possibility short of reducing faculty and staff had been thoroughly considered but that unfortunately the financial situation did not allow another choice.

As confirmed by LSU System general counsel Lamonica, seven of the UNO professors notified of placement on furlough pursued their appeals to the next level by writing to the system office to request a review. Acknowledgments of receipt of the request were sent upon their arrival, followed by almost identical letters signed by LSU System president Jenkins and dated September 20, notifying them (without a specific explanation) that he had found no basis for reversing the chancellor's decision and that their furloughs would commence on September 22. An exception was made in the letter to one of the professors, who in her appeal had expressed fear of being placed on furlough just a little before her sixtieth birthday on October 8, when she would become eligible for retirement and thereby for continued participation in UNO's joint health benefits plan with a large potential savings in costs for her over the years ahead. President Jenkins accommodated her situation by commencing her furlough on October 9.

The system president concluded his September 20 letters by pointing out that under the existing declaration of financial exigency the authorized furloughs would expire, if no further actions are taken, not later than July 1, 2007, and that any steps to terminate a tenured faculty member's appointment, which would require approval by the board of supervisors, would have to comport with the stated procedures for termination.

D. The Special Committee's Interviews

Between August 7 and 17, Special Committee members conducted face-to-face individual interviews with five of the UNO professors who were appealing notification of placement on furlough, and they interviewed by telephone three additional professors being furloughed. Others from UNO who were interviewed included officers of the faculty senate, of the AAUP chapter, and of the UNO Federation of Teachers, various faculty members who were resigning, retiring, or remaining, and a graduate student who had urged the Special Committee to give him an opportunity to argue on behalf of his furloughed adviser.

The Special Committee was mindful of the strong likelihood that it would be meeting preponderantly with faculty members who were displeased with the UNO administration in the aftermath of Katrina. What the committee heard was not entirely negative: some good

things were said about the chancellor's efforts, and comments about the actions and attitudes of various deans and chairs were not uniformly unfavorable. Still, the Special Committee was struck by the virtual unanimity of opinion, and the intensity with which it was conveyed, that at bottom the involuntary furloughs brought unnecessary harm to members of UNO's academic community whose performance had been judged positively, who had been granted continuous tenure, and whom the administration had not now demonstrated to be unfit to continue. The furloughs were imposed, so the argument of those interviewed went, despite the voluntary exodus of UNO faculty in unexpectedly large numbers through resignations and retirements, achieving all the downsizing in faculty positions and personnel costs that the administration had sought and leading to the recruitment of new faculty members for tenure-eligible positions and the engagement of part-time instructors to teach courses that had to be offered while tenured faculty members were kept from their classrooms and laboratories and removed from the payroll.


Accounts of individual instances of alleged unfairness and abuse heard by the Special Committee, many of whose members have had significant experience as administrative officers during their careers, left the committee with the impression that these were not occasional lapses, perhaps inevitable when large-scale restructuring is effected. Rather, a disturbing abundance of cases suggested a propensity to take advantage of the downsizing by removing someone who was simply no longer wanted, whatever the personal reason and no matter the academic merits and needs. A few examples follow.

The reason given to a tenured professor, the only PhD in her department, for furloughing her was a belief that too few students were completing her program. The number came from a count taken early in the semester, however, and had she known this, the professor states, she could have shown to the hearing panel that it was a serious undercount.⁹

Another professor was eventually informed that his having been selected for furlough was based on a low rating in a March evaluation. The initial Restructuring Plan that was circulated in February already had this professor slated for release, however, a fact that cast doubt on the stated reason for furloughing him.

9. Chancellor Ryan, responding to a prepublication draft of this report, stated that the program in question had been identified as a "low completer" prior to Katrina and that there were not enough students to warrant its retention in a condition of financial exigency.





A third professor, who had received positive evaluations of her academic performance year after year, was informed when her appeal was rejected that the decision was based on evidence presented by her department chair “of a persistent and longstanding performance deficiency with respect to scholarly research.” The professor stated to the Special Committee that now having “performance deficiency with respect to scholarly research” on her official record implies incompetence or even something unethical, when in fact in a department with a focus on teaching she has authored seven publications, none previously criticized for absence of quality.

President Jenkins and Chancellor Ryan had assured the Special Committee that they would cooperate with its inquiries. When the committee met in New Orleans on August 30 with the public-sector administrative officers, Chancellor Ryan was asked why, with the small number of tenured faculty being furloughed and the still smaller number pursuing appeals, efforts were not being made to work out a mutually acceptable parting of the ways with those whom the administration believed it truly could not retain. LSU System general counsel Lamonica, with the submissions from the seven who were pursuing their appeals presumably then in the system office, immediately responded to the effect that something extra cannot be provided to one without providing it to all. Asked if he were averse to exploring possibilities of settling the cases, Mr. Lamonica replied that some of the appellants had engaged lawyers and that he objected to any discussion with the AAUP about ongoing cases.

E. Issues

1. CRITERIA AND PROCEDURES REGARDING PLACEMENT ON FURLOUGH

Clearly the criteria and procedures called for in UNO’s Declaration of Financial Exigency, Restructuring Plan, and supplementary documents, and those that have been employed in the furloughing, depart sharply from applicable AAUP-supported standards as provided in Regulation 4c of the Association’s *Recommended Institutional Regulations on Academic Freedom and Tenure*. Regulation 4c calls for faculty participation in the various steps leading to the temporary or permanent termination of faculty appointments: determination of the existence of a state of financial exigency requiring termination, of the needed number of terminations, of the guidelines for selecting those to be released, of where within the university the releases were to occur, and of who specifically would be selected for

release. Assessments of the degree of faculty participation in these matters differ widely. Chancellor Ryan has asserted that the faculty was kept abreast and consulted throughout, saying so on numerous occasions on campus, in correspondence with the Association’s staff, and orally at the meeting with the Special Committee on August 30. Some faculty members acknowledged a modest degree of involvement, while others characterized it as scant and meaningless. Members of the elected Faculty Planning Committee are reported as having been shown a draft of the Restructuring Plan at a stage before it was circulated but having said nothing about it then because they assumed it was confidential. The parlous financial situation of UNO was certainly not kept secret and was not seriously disputed, and it was known that a declaration of financial exigency was forthcoming long before the board of supervisors acted on it. The drafts of the Restructuring Plan pretty well laid out where cuts were to occur, and there apparently was no serious faculty challenge beyond those who stood to be adversely affected. Decisions on who specifically was to be released were in most cases made in the particular colleges and departments, with faculty involvement varying from unit to unit but with the actual decisions left largely to the deans and the department chairs.

The Special Committee believes a fair assessment of the degree of faculty involvement would be that, while the administration did not resist it, the faculty through its elected bodies, whether because it believed challenging what was in process would be futile or whether it viewed the decisions as the administration’s responsibility and prerogative, was not as aggressive as it might have been in insisting on exercising its own prerogatives under principles of shared academic governance.

On matters of academic due process for those notified of placement on furlough, contrary to the requirements of Regulation 4c they were not provided upon notification with a written (or in some cases even an oral) explanation of why they in particular were selected: the burden in contesting the notification fell upon them rather than on the administration; their appeals were heard not by a committee of faculty peers but by a panel with the majority of its members the administrators who were responsible for the notification; and they received three months of notification of removal from the payroll rather than the twelve months that are required under Association-supported standards. The investigating committee accordingly finds that the UNO administration, in furloughing members of the faculty pur-

suant to a declaration of financial exigency, denied them safeguards of academic due process as called for under Association-recommended standards.

Were there factors that prevented the administration from acting in closer conformity with these standards? When the Association's staff conveyed concerns about shortcomings in due process, Chancellor Ryan stated in his response that "protracted appeal procedures" would have a negative effect on the university and the community. The Special Committee might see some justification for this response if a massive number of furloughs had been in prospect, but only a small fraction of the initially contemplated eighty or more received notice of placement on furlough and only a fraction of these contested the notification. The committee rejects the implication that affordance of adequate safeguards of academic due process would have been overly burdensome.

2. FACULTY TENURE AT THE UNIVERSITY OF NEW ORLEANS

Tenure has existed at UNO from the institution's outset. The criteria that were adopted for furloughing faculty, however, refer to having tenure only as one of many factors that can be considered because it might be evidence of a faculty member's competence. From the available information on the notifications of furlough, the Special Committee is aware of cases of furloughing tenured faculty members while retaining junior members of the faculty or engaging part-timers to do similar work and indeed recruiting for someone new as a replacement. It is apparent that a disproportionate number of tenured faculty has left UNO, voluntarily or involuntarily. Chancellor Ryan is reported as having been hard pressed, when questioned at faculty meetings, to say anything positive about a need to respect tenure commitments. The procedures governing release of faculty that were adopted at UNO in connection with the financial exigency declaration and the restructuring plan do indeed allow opportunity for releasing tenured faculty that did not exist while the previous policies with their safeguards for tenure were in place.

The Special Committee finds that the UNO administration, in several cases placing tenured faculty members on furlough while retaining nontenured faculty for similar work, disregarded the protections for tenure set forth in the joint 1940 *Statement of Principles on Academic Freedom and Tenure* and the Association's derivative *Recommended Institutional Regulations*. The committee finds further that tenure at the University of New Orleans is currently insecure and will remain so as long as the current Declaration of

Financial Exigency with its procedures for releasing faculty members remains in effect.

3. THE NECESSITY OF INVOLUNTARY FURLOUGHES

As discussed earlier in this report, at most sixteen professors who had not already agreed to resign or retire were notified of placement on furlough. The saving of costs through the reduction of faculty positions that was a target of the Restructuring Plan had been essentially met by the voluntary (or semivoluntary) departures from the faculty that had occurred or were still expected. Several departments were advertising for multiple regular faculty positions to fill newly created vacancies. Based on this evidence and absent any contrary evidence from the administration, the Special Committee strongly doubts that any involuntary furloughs were necessary. The committee strongly suspects, if there were a small handful of remaining cases in which retention was not feasible, that these cases could likely have been resolved on mutually acceptable terms had the administration pursued this course.¹⁰


4. USING A CRISIS AS AN OPPORTUNITY FOR RESTRUCTURING

As have other chief officers of New Orleans universities, Chancellor Ryan has acknowledged that the post-Katrina crisis, with its immediate need to repair damage and the need in the broader sense to construct a new and changed city with a university restructured to

10. Chancellor Ryan commented on this paragraph as follows:

The contention that furloughs were unnecessary because of the high number of retirements and resignations evidences a fundamental misunderstanding of the underlying facts. At the time the UNO Restructuring Plan was developed, the University projected a total loss of revenues of \$16.5 million. This figure was based on a \$6.5 million reduction in state revenues and a *projected* loss of \$10 million in tuition revenues. Enrollment before the storm was 17,250. The Restructuring Plan budget was based on *projected* enrollment of 14,600. Actual enrollment for Fall '06 was 11,700—fully 25 percent less than the projected figure upon which the Restructuring Plan budget was calculated. The estimated \$16.5 million in restructuring savings *included* \$1 million in retirement and resignations forthcoming after the Board declared financial exigency. ... Thus, the notion that retirements and resignations produced revenue that made the furloughs unnecessary is simply mistaken.





serve and to lead the future New Orleans with maximum effectiveness, brought about a sense of urgency and a receptiveness to change that are lacking in more tranquil times. The Special Committee cannot fault the chancellor for seeing this opportunity and endeavoring to use it. Whether these endeavors required the abandonment of existing faculty policies, and particularly the safeguards of faculty tenure, is quite another question. The Special Committee finds that these policies did not need to be disregarded in order to achieve the envisioned restructuring. Making changes without having to adhere to certain policies may be more convenient, but the countervailing inconvenience is a small price to pay for the maintenance of policies that ensure principles of academic freedom and tenure at an institution of higher learning.

F. Conclusions

1. The administration of the University of New Orleans, in placing members of the faculty on furlough pursuant to a declaration of financial exigency, denied those faculty members safeguards of academic due process as set forth in the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure*.
2. The administration, in selecting faculty members for furlough, paid insufficient heed to the protections of tenure as enunciated in the 1940 *Statement of Principles on Academic Freedom and Tenure* and derivative Association policy documents.
3. Tenure at the University of New Orleans is currently insecure and is likely to remain so as long as the current Declaration of Financial Exigency with its procedures for releasing faculty remains in effect.
4. The administration has not demonstrated need for the continuation on furlough of any members of the University of New Orleans faculty.

IV. SOUTHERN UNIVERSITY AT NEW ORLEANS

A. Introduction

Southern University at New Orleans was founded in 1956 as a branch of Louisiana's flagship historically black Southern University in Baton Rouge. SUNO's management was transferred in 1975 from the State Board of Education to the newly established Board of Supervisors for the Southern University System.

The flooding caused by Hurricane Katrina took an extremely heavy toll on SUNO. All eleven buildings on SUNO's main campus, located in eastern New Orleans just south of Lake Pontchartrain, were extensively damaged by flood waters that rose more than ten feet. During fall 2005, when the university was closed, the university administration was headquartered on the Baton Rouge campus of Southern University and some classes were held there. When the university reopened in New Orleans in January 2006, it was forced to operate out of trailers throughout the spring semester and into the 2006–07 academic year for most academic and administrative functions as well as for student and some faculty and staff residences. Before the hurricane struck New Orleans in late August 2005, the university enrolled approximately 3,700 students taught by some 160 full-time faculty members. Enrollments for the spring 2006 semester fell precipitously to 2,037 students but increased to about 2,300 students for the fall 2006 semester. At the beginning of the spring 2006 semester, ninety-one faculty members returned to the university. Those with approved work assignments had received their full salaries from August through December. Of the seventy or so faculty members no longer at the institution, the administration had notified fifty-five of them near the end of the fall 2005 semester that they had been placed on furlough. These furloughs are the central focus of this report.

B. Background

In a memorandum dated November 21, 2005, SUNO's interim chancellor, Robert B. Gex, notified some university faculty and staff members that they had been placed on furlough. The chancellor said the furloughs were a "lay-off avoidance measure," that "we hope by adopting this measure we will avert the need for layoffs," and that the university "will develop and implement a recall procedure." Shortly thereafter, in a December 12 memorandum, the chancellor informed all other faculty and staff that additional notifications of furlough would be issued "to further trim the University's budget and workforce in the aftermath of Hurricane Katrina and because the services of all SUNO employees may not be needed in the

Spring of 2006." "Some" classified and unclassified employees had already been furloughed, the chancellor stated, and the administration "will determine which employees will be needed in the short- and long-term to provide academic and support services at SUNO for spring 2006 and thereafter." Faculty and staff were told to expect to be notified about their status by the university's Office of Human Resources "as soon as we complete the assessment of the University's academic and service needs."

The assessment referred to by Dr. Gex was apparently completed in the next day or two, for letters dated December 16 signed by the director of human resources were sent to the fifty-five professors, thirteen with tenure, informing them that they were being furloughed without pay effective December 31. The reason given for the furlough in each case was much the same as described in Dr. Gex's December 12 memorandum, though stated with greater emphasis: this action "is necessary to further reduce the university's budget and workforce ... and based on projected student enrollment for the spring 2006 semester." The letters did not say how long the furloughs would last, but held out an expectation of eventual return to the university:

If it is determined that your services are needed, you will receive written notification of your recall for work from me; in which case, you must respond promptly. It is requested that you keep the Office of Human Resources informed of your continued availability for work, your current address and telephone number and provide other contact information so that written notices affecting your employment at SUNO can be timely delivered. The SUNO website will post important notices and information for the benefit of furloughed employees.

Some of those furloughed were indeed recalled. Chancellor Ukpole informed the Special Committee in early February 2007 that twelve of the fifty-five had been reinstated, four turned down an offer of recall, nine resigned, and nine retired. Of the twenty-one remaining, seven had temporary appointments that were not renewed, and fourteen have not been recalled because of program elimination. The continuing tenure of one of the professors brought back has thus far been unrecognized by the administration. For the fourteen who remain on furlough, the prospect of their being recalled seems increasingly unlikely.

The December 16 letters concluded by informing the furloughed faculty members of their eligibility for medical



benefits: "Please be advised that if you participate in the group insurance program through State Group benefits, your insurance will expire on December 31, 2005, unless you pay your portion of the January 2006 premium that is due on or before December 23, 2005."

On the same day, December 12, that Dr. Gex distributed his "notice of pending furlough," he wrote to Johnny G. Anderson, chair of the Southern University System's Board of Supervisors, resigning his position effective December 31. Dr. Gex had served as SUNO's chancellor from 1989 to 1997, and he had agreed to return to the university in June 2005 for no more than one year while the board of supervisors conducted a search to replace retiring chancellor Press Robinson, Jr. The reasons for Dr. Gex's resignation are discussed later in this chapter, but here the Special Committee notes that the resignation was triggered by the board's decision to appoint Dr. Victor Ukpolo, the Southern System's vice president for academic and student affairs, as SUNO's chancellor. Dr. Ukpolo took office on January 7, 2006.

Along with the decision to furlough numerous faculty members, the SUNO administration announced far-reaching changes in the university's academic programs that had been approved by the system's board of supervisors at its meeting on December 8, 2005. The new academic plan eliminated nineteen degree programs, including undergraduate programs in English, mathematics, biology education, physics, political science, and history, and it added seven new programs, among them medical records administration, business entrepreneurship, and human development and family services. Described as an academic plan with a "community-based emphasis," the plan's stated objective was to make SUNO "relevant to the rebuilding of the city of New Orleans and its surrounding communities."

The December 8 changes called for a pervasive shift in the nature and mission of SUNO, from a largely liberal arts curriculum to a community-based one. The Special Committee cannot assess whether the sweeping subtractions and additions of programs were sensible or prudent, but the committee does express alarm that such fundamental changes in the educational program were enacted without faculty involvement and consultation. Indeed, the plan's release sparked immediate criticism from members of the faculty about how it had been formulated. The president of the SUNO faculty senate was reported in the local press as saying that "[n]obody can deny the fact that no faculty input went into the development of that plan." The same article quoted the chair of the board of supervisors as having said that he "was shocked to hear SUNO vice chancellors had not met with campus

academics," reporting that he planned to have a meeting with the vice chancellors.¹¹

While the December furlough letters notified faculty members about their status after December 31, they were silent about the right of appeal under a declaration of "force majeure" approved by the Southern system's board of supervisors on November 18. The declaration, identical in every key respect to the declaration of "force majeure" approved by the Louisiana State University Board of Supervisors for the LSU Health Sciences Center on the same day, superseded the university's faculty handbook and the board of supervisors bylaws and provided for an appeal procedure only through administrative channels.¹² In brief, affected faculty had five working days from their receipt of the furlough notice to appeal to administrative superiors, who were to make a recommendation to the chancellor. The chancellor's decision could be appealed to the Southern University System president, whose decision was final.¹³ Several faculty members filed appeals, all of which were rejected.

Criticism by faculty officers that the administration had not included them in the development of the new

11. Commenting on the prepublication draft of this report, Chancellor Ukpolo wrote that the statewide coordinating body for higher education, the Louisiana Board of Regents, "invited a small committee ... of the Southern University System's Board of Supervisors ... to announce that, given the storm's impact on the university, drastic measures would have to be taken to stabilize the institution and plan for the immediate and long term future of SUNO. ... All faculty members had an opportunity to attend regular meetings called by SUNO and System administrators where issues were discussed regarding the options faced of closing SUNO or drastically reducing the number of programs."

12. For a discussion of various features of the "force-majeure" declaration, see this report's chapter II on the Louisiana State University Health Sciences Center. With regard to the silence of the furlough letters about possible appeal, the declaration stated that "SUNO shall notify each affected employee of the proposed disaster-caused employment action in writing. ... The notice shall include a summary of the proposed action, the reasons therefor, and the available review procedures."

13. Chair Anderson of the Southern University System Board of Supervisors, commenting on the draft text of this report, wrote that authority rests with the board for "final internal review."

academic plan was followed by a series of faculty senate memoranda addressed to Chancellor Ukpolo on “Reductions in Faculty Ranks and University Reorganization” (January 23, 2006), “Furloughs and Appeals Hearings” (March 9), “Teaching Loads” (March 20), and “Repeal of ‘Force Majeure’” (April 5). Each memorandum sharply faulted the administration for actions taken or issues left unaddressed, and each proposed specific remedies. The April 5 memorandum, the shortest of the lot, merits full citation:

“Force majeure” is a legal concept protecting a person or organization from being forced to honor a contract when an act of God makes performance impossible. As such it is limited in both scope and duration. Once the disaster passes, “force majeure” expires. “Force majeure” covers the impossibility of performance, not convenience of performance.

Katrina is over. The event that makes performance impossible has passed. While the physical devastation lingers, the university took steps to reorganize and reduce expenses and these have left us in a stable posture. Further, spring enrollments provide a basis to make knowledgeable projections for summer and fall enrollments. There is no need to continue “force majeure” and its legal strength at this point is questionable.

The Faculty Senate at Southern University at New Orleans urges that, as chief officers of this institution, you either declare “force majeure” over or request the Board to take such action so that the university can resume using the Faculty Handbook as the guiding reference in making teaching-load and faculty-employment decisions. It is no longer acceptable to fail to fulfill all contractual obligations.

Responding on April 18 to the senate’s memorandum, Chancellor Ukpolo said that the “force-majeure” policy “is still relevant to deal with the uncertain future confronting SUNO. However, once we know our enrollment numbers for the Fall Semester 2006, we should revisit the necessity of the ‘force majeure.’” In October 2006, at a meeting of the faculty senate, he stated that he would reexamine the need for the policy and recommend its revocation to the Southern University president if enrollment for the next semester increased by 10 percent. The Special Committee understands that the declaration is still in force.

The Association’s staff, having reviewed documentation provided by SUNO faculty members and officers of the AAUP’s Louisiana state conference, wrote to Chancellor Ukpolo, initially in February 2006, to convey the Association’s concerns about issues of tenure, academic due process, and academic governance posed by the furlough decisions. The staff later provided information to the chancellor about the establishment of this Special Committee and its plans for visiting New Orleans in August to meet with university administrative officers and concerned faculty members.

In a letter dated June 12, 2006, the chancellor responded at length to these letters. With respect to furloughed faculty, he stated that “those remaining in furlough status could maintain their [health-insurance] coverage by paying the premiums themselves. In the face of state-mandated cuts in SUNO’s budget and reduced student enrollment, there was no other alternative to this action.” Furloughed faculty were to be recalled “as circumstances dictated and, of necessity [we] eliminated low completer programs and reorganized curricula to meet our immediate academic needs based upon the programs maintained and projected and actual student enrollment.” These faculty had “the right to appeal,” but “we set no deadlines by which any faculty member could appeal.”

With regard to the faculty’s role in the furlough decisions and the decision to adopt a new academic program, the chancellor distinguished between the faculty senate, on the one hand, and the faculty as a whole, on the other:

While it is recognized that there is an elected faculty body of faculty representatives, SUNO does not operate on the premise that the faculty as a whole is incapable of participating in the decision-making process except as directed by that body. As SUNO’s business unfolded, the entire faculty was given the opportunity to participate in the information gathering and disseminating process and to have direct input into matters that were affecting them.

Selected members of the Special Committee met on August 18 with furloughed SUNO faculty members, continuing officers of the SUNO faculty senate, and Dr. Joseph Bouie, who served as chancellor of the university for the period 2000–02. At the August 30 meeting attended by senior administrative officers of the three New Orleans public universities, committee members had the opportunity to hear directly from Chancellor Ukpolo.



C. Issues

1. FURLOUGHS AND FINANCIAL EXIGENCY

The American Association of University Professors has long recognized that a college or university can legitimately terminate faculty appointments, including appointments with tenure, on grounds of financial exigency, but that much can be done to avoid the necessity of this extreme step. Furloughs without pay, a familiar measure in industry and government, are one such step, which the AAUP has identified, along with numerous other steps, as a way for institutions to deal with pressing financial problems.¹⁴

Payless furloughs are a mixed blessing, however, for faculty members. On the one hand, a furlough implies the possibility of returning to the campus and a paid position, and, as described earlier in this report, the December 2005 notices issued to SUNO faculty members announcing the furloughs explicitly referred to this possibility. On the other hand, the financial burden on the individual is no different from what it would be if the appointment had actually been terminated: in either circumstance, no salary is paid. It would therefore not be surprising to learn that faculty members placed on furlough will consider positions elsewhere as a hedge against furloughs that go on too long. An administration, for its part, if it is concerned that furloughed faculty members not leave for other positions, will try to limit the duration of the furloughs.

There is no question that SUNO's financial condition in the aftermath of Katrina was grave, and that it faced the daunting tasks of rebuilding its physical infrastructure and its academic programs. Because a significant portion of the university's operating expenses are linked to salaries and benefits, these were a prime target for reduction. SUNO's faculty handbook and the Southern University System's bylaws are silent with regard to furloughs, but the declaration of "force majeure" identified furloughs, defined as a "temporary leave without pay status before the end of the employee's contract term," as one of three "Disaster-caused Employment Actions." The other two were, like those noted in this report's preceding chapters on the LSU Health Sciences Center and UNO, layoff ("the employee is temporarily dismissed

before the end of the employee's contract term") and termination ("the employee is permanently separated from the institution"). The declaration stated that "both furloughs and layoffs may lead to eventual termination," and it called for actions taken against faculty members to respect the "needs and rights of the affected employees to the fullest extent possible under these extraordinary circumstances."

Despite the characterization of furlough (and even layoff) as temporary, some of the SUNO faculty members placed on furlough would seem to have had good reason to think that their professional futures lay elsewhere. The furlough notices made no reference to an expiration date or to a date by when the furloughs would be reassessed. They identified no criteria according to which the administration would determine if someone's services were needed again, and they were silent about any plans for protecting faculty salaries and hence faculty positions in the future. Moreover, the approval by the board of supervisors of a new academic plan a few days before the furlough notices were issued had direct and far-reaching implications not only for the curriculum and students but also for faculty appointments. A furloughed faculty member could understandably conclude that his or her furlough was, or would very soon become, tantamount to termination.

In his November 21, 2005, memorandum that preceded the issuance of the December 16 furlough notices, Dr. Gex described furloughs as a "measure that will avert the need for layoffs." With another academic year approaching completion, however, the result in the fourteen cases of furloughed faculty members, including some with tenure, who have not been recalled has not been merely layoff but, it is increasingly apparent, permanent termination of appointment.

2. THE REVIEW PROCEEDINGS

The Special Committee turns next to the issue of the procedures available to those tenured faculty members who sought to contest the notifications of placement on furlough. As noted above, the university's policies in effect before the declaration of "force majeure" make no reference to furloughs, but afford to faculty members subject to termination of appointment because of financial exigency or "matters directly related" to such termination the opportunity for a full on-the-record hearing before an appropriate faculty committee. The elements of the SUNO hearing procedure are drawn verbatim from Regulation 4 of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure*, derived from the 1940 *Statement of*

14. "Financial Exigency, Academic Governance, and Related Matters," *Academe* 90 (March–April 2004): 112. For an account of a university that utilized payless furloughs, which were then followed by appointment terminations, see "University of the District of Columbia: Massive Terminations of Faculty Appointments," *Academe* 84 (May–June 1998): 46–55.

Principles on Academic Freedom and Tenure, including the right of the faculty member to cross-examine adverse witnesses and to be provided with a record of the hearing. The burden of proof rests with the administration.

By contrast, the declaration of “force majeure” called for any hearing to involve only the administration and indeed those same administrative officers who issued the notices of furloughs being contested. The declaration provided no information about how the hearing should be conducted other than to say that the vice chancellor and the cognizant dean (or designee) “shall listen to and consider any facts and contentions by the employee and review the initial recommendation as to that employee.” In short, as in the LSU Health Sciences Center case, the declaration of “force majeure” at SUNO served to short-circuit the institution’s existing procedural protections against involuntary termination of faculty appointments. The declaration of “force majeure” and the ensuing terminations were unaccompanied by explanation of why existing procedural protections relating to financial exigency were being bypassed.¹⁵

A few tenured faculty members promptly filed appeals. Among their various claims, they alleged that the administration had retained nontenured faculty members or engaged new contingent faculty to teach courses that they were qualified to teach. There were delays in the administration’s processing of appeals, but Chancellor Ukpolo’s eventual May 25 response to one of them appears to have been typical:

Please be informed that I have received the documentation from your Furlough Appeal Hearing. After my review of the documentation you submitted, I concur with the recommendation of the Vice Chancellor of Academic Affairs that the decision for furlough remains unchanged.

The chancellor thus did not provide the affected professors with any reasons for his decision, thereby offering them no indication of the grounds on which further appeal could be mounted.

The five-day filing deadline prescribed in the “force-majeure” declaration perhaps reflected concern that involvement of a faculty committee would have delayed decisions that needed to be made quickly. But there is no reason to believe that a faculty hearing committee

could not have finished its work within at least the nearly six-month period that the SUNO administration took to complete its task. Neither the board of supervisors nor the SUNO administration explained why it was considered necessary to bypass the university’s existing hearing procedure and replace it with a procedure that on its face, and as it operated in these cases, was seriously deficient. Under it, the SUNO administration determined that faculty members should be furloughed, announced that furloughs were forthcoming, and issued letters to faculty members notifying them that they had been furloughed. In their appeals, tenured faculty members questioned the legitimacy of these decisions as applied to them and the process by which they had been made. The administration was thus in the position of adjudicating its own contested decisions. The failure of the board of supervisors and the SUNO administration to afford to furloughed faculty members the opportunity for a faculty hearing represents, in the judgment of the Special Committee, a flagrant deficiency in academic due process.

3. THE ROLE OF THE FACULTY IN THE FURLOUGH DECISIONS

The official role of the SUNO faculty in financial exigency decisions was well established before Hurricane Katrina struck New Orleans. The university’s policies provided that a university committee, with at least half of its members appointed by the elected faculty senate, would determine whether a financial exigency exists. Department chairs, in consultation with a faculty committee elected by members of the department, would “determine the individuals whose services are to be terminated.” Lastly, “any proposed termination of tenured faculty based on financial exigency” would “be reviewed by a committee of tenured faculty before a course of action is decided.” Consistent with standards set forth in Regulation 4c of the AAUP’s *Recommended Institutional Regulations on Academic Freedom and Tenure*, these SUNO policies conferred upon the faculty a significant role in financial exigency decisions.

The “force-majeure” declaration addressed the faculty’s role only as follows: “Prior to making a determination to discontinue a program [as a result of the university’s lack of funds], the Chancellor shall take reasonable steps under the circumstances to consult with deans, department heads, and faculty representatives.”

Faculty members at SUNO, furloughed and nonfurloughed alike, have justifiably complained about the absence of meaningful faculty involvement in any

15. See section F, “The Necessity and Propriety of Invoking ‘Force Majeure,’” in chapter II of this report.

aspect of the furlough decisions—from the determination to issue a declaration of “force majeure,” to the determination of which academic programs were to be discontinued and which were to be added, to the determination of the criteria for selecting particular individuals to be furloughed, and to the identification of the faculty members to be furloughed.¹⁶

Indeed, the SUNO administration itself complained about the role of the board of supervisors and the Louisiana Board of Regents in SUNO’s affairs. In his letter of resignation following the announcement of Chancellor Ukpolo’s appointment as chancellor, Dr. Gex criticized the treatment of the SUNO administration by the two boards:

For me, I have felt disrespected since I arrived on the Baton Rouge campus. System and Baton Rouge personnel were assigned to attend SUNO’s meetings so that the [System] administration knew what we were doing almost before we knew. SUNO was micromanaged from the beginning. And the worst indignity occurred when a delegation of System persons went to the Board of Regents to discuss SUNO’s future with no representation from SUNO on that delegation.

Dr. Joseph Bouie, the former chancellor who met with the Special Committee on its visit to New Orleans, voiced similar concerns.

As noted earlier, Chancellor Ukpolo, in his June 12 letter to the Association’s staff, drew a distinction between the faculty as a whole and the faculty senate, suggesting that the administration’s communications with the former could substitute for dealing with the official agency for faculty participation in the governance of the university. Even if the severity of the university’s financial crisis and the need for prompt action explained why there was less than full consultation with the faculty senate, the faculty’s role seems to have been limited to reacting to decisions already made by the board of supervisors and the administration. This was notably true with regard to

16. Chancellor Ukpolo, expressing doubt that this statement can be substantiated, wrote in response to it that “deans, chairs, and faculty were briefed at regular meetings to explain the compelling circumstances leading to the decision to furlough faculty In fact, department chairs and deans, in conjunction with the faculty, recommended to the administration the names of faculty to be furloughed based on the prevailing circumstances in each department.”

the issuance of the declaration of “force majeure,” the announcement of the new academic plan, and the issuance of furlough notices. All these decisions bore directly on the faculty’s responsibility for the teaching and research done at the university, and therefore the faculty should have had an important role in the decision-making process. Instead, the evidence is persuasive that these decisions were made entirely within the confines of the board of regents, the board of supervisors, and in smaller part the SUNO administration, and that the faculty was thus left without an effective voice in matters significantly affecting faculty status.

In not submitting proposed program changes to the faculty senate and instead reporting on them in a more inclusive but more amorphous manner to the faculty as a whole, the SUNO administration effectively denied the faculty an opportunity to respond expeditiously through its formal governance structure.

D. Conclusions

The Special Committee, throughout its inquiries, was continually reminded that the damage inflicted on Southern University at New Orleans and other universities in the city by Hurricane Katrina was unparalleled in the history of higher education in the United States. In the face of these extraordinarily difficult circumstances, particularly in losing the use of its campus buildings for an indefinite future, the SUNO academic community has undoubtedly made progress toward restoring the university’s operations. This achievement, however, has come at a high and unnecessary cost to faculty rights and particularly to principles of due process and academic governance. The Special Committee concludes that :

1. The furloughed Southern University at New Orleans faculty members were denied the academic due process to which they were entitled under the university’s own policies before “force majeure” was declared, under the 1940 *Statement of Principles on Academic Freedom and Tenure*, and under the Association’s derivative *Recommended Institutional Regulations on Academic Freedom and Tenure*.
2. Actions of the Louisiana Board of Regents, the Southern University System Board of Supervisors, and the SUNO administration, taken singly or in some combination in matters fundamentally affecting the university’s academic programs and the status of its faculty, manifested disregard for the faculty’s appropri-

ate role in academic governance as enunciated in the *Statement on Government of Colleges and Universities*.¹⁷



17. Southern University System Board of Supervisors chair Johnny Anderson, in his comments on the prepublication text of this report, maintained that “academic freedom and due process safeguards were preserved for all SUNO faculty members during the implementation and enforcement of the *Declaration of Force Majeure*.”

System president Ralph Slaughter wrote as follows:

While we reaffirm our appreciation to the AAUP and the Special Committee for the attention that your visit ... and the report have drawn to the continuing plight of SUNO and other New Orleans area higher education institutions, we must respectfully disagree with your findings. We could not and cannot have tunnel vision in planning and executing recovery activities while we continue our efforts to attract students to return to our campus in New Orleans. Our administrators must see and consider the entire picture, the whole institution, and not just how the landscape relates to faculty. As advocates for faculty and faculty issues, AAUP and the Special Committee can adopt this narrow viewpoint, our university administration cannot. As our students come, they will require not just faculty’s services, but a full complement of staff and administrative services that will contribute to their successful matriculation at the university.

V. LOYOLA UNIVERSITY NEW ORLEANS

A. Introduction

Loyola University New Orleans was founded in 1912. Its pre-Katrina enrollment was about 5,600, with a complement of more than 300 full-time faculty members organized into several schools and colleges.

The university suffered significantly from wind and water intrusion as a result of the hurricane, although damage was modest compared to other New Orleans universities. According to President Kevin Wildes, the university claimed \$4.8 million in property and content losses: \$3 million was paid out by its insurance carrier and the remaining \$1.8 million constituted its deductible under that policy. President Wildes estimated the university's revenue shortfall attributable to Katrina to be about \$25 million; the university has claimed \$15 million against its carrier of business-interruption insurance and an additional \$5 million in other claims, resulting in a \$5-million shortfall under that head. Total losses for 2005–06 of \$14.5 million were offset by \$8.2 million in federal supplemental aid, \$.4 million from the Bush-Clinton fund, and a \$1 million business interruption insurance advance. The university's unrestricted endowment is about \$250 million, and its operating budget for academic year 2005–06 was about \$125 million.

In consequence of the disaster, the university closed for fall 2005. When it reopened in January, more than 90 percent of its students returned. All faculty and staff members were paid during the period of closure. For fall 2006, the university enrolled 527 new first-year students; the previous year it had enrolled more than 900 first-year students and had anticipated a first-year enrollment in 2006–07 of 630. Total fall 2006 enrollment of about 4,700 students represents a 16 percent decline from the previous year. According to President Wildes, the operating deficit for 2005–06 was \$12.9 million and for 2006–07, without budget cuts, a deficit of about \$12 million was anticipated.

The following sections will recount the events after the university's reopening that drew the Association's concern. They will next briefly outline the Association's involvement leading up to the appointment of the Special Committee. They will then measure the administration's pattern of decisions against the university's rules, rules that fully embrace Association-supported standards. A final observation and the Special Committee's conclusions will be offered at the close.

B. The Pathways Plan: A Chronology

Even before Katrina, President Wildes announced his

desire to take up the future of the university—its mission, programs, academic structure, and staffing. In 2004–05, the president appointed a University Strategic Task Force and charged it with developing a plan to be presented to the board of trustees at its first meeting of 2005–06. Katrina cut short that effort but, in President Wildes's words, "provided us the opportunity to take an even closer look at our offerings and operations."

Before this report examines how the administration proceeded, key elements of the institutional governance structure and its specific rules on making decisions to discontinue departments or programs of instruction need to be identified. Regarding structure, the university's rules provide for a University Senate as "an advisory body whose function is to assist the University in matters that the Senate deems appropriate concerning the whole University." It consists of the president of the university and the provost and vice president for academic affairs, both *ex officio*, and faculty members selected by school, department, and college. There is also provision for a Standing Council for Academic Planning (SCAP). It is chaired by the provost and vice president for academic affairs and consists of fourteen elected faculty members and two students. Among its responsibilities, SCAP is charged with this:

It shall review proposals for program inaugurations and discontinuances and evaluate such proposals on the basis of criteria proposed by SCAP and agreed to by the University Senate and the President regarding these proposals.

Chapter 9 of the Loyola University Faculty Handbook deals in detail with the subject of program discontinuance. The key provisions are set out below:

A. Specific Causes for Termination

9. Discontinuance of a program or department of instruction. If a decision is made to discontinue formally a program or department of instruction, this decision will be based essentially upon educational considerations, which may involve financial matters. Educational considerations and financial matters do not include cyclical or temporary variations in enrollments but must reflect the long-range judgment that the educational mission of the University as a whole will be maintained or enhanced by discontinuance. . . .



E. Procedures for Termination Because of Discontinuances

1. A proposal to discontinue a program or department of instruction will be evaluated by the Standing Council for Academic Planning, which will apply the criteria established by the University Senate. The Standing Council for Academic Planning will advise, in writing, the Board of Trustees, the President, and the University Senate concerning the proposed discontinuance.
2. [Section 2 on placement and severance obligations toward affected faculty is discussed in section D.2 of this chapter.]
3. A faculty member may appeal a proposed relocation or termination resulting from a discontinuance and has the right to a full hearing before the University Rank and Tenure Committee in which the essentials of an on-the-record adjudicative hearing are observed. The issues in this hearing will include the question of the University's failure to satisfy any of the conditions for this section. In such a hearing the determination by the Standing Council for Academic Planning that a program or department is to be discontinued will be considered presumptively valid, but the burden of proof on the other issues will rest on the administration.

A report prepared by a committee of the University Senate in June 2006, reflecting back upon the events to be discussed below, noted that the president's Strategic Task Force had met on only three occasions, shared no substantive data or ideas, and responded only to broad statements of goals. It further noted that SCAP, charged with evaluating programs under criteria adopted by the senate, worked from January through March to produce a set of criteria, which it forwarded to the senate but which that body declined to approve. The matter of criteria was thus returned to SCAP, and on April 5, 2006, that body issued a four-page report setting out criteria for program evaluation. As the introduction to that report observed, a program review could be undertaken with an eye as much on the enhancement of a program's quality as on its discontinuance, consolidation, or suspension. The report set out six broad heads, each enumerating further nonexhaustive criteria elaborating the particular category of evaluation. The criteria laid down were: (1) centrality to the university's mission; (2) program reputation and quality; (3) service to

other programs or the common curriculum; (4) demand; (5) impact on the community; and (6) revenues and expenses.

On April 5, the date SCAP's report was issued, President Wildes e-mailed the Loyola faculty that on April 7 the data relied upon for program review would be posted on the provost's Web site and that the full details of a plan for reorganization would be released three days after that, on April 10, in anticipation of final action by the board of trustees a month later, on May 19. The president stated:

As we move forward, we will continue to follow the process as outlined in the Faculty Handbook. Already, SCAP has unanimously recommended to the University Senate a set of criteria, unweighted so that no program is unfairly disadvantaged, for use in decisions about program terminations. SCAP will have the opportunity to continue fulfilling its responsibilities, as stipulated in the Handbook, by advising the Senate, the Board of Trustees, and myself in writing about the plan.

The president noted that the initiation of a comprehensive blueprint for Loyola's future antedated the hurricane and that Katrina "may have forced us to accomplish this undertaking earlier than anticipated." No reason was given for so foreshortened a process. The month allowed by the president included the Easter recess. The timetable provided little opportunity for senate reflection on the proposed criteria. In actuality, only days would be available for SCAP to review any proposal, assuming senate approval of the criteria to be applied.¹⁸

On April 10, the president released a six-page, single-spaced document, "Pathways: Toward Our Second Century"—the product, it stated, of "consultation and evaluation." The president did not state with whom that consultation had occurred. The report of a senate subcommittee issued in June asserted that the various faculties or representative faculty bodies, department chairs, and even deans were not consulted in the process.¹⁹

18. Commenting on a prepublication draft of this report, President Wildes stated that the timetable was established by the board of trustees and that he was able to get an earlier deadline extended until May.

19. President Wildes stated that "deans were briefed on the entire proposal before it was released," and that "some departmental chairs were contacted regarding questions on programs and enrollments."



(This complaint has been ongoing in the faculty's reaction to the plan. It was reiterated in explanation of a vote of "no confidence" in the administration by the faculty of the College of Humanities and Natural Sciences, the university's largest, in September 2006.) The plan was developed by Provost Walter Harris, Assistant Provost John Cornwell, and Assistant Provost Brenda Joyner.

The Pathways plan proposed to restructure several schools and colleges, eliminate City College (Loyola's evening division), consolidate some programs, suspend undergraduate majors and minors in seven disciplines, suspend master's degree programs in four, and discontinue majors, minors, and graduate studies as follows:

- Bachelor of Arts
 - Communication sequences in Broadcast Journalism, Broadcast Production, Communication Studies, and Film Studies (Photo Journalism will be combined with Print to form Journalism)
- Bachelor of Science
 - Communication Information Systems
 - Computer Science
 - Elementary Education (and Minor in Secondary Education)
- Bachelors
 - Computer Information Science
 - Computer Information Systems Applications
 - Human and Organizational Development
- Masters
 - Communications
 - Communications/Juris Doctor
 - Computer Information Science
 - Elementary Education
 - Reading
 - Secondary Education

The Pathways plan called for the termination of the appointments of seventeen faculty members, who were ostensibly rendered redundant by these discontinuances and consolidations. Of these, eleven held tenure, most of them with long institutional service, and the remaining six were probationary faculty members who had already been reappointed for the 2006–07 academic year.

As noted previously, the university's rules governing program discontinuance require that the criteria to guide the decision be established by the University Senate and that a specific proposal to discontinue a

program first be evaluated by SCAP in light of those criteria. The specific programmatic proposals announced to the Loyola faculty on April 10—for general discussion and comment in anticipation of board action only a few weeks later—had not been the product of any evaluation by SCAP. In the administration's view, as announced on April 10, SCAP was as free to comment as a body as any individual member of the faculty, its institutional standing in the process being otherwise undifferentiated.²⁰

As it had promised, the administration posted the data relied upon in preparing the Pathways recommendations. These consisted of four tables setting out: (1) student applicants, admits, and acceptances ("yield") by major for four academic years, 2002–05; (2) a headcount of majors and minors as of February 23, 2006 (as provided by the Office of Student Records); (3) all undergraduate degrees awarded from 1994–95 through 2004–05; and (4) graduate degrees awarded over the same period of time. No explanation was provided of what these data meant, how they were used, or how they were related to the qualitative criteria set out in the April 5 statement. Even so, and despite the time allowed, a subcommittee of SCAP undertook to evaluate the Pathways plan in light of the data supplied.

On April 17, the SCAP subcommittee issued a preliminary report. It drew four conclusions: (1) the data supplied were incomplete and did not address all the criteria set out in the April 5 SCAP report; (2) the lack of reasoned explanation made it difficult if not impossible to draw any connection between the criteria and the programmatic proposals; (3) the absence of crucial information could suggest that other criteria or factors had been applied; and (4) the data suggested that, to the extent the decisions were financially driven, reductions in other areas might obviate the need for any programmatic elimination.

On May 10, after further deliberation, SCAP submitted a more extensive supplement and corrective to the administration, faculty, and governing board. It set forth what it took to be serious flaws in the data provided by the administration, which it detailed in two attachments. Even as it called for a total reevaluation, the report concluded:

20. In his response to the draft text of this report, President Wildes stated that "providing the proposal first to SCAP without sharing it with the entire campus seemed naive given the importance of the plan and the tendency for confidential reports and proposals to be widely shared."

Members of SCAP are well aware of the challenges of the post-Katrina world and the need to make changes in the university. Though it is too soon to know exactly how drastic those changes will have to be, it is clear that fiscal demands may well necessitate elimination or cutting back certain programs to deal with reduced revenue. Loyola will be a different university. The concern of SCAP is that changes will be made without complete and reliably analyzed data, and without any articulated rationale for the changes. In the end, this will be harmful not only to individual faculty, students, and staff and to historic programs at the university, but also to the viability and growth of the university and to its mission.

Assistant Provost Cornwell, one of the drafters of the Pathways plan, later posted more data in response to the senate's request; but these, too, were found significantly wanting by the senate.

Meanwhile, in April, the faculty of what was then named the College of Arts and Sciences and the University Senate respectively voted "no confidence" in the process that produced the Pathways plan. The faculty's disagreement went further. On May 11, the senate took a "straw vote" of no confidence in the provost's office—nineteen for the motion, four against, and two abstentions. On May 12, the faculty of the College of Arts and Sciences voted "no confidence" specifically in Provost Harris and in Assistant Provosts Cornwell and Joyner—seventy-one voting for the motion, two against, and four abstentions. It further urged the board of trustees to table the plan until November 2006, providing a number of grounds for so urging.²¹ Interestingly,

21. The more salient are:

3. Criteria for restructuring have not been approved by SCAP or by the University Senate. There has been no vision put forward to guide any sort of wise restructuring plan. There has been no clear rationale put forward to justify the proposed cuts.
4. The current plan was not received by the deans or the faculty before it was put forward on April 10, 2006, therefore we have not had sufficient time, or access to complete data, to allow for reasonable deliberation and joint planning among administrators and faculty.
5. Severe and serious cuts to departmental majors and of tenured faculty members as proposed by the Pathways Plan should not be chosen as the best strategy to ensure the future health of our university, especially when these recommendations are based

these motions did not address the faculty's confidence in the president. From what the Special Committee was given to understand, the faculty leaders hoped, perhaps naively, that the president might take the faculty's exclusion of him from its vote as an overture to mend fences. If so, the attempt failed. A week later, on May 19, the board of trustees adopted the Pathways plan.

On May 22, President Wildes sent an e-mail to the faculty addressing the board's action. He discussed the need for the institution "to make choices about our future in this new environment and how Loyola could become a stronger community," stating that "numbers' were not the only factor to drive the decisions." Although several suggestions were made in the "feedback" the administration received, he concluded that none provided "alternative ways to close the budget gap," and that time was short given the deadline laid down by the board. On the process of arriving at the plan, President Wildes stated:

I developed ideas that shape the vision of this plan in conversations with the vice presidents, deans, and representatives from the University Senate, Administrative Staff Senate, and Student Government Association. I also built the vision upon all the work on planning that has been done in recent years. The vision provides a framework for the strategic goals and for my recommendations to the board on existing programs. I asked the provost, Walter Harris, and his staff to conduct a program review to analyze how we allocate our resources. The allocation of resources is a question of stewardship. In a finite world, we need to make choices about how we will use the resources we have.

I know that a number of people have expressed concerns about the program review. After reviewing everything, I am confident in the analysis and the work that Dr. Harris and his staff did in this area. As the board has expressed confidence in my administration,

on inaccurate compilations and misinterpretations of data from just the 04-05 fiscal year.

6. The attrition of both students and faculty that has been caused by the mere announcement of the plan has not been assessed.
7. Alternative cost-cutting measures have not been proposed and explored by the whole university community.



I want to express my clear confidence in Provost Harris and his staff for the work they have done.

No notice was taken, nor mention made, of the formal faculty protests: of their criticism of the data relied upon by the administration, of the administration's failure to engage with that criticism, and of the lack of any reasoned explanation by the administration for the choices made.²² Instead, the president closed his communication with what a reader could only take as an oblique reference to the faculty's collective consternation: "I think that one can argue that a university is a constellation of communities: faculty, staff, students, alumni and administration. Each is an important constitutive element of the university. No one element comprises the whole of the university but every element is necessary for the life of the university."²³

22. The president in his subsequent comments to the Association stated that "data alone did not drive the program discontinuance decisions. First and foremost was centrality to mission. While data played a role, and some data were openly acknowledged to be flawed and thus were corrected or not used, considerations of the shape of the university in the future were paramount."

23. In his response to the draft text of this report, President Wildes provided an expanded interpretation of the development of the Pathways plan and the faculty's role in the process:

Given the fact that the Board of Trustees mandated the university to move quickly, the provost, a member of the university SCAP, drafted an initial set of program review criteria based largely on the work of [an outside consultant]. This initial set of criteria was discussed with the Council of Deans and then presented to SCAP at its first regular meeting on January 17, 2006.

SCAP was asked to take the criteria and shape [them] into whatever form seemed most appropriate for Loyola. At each of the succeeding regular meetings of SCAP, the provost sought input from the group for improvement of the criteria. At one point, he asked members to put in writing the precise wording they would suggest for improving the criteria and submit that to him for incorporation into the document. Only two faculty members eventually submitted written suggestions. In the meantime, the set of criteria was shared with the University Planning Team, again with the Council of Deans, and with the President's Cabinet for whatever suggestions could be garnered for improv-

On June 8, a subcommittee of the senate distributed a detailed report, "A Call for Conversation and a Critique of Pathways." The chair of the senate prefaced it by noting that he had asked that it be circulated to each member of the board. "I plainly stated," the chair wrote, "that the senate had not endorsed or advised the president on any discontinuance or elimination. Moreover, the senate is of the opinion that SCAP had virtually no time to react to Pathways and the faculty has been virtually excluded from the whole process."

The report asserted that the administration's action belied the claim of the university as a "constellation of communities," adverting to the failure to build support for a shared vision of the institution's mission and the lack of collegiality and of meaningful community input into the process. It alleged a lack of competence by the administration in its disregard of SCAP's role under the

ing it. No suggestions were forthcoming. At one point, a couple of SCAP members argued for weighting the criteria. In the end, SCAP roundly rejected that notion and opted instead to have the criteria prioritized.

After several discussions and further development, SCAP developed criteria which it submitted to the Senate at its April 6 meeting. The Senate subsequently formed a subcommittee to review the criteria and submitted a report to the Senate on April 20, which expressed concern about some of the data relating to the criteria. The plan was also made public on April 10 followed by a period in which the campus community as a whole was invited to give its input, which it did. SCAP's criteria, the Senate subcommittee report, and the campus community's input all figured into the decisions and recommendations, which were ultimately made to the Board of Trustees.

Although the review was done in a compressed time frame, the appropriate committees were consulted, and there were other forms of faculty consultation as well. The special committee of the Board of Trustees, advising the administration, met with the leadership of the University Senate to listen to their views and concerns. One consistent piece of advice from faculty bodies was to make no changes and wait. The board judged that such inactivity would violate its fiduciary responsibility.

What this draft report does not acknowledge is, according to the Handbook, [that] the ultimate responsibility for program discontinuance rests with the Board of Trustees. SCAP's role is to *advise*. No faculty body ultimately decides whether to discontinue programs.

institution's governing rules, its reliance on invalid data, and its failure to provide any rationale for the plan. The latter two were singled out in particular for a more extended discussion. The senate approved the report on June 21, and forwarded it to the president and the governing board.

Meanwhile, on or about June 14, letters of termination were sent to the seventeen professors affected by the program discontinuances. These letters cited chapter 9 of the Faculty Handbook as allowing for that action. The affected faculty members were placed on leave without teaching assignments but with severance pay for a one-year period. They were ordered to relinquish their offices in two weeks. No mention was made of the availability of the hearing procedure set out in chapter 9. Most of the eleven tenured professors notified of termination have initiated these proceedings, however. The hearing on the first case (to be discussed later) was held on November 13, 2006. The second and third hearings took place in December, the fourth and fifth occurred in January 2007, and others as of this writing were still to be scheduled.

With the beginning of the 2006–07 academic year, President Wildes sent a twelve-page memorandum via e-mail to the Loyola community. In it he discussed the institution's current and projected situation vis-à-vis

Contrary to the findings in the Special Committee draft, Loyola did in fact involve the faculty in the program discontinuance decision-making process as called for in the Faculty Handbook. Unfortunately, although the faculty-dominated SCAP had the opportunity to develop program discontinuance criteria, it did not act at all until pushed by the provost. As the report acknowledges, SCAP worked for three months (January to April) to develop criteria. Whether the criteria developed with SCAP required Senate approval is a matter of disputed interpretation of the Handbook, but regardless, the Senate did not undertake to develop criteria. In other words the two faculty bodies with the greatest opportunity (and obligation) to shape the process chose inaction, explained by complaining they needed more time, better data, and so on. ... While the authors of the draft are seemingly unimpressed that Loyola solicited input from other than official faculty bodies, the fact is that large and small meetings of faculty were held, as were individual conversations beyond the requirements of the Handbook. These other means of soliciting input did not take the place of formal consultation with the faculty but instead supplemented it.

enrollment and finances and the institution's "strategic goals"—the latter summarized in terms of resurrection. One strategic goal called for a revision in the university's "governance process to promote shared decision-making in line with new academic structure." The president explained:

[I]n light of all that happened last year, I would like to invite the university community to a review of university governance. At the end of last year, I received, and sent to the Board of Trustees, a document from the University Senate entitled "A Call for Conversation." I think the title is right on target. I will work with faculty, staff, and student leadership, as well as the Board of Trustees, to develop a process for the review of governance for the entire university. I would like to invite the entire university to participate in this review.


On September 26, the faculty of what is now the College of Humanities and Natural Sciences voted to reaffirm the vote of "no confidence" in Provost Harris taken previously by the faculty of what was then called the College of Arts and Sciences—this time by vote of seventy to ten. On this occasion, the college faculty went on to vote "no confidence" in President Wildes—sixty-one to nineteen. The motions were prefaced by a recapitulation of what the faculty believed to have been the fundamental deficiencies in the process leading to the adoption and implementation of the Pathways plan.

Using the questions raised by the senate's June "Call for Conversation" as "a frame of reference," President Wildes on December 6, 2006, sent the senate's executive committee a nineteen-page memorandum that he characterized as his contribution to a potential "ongoing conversation" between the senate's committee and a committee of the board of trustees. The senate was to respond to this document on February 8, 2007, as will be seen in the epilogue to this chapter.

C. The Association's Involvement

In March 2006, the Association's chapter at Loyola alerted the Washington office staff to the prospect of a plan to discontinue programs. Shortly thereafter President Wildes called Jordan Kurland, AAUP associate general secretary, to inform the Association of the formulation of a plan and to solicit the Association's reaction. A few weeks later, after the Pathways plan had been released, the staff wrote to President Wildes. It noted that the university's governing instrument,





chapter 9 of the faculty handbook, closely tracks Association-recommended standards and procedures for program discontinuance and the consequent termination of the services of faculty members during the terms of their appointments. The letter questioned the administration's adherence to the university's rules in detailed respects. These concerns were reiterated in a letter of June 12 expressing surprise that the board of trustees would have acted in the face of an "evident lack of faculty support." The letter urged that the administration not proceed and, should it choose to do so, that no tenured faculty appointment be terminated without adherence to Association-supported standards embraced in Loyola's own rules. Upon learning of the issuance of the letters of termination, the staff wrote on June 20 to convey the Association's continuing concern.

President Wildes replied on June 26. He stressed the difficulties of recruiting students in a post-Katrina world, the need to adapt to tough circumstances in order to thrive, and the availability of due process for faculty members adversely affected by programmatic decisions. On the question of process, the president took issue with the staff's assessment. He acknowledged that Loyola's rules "virtually track" Association standards, but he asserted that these were followed to the letter and exceeded in spirit:

Not only did we faithfully follow our procedures but, as part of the planning process that included examination of programs, we went further, by opening up a comment period and holding a town meeting open to all. Furthermore, in developing Pathways, I and members of our administration spent countless hours in one-on-one and small group meetings with faculty. We went way beyond both your guidelines or our mandated procedures to obtain input into planning our recovery from the most devastating event in the history of our city and this university. . . .

[T]o suggest that we ignored faculty input in devising Pathways, much less that we failed to adhere to our internal procedures on program discontinuance as mandated by our Faculty Handbook, is wrong in fact and unfair in impugning the integrity of this institution and the people who serve it.

D. Issues

Two sets of issues arising under principles of academic due process are presented in these events. The first concerns the adequacy of the process leading to the termination of the appointments of faculty members, mostly tenured, and of the prospect of their being heard intramurally in review of the actions. The second concerns the treatment afforded the notified faculty in the immediate aftermath of those decisions.

1. "PATHWAYS" AND PROGRAM DISCONTINUANCE

As President Wildes acknowledged, the university rules, embodied in chapter 9 of the Faculty Handbook, "virtually track" Association-supported standards governing the termination of faculty appointments on grounds of program discontinuance. This is not a situation where the professoriate is summoned to persuade an administration or governing board of the soundness of these standards, instrumentally or ethically. The question is whether the institution abided by its own rules, and that question encompasses whether the institution comported with Association-recommended standards; the two are coterminous.

Under Loyola's rules, decisions to discontinue an academic program may involve, indeed can be inextricably linked to, financial considerations; such decisions are, however, distinct from decisions driven by financial exigency. Neither the administration nor the board of trustees of Loyola relied upon financial exigency as a ground of action, nor, despite the accumulation of significant deficits, was the institution in so dire a situation.

Because program decisions are, at their core, educational, however they may be connected to long-term trends in enrollment, tuition, and curricular interests,²⁴ Loyola's rules assign a major role to the faculty in the decision-making process, premised primarily on the faculty's educational expertise and secondarily on the need to maintain the faculty's commitment to the institution in a stressful period of curricular change. The rules are fashioned to build trust in a process that may result in the termination of the appointments of colleagues of long and exemplary service—to assure not only those adversely affected but the faculty as a

24. Recall that Loyola's rules require that program discontinuance must be "based essentially upon educational considerations, which may involve finances," and that financial matters do not include cyclical or temporary variations in contrast to long-range judgments.

whole and the larger community as well that the decisions were soundly deliberated, educationally justified, and fundamentally fair. Loyola's rules do this in two ways. First, they require that SCAP, a representative body of the faculty specially chosen for the task, "evaluate a proposal to discontinue a program or department of instruction," under senate-approved criteria: as a precondition, SCAP must advise the senate, the president, and the board of trustees, in writing, concerning a "proposed discontinuance." Second, those faculty notified of termination in consequence of programmatic change have recourse to a hearing before the University Rank and Tenure Committee. In that event, SCAP's determination—that a proposed discontinuance is or is not warranted under the applicable criteria—is considered "presumptively valid." Thus, the burden rests on the affected faculty member challenging the decision to show that the discontinuance, if SCAP-approved, is nevertheless arbitrary, discriminatory, or otherwise unwarranted; by contrast, the burden rests upon the administration to show that the discontinuance, if SCAP-disapproved, is nevertheless justified and that the action taken is appropriate.

Despite the administration's protestations to the contrary, the Special Committee finds sufficient evidence that the administration of Loyola University failed to comply in significant respect with the institution's own rules governing the manner in which decisions to discontinue programs are to be made. First, a set of criteria was developed by SCAP as a template or guide for programmatic evaluation, but the senate did not adopt those criteria. Inasmuch as the rules require SCAP programmatic review under senate-adopted standards, just what these standards were had first to be resolved. Second, and perhaps more important, the rules require SCAP, in the first instance, to evaluate any proposal for program discontinuance. President Wildes has insisted that the dissemination of the Pathways plan on April 10 conformed to and even exceeded that requirement. The faculty's representative bodies disagreed. So does the Special Committee.

The rules contemplate an exacting deliberative process. If one assumes the April 5 SCAP recommendations to have been operative, they lay out a set of variable or unspecified weights. A 1993 AAUP ad hoc committee investigating the proposed reduction and abolition of programs of instruction at San Diego State University commented on a similar situation. There the administration took upon itself the role of designating departments for reduction and discontinuance based upon criteria established by the San Diego State

faculty senate that are almost identical with those set out by the April 5 SCAP report, that is, quality, centrality, curricular and community need, diversity, program size, and cost (and resource generation) when all else is equal. "These criteria," the AAUP investigating committee observed,

might have provided an adequate framework for a rigorous, systematic process of programmatic review by the San Diego State faculty. Their all-embracing character, however, allowed the freest play to justify almost any departmental termination decision. That is, unless one could find departments that fall afoul of virtually all of them ... any one criterion could be pointed to as justifying a decision, the others to the contrary notwithstanding, even as the same factor is discounted in a determination in another case.²⁵

At Loyola no rigorous, systematic process was conducted by the faculty body expressly charged under the institution's rules to do so. Instead of performing that primary role as called for under the university's own procedures, SCAP was placed in the peripheral position of critic: no pre-decisional documents or analyses were shared with SCAP (or the senate or the faculty as a whole) addressing why any of these programmatic decisions were made. The data relied upon were posted—as available to SCAP's membership as to anyone else—but these were never connected to any particular decision, and no reasoned explanation for the decisions was given. Importantly, much that was relied upon was deemed by the faculty to be inexplicable because of the very absence of such connective analyses and explanation. The senate's June 21 "Critique of the Pathways Plan" summarized what the senate believed were errors and lacunae in the data: only a one-year snapshot was relied upon; revenue for one year was compared with enrollment from another year; subspecialties were wrongly treated as majors; and more.²⁶

A later senate critique of the data and methodology was even more pointed. It adverted, for example, to the

25. "San Diego State University: An Administration's Response to Financial Stress," *Academe* 79 (1993): 94.

26. For example, of the Department of Communications, one of the hardest hit, the senate observed that four sequences were eliminated based on the seventy-eight students enrolled as of a snapshot date:

All of Communications	=	442 students as of February 23, 2006
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following in the administration's methodology in an analysis done after the development of the Pathways plan: "[A]n instructional program at Loyola, on average, generates net tuition revenue equal to 2.28 times the instructional cost of salaries associated with that program. Programs that generate more than this amount are, in effect, subsidizing programs that generate less than this." This, the senate report argued, was a non sequitur:

[C]ertainly any program or department that can claim a large number of students as majors contributes substantially to the overall ratio just by virtue of the fact that those students are on campus, they take classes at the university, and they pay tuition. No matter what department or program those classes are in, the numerator of the overall university ratio is increased if there are

All of Communications	=	442 students as of February 23, 2006
Broadcast Journalism	=	27 students
Broadcast Production	=	21 students
Communications Studies	=	18 students
Film Studies	=	12 students
Total	=	78 students
Advertising	=	49 students
Photo Journalism	=	10 students
Print Journalism	=	18 students
Public Relations	=	66 students
Total	=	143 students

But the Senate report proceeded to add the following:

Note that: $78 + 143 = 221$ students
 And: $442 - 221 = 221$ students who have not declared a specialty

As students need not declare a specialty until they graduate, the report concluded that the administration neglected to count 221 students, or 50 percent of communications students. This could have been clarified, the senate's "Critique" observed, had the administration asked the faculty to make sure each of their advisees had declared a major. "Notice that Photo Journalism has 10 students, lower than any of the specialties that were eliminated. Print Journalism has 18 students as did Communications Studies, but Communications Studies was eliminated." No explanation of these and kindred inconsistencies has been supplied by the administration.

more students paying tuition at the university. But without breaking down the data further and looking more closely at all sorts of factors including majors, minors, electives, and Common Curriculum requirements, it is not possible to say which programs contribute more or less to the overall ratio of 2.28 just by looking at departmental or program ratios. There is a complex interplay between attracting students to the university in the first place, retaining them, and distributing their academic credits across courses and departments.

Let it be conceded straightaway that SCAP's and the senate's critiques might themselves be flawed and that a cogent and coherent rationale actually did underlie the administration's actions. The insuperable obstacle to making any judgment in the matter is the stark fact that a mass of data—some only a snapshot at a moment in time or over a short period of time—does not drive inexorably toward any obvious programmatic decision. This obstacle is heightened by the ostensible application of criteria of variable weight coupled to the absence of any effort to relate the data to the criteria, that is, of any written, detailed explanation of how these decisions will lead the university in a better direction.²⁷

In sum, the rules call for an exacting deliberation in which these very issues, including the probing of the data and of the methodology and attendant assumptions undergirding their use, would be addressed and resolved by SCAP. This entails a sharing of comprehensive data, a candid joint exploration between the committee members and the administration of precisely what they mean, a discussion of the benefits and drawbacks of each discrete proposal in light of long-term trends and needs, and the fashioning of a coherent rationale. Such is the assumption upon which the exercise of the faculty's educational judgment rests; indeed, the presumption in favor of SCAP's recommendation in any subsequent hearing challenging the decision simply makes no sense otherwise. But the time allowed by the administration—from the promulgation of the plan, April 10, to the date set for board action, May 19—alone would have precluded the possibility of any

27. Upon examining the data relied upon by Loyola's provost, the Special Committee is as much at a loss to discern a rationale for the Pathways plan as is the Loyola faculty. Both these data and the faculty's critique of them are available on the provost's and senate's Web sites, respectively.

meaningful deliberation. The faculty responded by calling for an extension to November—an altogether reasonable request. But no justification was offered for the brevity of the comment period, no demonstrable need has been shown for the board to have acted so swiftly, and, it suffices to say, the administration declined to engage any more with the urging for more time than it had with the specific criticism leveled at the data supplied and the total want of analyses.²⁸

President Wildes insists that the administration followed the rules and more, “by opening up a comment period and holding a town meeting open to all.” Contrary to the president’s words, neither a suggestion box nor a town meeting is an adequate substitute for the kind of thoughtful faculty deliberation the rules require. For reasons that remain unexplained, this the administration assiduously strove to avoid.

The majority of the tenured professors with appointments to be terminated as a result of these decisions requested a hearing before the University Rank and Tenure Committee as provided for in chapter 9 of the institution’s rules. As previously stated, the first of the hearings was held on November 13. A stenographic record was kept, Provost Harris served as the administration’s main representative, and attorneys for both sides participated. Two additional hearings were held in December, a fourth and fifth occurred in January, and others, as of this writing, were still to be scheduled.

2. THE TERMINATIONS

Part of Loyola’s rules adverted to but omitted in the recitation set out earlier provides:

2. 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 University will make every effort to place the faculty member concerned in another suitable position. If placement in another position would be facilitated by a reasonable period of training, financial and other support for such training will be proffered. If no position is available within the University, with or without retraining, the faculty member’s appointment may then be ter-

minated, but only with the provision for severance salary equitably adjusted to the faculty member’s length of past and potential service.

The rules require the exhaustion of these obligations as a condition precedent to the issuance of a notice of termination. The administration made no discernible effort to comply with these rules before issuing the termination notices. But there is more at work here than the administration’s willful neglect of its obligations. The administration removed the notified professors from the classroom, denying them access to their students, even as in some instances it made new faculty appointments to teach offerings the displaced professors were listed to teach, had taught, or were competent to teach; and it abruptly removed these faculty members from their offices and denied them further computer, library, and parking privileges.

The Association has long regarded a removal from teaching as a suspension, a denial of the freedom to teach, permissible only in conjunction with an impending dismissal proceeding and even then only when continuance would present an immediate threat of harm to the individual or to others.²⁹ These Loyola terminations were predicated on programmatic change, not misconduct. The university did not benefit from paying a second instructor to teach the classes of one whom the administration has placed on a “paid [compulsory] leave.” Nor would there seem to be any purpose served by the eviction of faculty, many with decades of service, from their offices and the denial to them of common hospitality. The Special Committee can conceive of no justifiable reason for such abusive and humiliating treatment—and the administration has offered none.³⁰

E. A Concluding Observation

Well before Katrina, the administration of Loyola University had set its sights on a major assessment of the institution’s academic programs, finances, and direction. Given the shifting landscape of private higher education today, the Loyola faculty like others has not disputed that such was a prudent decision. Nor did the Loyola faculty doubt that Katrina made that assessment at once more pressing and more complex: the area

29. For example, “Academic Freedom and Tenure: City University of New York,” *Academe* 90 (2004): 43.

30. The president in his subsequent comments on the draft report called this treatment a “gesture” intended to “free them to secure other employment.”

28. President Wildes later stated to the Association that the faculty’s call for an extension until November was out of the question because of the need to develop a balanced budget for the next academic year.



from which the institution drew a significant cohort of its students had been depopulated by half, and none could say how many would return; nor, to the extent that the university drew students from a distance, was it possible to predict how many prospective students would in future be chary of attending college in New Orleans.

The need to chart a course was clear. To do so the university was fortunate in having a set of institutional rules in place that, consistent with the best standards of American higher education, ensured that the review of its programs would be undertaken by the faculty in a manner calculated to ventilate all educational options in the light of data—the content, assumptions, methodology, and implications of which would be fully explored—and in the light of agreed-upon criteria. Moreover, those whose positions might be at risk were fortunate because the rules assured them of humane treatment—by placement in a suitable alternative position, if available; by retraining, if possible; and, if necessary, by severance pay adequately adjusted in consideration of their years of service. They were further fortunate in that the rules assured them a hearing process expressly geared to test whether the decisions were procedurally rigorous, educationally justified, and fair. Finally, the university as a whole was fortunate in having an active faculty committed to the institution's well being and to the performance of its responsibilities in the process.

For reasons neither explained to the Loyola faculty nor obvious to this Special Committee, the administration chose to act in disregard of the rules. Instead, President Wildes has rested content to maintain that those who concur in this observation unfairly impugn the university and those who serve it.³¹

F. Conclusions

1. The administration of Loyola University New Orleans, in acting to terminate the appointments of seventeen members of the faculty on

31. President Wildes concluded his comments on the draft report by stating that

the draft focuses only on faculty rights and does not address at all the common good, indeed the very survival of the university. The cost to delay in decision making would have been high, as our enrollment numbers for this year show, and would have profoundly impacted the university for years to come. The Board of Trustees has a fiduciary obligation to protect the university, and the board acted to fulfill its duty. We did follow the advisory process outlined in our Handbook in the midst of extraordinary circumstances.

stated grounds of program discontinuance, proceeded in gross disregard of its own applicable policies and of the Association-recommended standards with which those policies comport.

2. The administration, in rescinding teaching assignments that had been made for some of these faculty members for their terminal year and in barring them from campus access and facilities, effectively subjected them to summary dismissal in violation of the 1940 *Statement of Principles on Academic Freedom and Tenure* and the university's own official tenure policies.
3. In ignoring prerogatives and official actions of duly constituted faculty bodies and in being unresponsive to faculty calls for a collaborative relationship following successive faculty votes of no confidence in the administration, the Loyola University New Orleans administration has held to a position inimical to principles of shared governance as enunciated in the *Statement on Government of Colleges and Universities*.

G. Epilogue

By date of January 10, 2007, a draft copy of this report, with an invitation for corrections and comments, was sent to President Wildes and other administrative officers, to chairs of university and faculty bodies cited in the report, to officers of the AAUP chapter, and to individual faculty members who had sought the Association's assistance.

On February 1, the AAUP chapter sent a letter to each member of the Loyola Board of Trustees discussing the prospect and potential ramifications of possible AAUP censure if the findings and conclusions in the Special Committee's report do not lead to prompt corrective action. The chapter asked the trustees "to acknowledge that wrongs have been committed, and to undertake, with the greatest possible urgency, whatever steps are necessary to demonstrate the institution's firm commitment to righting those wrongs."

Taking note of the draft report in a February 9 bi-weekly update on university affairs for faculty and staff, President Wildes stated that the national AAUP and the local chapter want "a restoration of the status quo before we went through the reorganization last spring." He referred to this as the national AAUP's position despite the Special Committee's statements, in its "Concluding Observation" on Loyola, that the soundness of undertaking "a major assessment of the institution's aca-

demographic programs, finances, and direction” was not disputed by the faculty, that the assessment has become “at once more pressing and more complex” as a result of Katrina, and that the “need to chart a course was clear.” As to the AAUP chapter’s position, its officers challenged President Wildes to provide evidence that anyone representing the chapter had advocated a return to the pre-spring status quo. Absent such evidence, the chapter officers called upon him to publish a retraction of the statement he had made.

Following a meeting of the University Senate on February 8, that body’s executive committee sent a letter to each of the trustees conveying the Special Committee’s conclusions and, like the AAUP chapter’s letter, encouraging board members to take steps to correct wrongful actions and avoid prospective AAUP censure. At its February 8 meeting, the University Senate approved a “Call for Action,” intended as an update of the senate’s June 2006 “Call for Conversation” and a response to the December 2006 “ongoing conversation” memorandum from President Wildes and to the Special Committee’s draft report. Its full text follows.

The University Senate’s Call for Action

The American Association of University Professors draft report from the Special Committee on Hurricane Katrina and New Orleans Universities confirms the concerns outlined in “A Call for Conversation and Critique of Pathways.” The university’s senior administrators have placed themselves at serious risk of AAUP censure and their post-Katrina actions are likely to result in censure of the administration. Our collective interests are to avoid censure for the sake of the long-term health and vitality of our Loyola University.

The University Senate feels strongly that the only way to proceed at this point is to focus on addressing the mistakes made: the lack of process, inadequate communication and consultation with the faculty, faulty data and analysis used in decision making, and the lack of a shared vision for the future of the university. We must move with all deliberate speed to ameliorate the negative impact of ill-informed decisions on faculty and staff colleagues. The single most important way to avoid AAUP censure is to focus on the core issue of improving the relationship between faculty and administration by restoring shared governance as written in the Faculty Handbook. Therefore, we call on our president, provost, and the Board of Trustees to implement immediately the following points:

1. The president must immediately acknowledge that the Faculty Handbook is the equivalent of our Constitution whose primacy must be defended and maintained at all cost. Given this, he must also accept the Standing Council for Academic Planning (SCAP) Pathways report as “presumptively valid.” If all of the SCAP recommendations cannot be implemented at this time, the university should make every effort to place terminated tenured or tenure-track faculty in other appropriate university positions. If this is not possible, then the administration should begin negotiating fair agreements with all terminated faculty members “equitably adjusted to the faculty member’s length of past and potential service” (see the next point).
2. The administration (working with legal counsel) should negotiate fair and equitable separation packages with all terminated faculty members who cannot be placed in other university positions. Packages must be judged as reasonable based on the Faculty Handbook (see Chapter 9.E.2) which states that, in such matters, years of past and potential service be factored into such decisions. In fact, the university administration should seek guidance from the AAUP to help develop these packages. After all, the university will have to settle with faculty members eventually and most Loyola community members would like to see the dollars go to our terminated colleagues rather than to legal representatives. The university administration should move quickly on this item so that we can salvage as much good will and hope for our community as possible.
3. The administration should meet with representatives from the AAUP immediately and demonstrate progress being made in effectively working with the faculty (especially on items 1 and 2). We need to engage in appropriate processes because the outcomes will impact adversely the life of this institution for many years to come. The university must avoid AAUP censure if at all possible.
4. All committees that are part of our university governance structure should begin regularly scheduled meetings immediately and do the work described in the Faculty Handbook. Further, the administration has to work collaboratively with the faculty representatives to establish the agendas for these meetings to



ensure that faculty time is well spent working on substantive issues versus busy work designed to give the appearance of shared governance. This is especially critical for university committees, specifically the Standing Council for Academic Planning (SCAP), the University Planning Team (UPT), and the University Budget Committee (UBC). Faculty representatives should be provided with detailed agendas and support information in a timely manner to ensure informed discussion and participation. It is only through such a process that our claims to the Southern Association of Colleges and Schools that we operate under a system of shared governance and that we have a rational approach to planning and budgeting can be substantiated.

5. Suspended programs must have the opportunity to appeal their suspension immediately to avoid irreparable damage to those programs. Each suspended program shall submit a proposal justifying reinstatement to the appropriate academic dean. Upon approval by the dean, the proposal will be forwarded to the provost to be placed on the agenda of the next regularly scheduled SCAP meeting, where the dean and respective department chair will argue the merits of reinstatement.
6. The process for program review must follow the guidelines as specified in the Faculty Handbook. Thus, in October 2006, the University Senate charged a Senate subcommittee to review program criteria proposed by SCAP. The subcommittee presented its draft to the Senate in December 2006, and the criteria [were approved] by the full Senate in the February 2007 meeting [and] returned to SCAP for program review. It is important to note that any program review and any criteria developed for the review process must be dynamic and ever changing. Approval must involve the Senate and SCAP as the Faculty Handbook requires.
7. During the 2006–07 academic year, the University Rank and Tenure Committee (URTC) has been meeting to hear appeals brought forth by Pathways-terminated faculty. To restore open communication and information dissemination, the University Senate requests from the URTC a summary of the appeal decisions along with their specific rationale. The Senate further requests a sum-

mary of the president's reply to the URTC on the matter.

8. The University Senate in cooperation with the administration will formulate criteria for identifying a bona fide state of financial exigency and for determining proper institutional responses to such a condition (Faculty Handbook 9.F). This proactive planning approach should be a part of our emergency planning efforts in the event of another disaster.

By letter of March 8, 2007, the University Rank and Tenure Committee provided the university president and the subject professors with letters conveying its findings in the five cases it had heard on appointment terminations resulting from the Pathways plan.

The hearing committee in each letter defined its charge as consideration of whether the administration adhered to the provisions of section E of the faculty handbook's chapter 9 that the administration had invoked in effecting the termination. The committee reported that it had considered three points: (a) whether the provisions regarding the process for program discontinuance had been followed; (b) whether every effort had been made "to place or retrain the individual in/for a suitable position elsewhere in the university"; and (c) whether the professor had been offered "severance salary equitably adjusted to the faculty member's length of past and potential service." On all three points in all five cases, the University Rank and Tenure Committee determined by vote of 10–0 that the administration had violated the faculty handbook.

On point (a), the committee found in the five cases that the administration—rather than base its action on the Faculty Handbook's provisions for evaluation by the Standing Council for Academic Planning according to criteria established by the University Senate—created its own process and proceeded accordingly. On point (b), the committee found that the administration "made virtually no attempt" to "consider suitable or available positions or retraining possibilities for any of the faculty members terminated," referring in each letter to available teaching responsibilities that the particular professor could assume. On point (c), the committee found that the one year of severance salary being paid to each of the tenured professors selected for termination of appointment did not "represent an attempt to adjust the severance for either past or potential service."

On the basis of the foregoing findings, the committee in all five cases recommended the professor's reinstatement.



VI. TULANE UNIVERSITY

A. Background

Tulane University was founded in 1834 as a medical college and reorganized in 1884 as a comprehensive private university with its current name. The majority of its schools and colleges are on the institution's uptown New Orleans campus, while the medical school and university hospital are located downtown. The pre-Katrina uptown enrollment was 10,715 full-time and 2,499 part-time students. When the campus reopened in January 2006, the student enrollment was 9,480 full time and 1,827 part time. The total full-time pre-Katrina Tulane faculty numbered 1,166, a number as of January 2006 considerably reduced by resignations, retirements, and layoffs, with additional layoffs to follow suit effective June 30, 2007.

The president of Tulane University, Scott S. Cowen, has served in that capacity since 1998. Prior to that time he was dean of the School of Management at Case Western Reserve University. The governing board of Tulane University is formally titled the Administrators of the Tulane Educational Fund, but in daily parlance it is generally referred to as the Board of Administrators. At the time of Katrina and its immediate aftermath the board chair was Catherine D. Pierson, since succeeded by Philip Greer. Provost and senior vice president for academic affairs Lester A. Lefton took office in 2001 and held it until July 1, 2006, when he became president of Kent State University. He was replaced by an interim appointee, Professor Paul L. Barron of the School of Law. Dr. Ian Taylor was dean of the School of Medicine until he resigned in December 2005, and he was replaced by Dr. Paul K. Whelton, who also retained his existing appointment as senior vice president for the health sciences. He resigned from Tulane, effective January 31, 2007, to assume the presidency of Loyola University Health System in Chicago.

The degree of flood damage to Tulane's uptown campus was substantial, but not nearly as severe as that suffered by the medical school and university hospital. President Cowen initially estimated property damage and operating losses for the 2005–06 fiscal year as exceeding \$300 million, and he subsequently reported an actual amount in excess of \$450 million. While the uptown campus reopened in January, the reopening of the medical school, many of whose staff, students, and educational functions had been shifted to the Baylor School of Medicine in Houston for the fall 2005 semester, was not completed until fall 2006.

Full-time faculty members received their salaries and benefits during the four months that the universi-

ty was closed. In the wake of a decision by the board of administrators on December 8, 2005, to declare financial exigency, however, at least 160 members of the faculty, with some estimates ranging upwards of 210, received notifications of release that were sent the next day. In the days that followed approximately ninety additional faculty members resigned or took retirement. Most of the releases were in the School of Medicine, where the Tulane University Hospital staff was cut by half and clinical faculty accounted for about 120 of the total number who were released. The tenured Tulane faculty members who were released included thirty-four in the School of Medicine (thirty clinical and four basic science), in addition to six in the Freeman School of Business and eighteen in the School of Engineering, for a total of fifty-eight.³²

Tenured medical faculty received twelve months' severance pay, and nontenured clinical faculty three to twelve months. In the case of tenured engineering and business faculty notified of release, their contracts were set to expire as late as June 2007. What is less clear is the basis for many of these decisions (especially since a number of units reported that nontenured faculty members had been retained while tenured faculty were released) and the process that led up to such decisions.³³ Likewise, less than transparent are the reasons for the discontinuance of three departments in the School of Engineering (Mechanical Engineering, Civil and

32. Figures on the number of released faculty and the categories varied somewhat over the period, but some examples will give an idea of the scale. According to Yvette Jones, the university's chief operating officer and senior vice president for external affairs, 132 faculty members out of 550 in the School of Medicine were separated (American Psychological Association, *Monitor on Psychology*, March 3, 2006). According to a draft Strategic Plan for the medical school issued by the Tulane administration in spring 2006, "we were forced to separate 122 faculty members in December 2005 that, when combined with 89 additional resignations, caused an unprecedented 33% reduction of our faculty count." The situation is somewhat complicated by the question of how and when the number of voluntary resignations and retirements was taken into account.

33. President Cowen, commenting on the prepublication draft of this report, stated that in many cases nontenured faculty members were doing work critical to the university's mission while tenured faculty members were not doing such work.



Environmental Engineering, and Electrical Engineering and Computer Science) and two programs in the School of Business. Also at issue is the role of faculty not only in these decisions but also in the adoption of an ambitious “Plan for Renewal” unveiled before the university reopened. Placing these matters in context requires going back to the weeks and months of fall 2005, in the wake of Hurricane Katrina’s damage.

B. Events during Fall 2005

After Hurricane Katrina struck and fall classes were cancelled, Tulane faculty members, like colleagues at other New Orleans institutions, took various courses of action. Some were able to conduct university business in other settings (in the case of the medical school, as has been noted, in Houston). Some, faced with damaged homes to which they could not return in a city in which evacuation orders had been given, joined professors in other parts of the country or found temporary professional quarters at other institutions where they had contacts. The administration and displaced professors both made efforts to maintain contact during the fall. President Cowen periodically sent messages to staff and faculty on an e-mail list, “Tulane Talk”; the university server, whose cable had been subject to repeated flooding, was back on line although periodically overloaded. In some instances department chairs or higher-level administrators encouraged uptown faculty to return to classes in January, and in no case known to the Special Committee was any professor discouraged from returning—especially since, as will be shown below, additional teaching was necessary to make up for the lost semester.

Some time in the second or third week of September 2005, Provost Lefton asked deans to communicate to their respective faculties that all tenure clocks had been frozen for 2005–06 “as a result of the catastrophic disruptions caused by Hurricane Katrina to our personal and academic lives.”³⁴ With the approval of the President’s Faculty Advisory Committee, mid-probationary reviews, promotion and tenure reviews, and reviews for promotion to full professor were cancelled for that year, as were “hearings of requests for reconsideration of last year’s unsuccessful third-year reviews and/or promotion and tenure cases.” The effect of stopping the tenure clock was to provide all tenure-eligible faculty

with an additional year in their probationary period, while those faculty members seeking promotion to the rank of full professor were asked to “wait for a more propitious time to seek promotion.” External evaluators and schools where promotion and tenure committees had already convened were to be notified of the postponement.

As reported in a communication of Dean Angelo DeNisi to the business school faculty, the Tulane administration proceeded to take some additional steps in the face of the disaster, including the centralization of the university’s budgeting system, the elimination of discretionary funds for travel or research and of overload (that is, additionally compensated) teaching, and the stipulation that everyone could be “asked to take on whatever duties seem appropriate.” According to the dean, “The President has said that anyone who refuses to carry out such an assignment will be fired or (in the case of tenured faculty members) they will no longer be paid until we return in January.” Programmatically, Tulane undergraduates would be offered courses in a fifteen-week session beginning in January and a nine-week session that would end in June, to ensure that students did not fall behind. “We are working on schedules right now. This is usually something that would involve a great deal of faculty consultation, but we need to get this done RIGHT NOW, and we have had a number of faculty and administrators working on this [emphasis in the original].” With respect to teaching appointments, however, “we may not be able to afford the luxury of all the adjunct faculty we have employed in the past.” Except for the threat to suspend the pay of noncooperating tenured faculty, no indication of larger layoffs or terminations appears in this statement.

As return to New Orleans became possible, President Cowen convened several meetings of the President’s Faculty Advisory Committee, a body elected by the Tulane University Senate for the purpose of serving as a consultative instrument and a sounding board for both faculty and administrative concerns. During the fall the advisory committee met four times (the first time in Houston on October 19) at approximately two- to three-week intervals, until the Plan for Renewal (to be discussed below) was issued in December. The record of this body’s relationship with the president has been reported, even by his critics, as generally good. According to persons who had served on it at different times under President Cowen, there was a sense that the views of the committee were generally listened to and taken into account. As one former member of the committee put it, the president not only asked for such input and advice

34. The Special Committee derived its copy of the referenced statement from a hard copy of the Web site of the School of Business, “last updated 9/21/05,” and hence its estimate of the date of notice.

but also attempted at all times not to prejudice the committee's deliberations with statements reflecting his personal position. Under more normal circumstances, the general understanding of the advisory committee's role was that it never acted as a substitute body for the senate, but rather as a conduit to and from that body, following which, on any issue of gravity, the senate would be consulted. It should also be noted, however, that the senate constitution describes the committee as elected specifically for advising the president "where subjects of great urgency or delicacy require immediate consultation."

On November 11, President Cowen devoted "Tulane Talk" to a message to faculty subtitled "The Future of Our University." He alluded in general terms to "conversations about the university's future," involving "a number of external advisors from such institutions as Harvard, Johns Hopkins, University of Michigan, Rice and Princeton" and consultation "on a regular basis with members of the President's Faculty Advisory Committee. ..." The letter cautioned that, while Tulane would ensure its commitment to academic excellence in balance with its "long-term financial viability," a number of "difficult decisions" would be taken in the next months, "but the result will be a stronger, vibrant and more focused university prepared for the extraordinary challenges of the 21st century." Listing several goals, President Cowen stated that "the center of the renewed Tulane should be an exceptional undergraduate program ... strengthened and surrounded by a limited number of graduate, professional and research programs," thus tipping the administration's hand with respect to the forthcoming Plan for Renewal.

President Cowen felt, the Special Committee believes with some justification, that the extraordinary events of 2005 placed the relationship of the advisory committee and the president on the kind of emergency footing envisioned in the senate constitution. The president informed the advisory committee of the need to declare financial exigency and, judging by the outcome, his explanation was persuasive. The committee as a whole, according to members who met with the Special Committee, did feel that based on the evidence presented, which included some preliminary disclosure of plans for cutbacks in the schools of engineering, business, and medicine, there was no alternative to the declaration, which the advisory committee was specifically asked to endorse and did in the event endorse, signing a statement to that effect. Members stated to the Special Committee that they believed their endorsement of the financial exigency declaration was conditioned on the basis of the information provided by the

administration as of December 3, 2005, and that the declaration did not necessarily represent the last word on conditions that the advisory committee understood to be still evolving.

After the events of that December, however, some members of the committee expressed concerns as to whether they had been encouraged in any meaningful way to canvass alternatives either to a declaration of financial exigency or to a shutdown, such as an across-the-board reduction of salaries. One member of the advisory committee told the Special Committee that the consultation seemed to be "form, not substance. ... We were basically told this is the way it would be." An additional and important complication in the events of this period involving the advisory committee was the confidentiality surrounding its proceedings. As one example, when the chair of the Department of Mechanical Engineering called the faculty senator from the School of Engineering who was serving on the committee to find out if there was anything in the deliberations he should be informed about, he said he was told that members had been instructed to remain silent on all issues. Had the discussions at the committee actually revolved around the fate of individual faculty members, the injunction might have been understandable. Given the fact that what was at stake was the future of the department, however, the exclusion of a broader faculty voice seems to the Special Committee to stem from a determination that it was a fait accompli not subject to discussion.

The Tulane "Plan for Renewal" was also presented to the advisory committee in December. The plan, stating that "survival and recovery were not the finishing line" but rather a starting point for long-range restructuring, put forward a proposal for a significant refocusing on the undergraduate experience. The Faculty of Liberal Arts and Sciences and the School of Engineering would be reorganized into the School of Liberal Arts and the School of Science and Engineering as part of a significant de-emphasis and reorientation of the existing engineering programs, with the number of accredited programs in the present engineering school being reduced from nine to two. The plan announced the indefinite suspension of numerous PhD programs in the social sciences, humanities and fine arts, sciences (with some regrouping of degree programs), engineering, social work, and law. It proposed what was described as high-quality doctoral programs in the professions, as redefined and regrouped. As part of an effort to offer undergraduates more instruction by full-time faculty, the



existing faculty would be supplemented with “professors of the practice” who would be full-time, non-tenure-track faculty members not expected to undertake regular research or service responsibilities.³⁵ Other new initiatives, such as a Center for Public Service maximizing possibilities for student outreach in New Orleans, were also set forth in the plan. Newcomb College, a long-standing undergraduate college for women, and Paul Tulane College would be “suspended” (in effect, would cease to exist) as of fall 2006, while a board of administrators task force would examine how both names and endowments would be used to support a new undergraduate college.

So far-reaching a reorganization obviously had direct implications for Tulane’s curriculum and for faculty status, which under widely accepted national norms as well as AAUP-supported policy are the primary responsibility of the faculty.³⁶ The reaction of the advisory committee to the plan was mixed. Though it neither endorsed nor rejected the plan, it did succeed in blocking some changes set forth in the initial proposal. Procedural questions turned on whether the implementation of the plan, without further faculty discussion, was governed by quite the same considerations of urgency as the declaration of financial exigency. Was it really necessary to press forward with the implementation of the plan before faculty had the opportunity to return in January and discuss it? Might general assent to its overall direction have been sought while giving the faculty opportunity to review it in the course of implementing the undergraduate curriculum necessary to carry it out? The argument was also advanced that restructuring should have been delayed until later in the spring when the university knew how many students had returned for the second semester and had a better

handle on likely first-year enrollments. To this, the administration responded that delay would have exacerbated the university’s already dire financial situation.³⁷

At a more fundamental and more disturbing level, members of the Association’s Special Committee heard a reiterated claim by Tulane faculty members that the plan was in effect an “opportunistic” attempt to implement failed pre-Katrina proposals, several of which had been previously sought by the administration and resisted by the faculty. According to this line of argument, Katrina had provided the opportunity for change that normal organs of faculty governance had resisted. The administration has vigorously contested this allegation, arguing that some components of the plan, including the hiring of “professors of the practice,” had been previously debated and approved by various segments of the faculty.

On the other hand, some of President Cowen’s statements as reported in the press suggest a point of view very close to faculty perception. In remarks quoted in the *Chronicle of Higher Education* (December 9, 2005), he said that “we basically cut the programs that were not the strongest. ... Under the current way universities operate, you can’t make those decisions under normal circumstances. It takes an event like this.” Another report stated, “Using the powers granted him as a result of the school’s financial emergency, [President Cowen] has enacted a bold, controversial, and wrenching ‘renewal plan,’ with which he hopes to remake Tulane from a very competitive school into a truly elite one. ‘I wouldn’t wish this on anybody,’ he says. ‘But out of every [disaster] comes an opportunity. We might as well take the opportunity to reinvent ourselves.’”³⁸ The Special Committee sees very little daylight between such reported statements and the view of dissenting faculty members on the matter.

C. The Appointment Terminations of December 2005: The Medical School

During fall 2005 some thirty-five faculty members from the School of Medicine went to Houston at their own

35. The proposal for “professors of the practice” had been under discussion at Tulane and though it was, in the event, approved by the University Senate in March 2006, disagreement exists between the administration and some members of the faculty as to whether in fact the provost had been correct in his report to the senate that the various schools and colleges had concurred in the proposal. Proponents of the appointment category defended it on the grounds that it represented a welcome move to reduce dependence on part-time faculty members; opponents saw it as another attempt on the part of the administration to weaken tenure in the post-Katrina environment.

36. See, for example, the Association’s *Statement on Government of Colleges and Universities*.

37. Adding to this response, President Cowen in commenting on the draft report stated that no designated faculty member contended at the time that action could be postponed without imperiling the financial situation and that the report provides no basis for questioning the board’s judgment on the matter.

38. Jennifer Reingold, “The Storm after the Storm,” *Fast Company* 104 (April 2006): 88.

cost and began to develop a program for medical students, assuming various new responsibilities. One of these individuals, a professor of fifteen years' standing who was subsequently to receive notice of termination, acted as interim clinical clerkship director and handled other assignments that needed to be carried out in anticipation of previously scheduled visits of accreditation bodies. Upon their return to New Orleans, many such faculty had to try to restart their laboratories and research programs in anticipation of the return of students. Several medical school professors told the Special Committee that they attempted frequent and regular contacts with their chairs for directions and volunteered for numerous duties on their return to a city where much, programmatically, remained to be salvaged.

Even as professors planned and executed their returns to New Orleans, discussions were already under way as early as September 20 in the medical school regarding the identification of "mission-critical faculty" and the sorting-out of "nonessential" faculty whose funding (through research or patient income) or role in training clinicians was not deemed adequate to justify their continuance. A thirty-four-page matrix identifying all faculty members by name, degree, rank, and department was used to enter such factors as their tenured status, their clinical and research contributions, and, where deemed appropriate, a date of termination, retirement, or departure, or a decision to retain. A number of professors who spoke to members of the Special Committee were unfamiliar with the matrix and questioned its use and the accuracy of the data it contained. Inasmuch as the Special Committee does not have access to the data that may have figured in many of the individual cases, it suffices for the time being simply to say that, aside from a general evaluation of the professor's funding record and programmatic usefulness (and it is not clear that in all cases even this was instrumental in the decision on retention), the lack of clarity in the decision-making process itself caused considerable anxiety and aroused resentment, according to faculty members with whom the committee met. Further complicating the picture was that in the medical school, where no program in its entirety as such was explicitly targeted for discontinuance, the termination of specific tenured faculty appointments often left untenured professors untouched.


On December 7 and 8, 2005, the board of administrators met to discuss the criteria for retention and dismissal of faculty members. The available evidence indicates that no faculty body was consulted in the development of these criteria. On December 9, following the

board's declaration of financial exigency the previous day, termination notices were sent to more than 120 faculty members in the School of Medicine (see comments earlier for variations in the reported figures). Some professors reported that they were called by their chairs at the last moment. (The suddenness of this notice was not confined to the medical school: one professor in engineering told the Special Committee that he had learned about the discontinuance of his particular program half an hour before the university announcement from a reporter who called him for his reactions.)

At a meeting that same December 9, department chairs in the medical school were handed brown envelopes containing the names of persons in their units whose appointments were to be terminated, which in some cases included the chairs themselves. In a number of cases, the Special Committee was informed, there was no necessary connection between the lists the chairs had been invited to submit earlier and those that were returned to them in the brown envelopes of December 9. Whether all chairs were equally in the dark cannot be ascertained, but the facts indicate that responsibility for the decisions rested essentially in the hands of Senior Vice President Whelton, following the deliberations of the administrative group that had defined the category of "mission-critical faculty." In addition to the December 9 notifications, termination notices signed by Dr. Whelton went out to medical school professors, many of whom were still scattered across the country, in the next several days. The critical paragraph of the particular letter to which the Special Committee has had access reads, "I regret to inform you that as part of the university's response to the financial exigency, the Health Sciences Center and the School of Medicine will be restructured in a manner that involves a reduction in size of the faculty. As part of this reorganization, your position will be eliminated and your employment with the University will end effective January 31, 2006." The next paragraph stipulated that as a result of termination, the professor would receive a monthly severance payment in an amount equal to the professor's monthly base salary plus 50 percent of the current supplemental salary, excluding employee benefits, for three months. No mention was made of any right of appeal under the Tulane statutes.

Members of the Special Committee and the staff spoke either in person or by telephone with twelve professors from the medical school, nine of whom had been directly affected by the cutbacks. Of these twelve, nine were tenured and three were nontenured clinical faculty, one of whom had voluntarily left the tenure





track several years before to help meet pressing clinical needs. Those who were tenured had been awarded tenure between 1969 and 1998. Four held endowed chairs. One of these was reinstated under pressure from the primary donors, but at a salary based entirely on dollars generated by the endowment with no additional financial support from Tulane, while another, who had been at Tulane for twenty-two years, stated that none of his salary was paid by the university but rather generated through patient fees and endowment money. Still another endowed chairholder had also served as department chair until the preceding summer, when he voluntarily stepped down to resume an active research program. One clinician stated that seven-eighths of his income came from the Veterans Administration hospital, with the remaining eighth supplied by Tulane. Of the two other nontenured clinicians, one stated that he had been in patient care for twenty-eight years and generated three-quarters of his own salary through the Tulane clinic and the Veterans Administration hospital, while the other estimated that his patient-care income just about covered his own salary.³⁹

At least two of the professors had directed large and well-funded training programs in their discipline. In the Department of Psychiatry and Neurology, with approximately fifty faculty, half were released, including all but one of the tenured psychologists, thus decimating a psychology internship program whose continued accreditation by the American Psychological Association was thus cast in doubt. Elsewhere in the School of Medicine, a basic scientist and the most recently tenured professor among those with whom the Special Committee spoke, carried a full-time teaching load, was active in getting grants, and had been active as well in faculty governance; at the president's request she had attended, as a representative of the President's Faculty Advisory Committee, the meeting of the board of administrators at which the issue of financial exigency was discussed. In one case, the department chair of the tenured professor being dismissed had asked that the latter be retained on funds currently available in the department's master account; the chair was informed that the money could

not be used in that manner, and that the program was to be discontinued. Several of the professors had active links in the New Orleans medical community, not only with the Veterans Administration hospital but also with the LSU Health Sciences Center.

In some, though not all, of the foregoing cases, the affected professors contended that previous disagreements with the administration, especially the administration of the medical school, played a role in their release; others had no such record and therefore, weighing their own performance, found the decision puzzling. Reasons for the terminations were repeatedly described as having been based on unclear criteria and carried out secretly. This need not mean that all terminations must be presumed to be without justification, but the question of consistency in the application of standards remains very much open. While the Special Committee has no doubt that income generation played a key role in many if not most termination decisions in the medical school, it noted exceptions made for course coordinators in some areas, while in other cases it found no clear evidence of how much money the Tulane administration believed it was effectively saving in such terminations.⁴⁰ In a number of instances it was alleged that tenured faculty members with no recent history of grants and no critical functions in either education or clinical training were retained.

On a purely programmatic basis, it was difficult for the affected faculty to discern the operative principles of selection regarding who should go and who should stay. Tenure did not seem to offer any additional protection to those who held it, other than more adequate notice of termination and/or severance pay. The Special Committee heard reports that nontenured professors were retained, some of them having been trained by tenured professors who had been let go. In the Department of Ophthalmology, the committee was informed, six of thirteen full-time faculty members were tenured, and four were let go, of whom one was tenured. One professor stated he had been told by an administrator that "tenure was not considered." At last report, that department had appointed part-time faculty to teach the pathology course formerly taught by the released

39. President Cowen, commenting on this paragraph in the draft report, noted "the sharp reduction in patient fees occasioned by closure of hospitals and de-population of New Orleans following Katrina." He also noted that income from an endowed chair ordinarily does not cover the professor's total compensation and that reassignment of the chair to another professor can result in savings in the other professor's salary.

40. The Special Committee acknowledges, of course, that salary lines may not tell the whole story, and that overhead costs must be factored in as well. But since no disclosure of figures, either aggregate or broken down, is known to have been made by the Tulane University administration, this committee has no way of ascertaining how such considerations played out.

tenured professor in order to satisfy accreditation requirements. The perception that the process leading to the termination of an appointment had been anything but transparent was matched by uncertainty as to just what was happening after December; several faculty members reported that they had heard of some reinstatements but had no more sense of what principles governed reinstatements than they did of those that had dictated termination decisions.

D. Faculty Appeals in the School of Medicine

Of four tenured professors in the School of Medicine who contacted the Association, only one pressed his appeal through the grievance committee of the school to the Senate Committee on Faculty Tenure, Freedom, and Responsibility (FTFR Committee), an elected body that is normally the next and final stage of appeal at the faculty level. The FTFR Committee has institutional-level jurisdiction over all appeals involving termination of appointment. To judge from the school grievance committee's handling of that case (for reasons that will be explained shortly), it would in fact have been idle for others to present their own grievances, and by the time the single appeal reached the FTFR Committee, which eventually upheld the school grievance committee's findings, it was summer and the committee was in process of reconstitution. The professor in question subsequently took a position at another university, and his case warrants brief comment mainly to dramatize the appellate problems under applicable AAUP-supported standards as they existed generally; they were equally applicable in the case of program discontinuance.

This professor was one of the endowed chairholders, in his fourth year of service, with an extensive teaching record (which the administration disputed), little or no record of external funding (his area of research was the medical humanities, in which such funding is sparse), and no expectation of clinical service connected with his initial appointment (although the administration cited that as a reason for the determination that he was nonessential). Reporting on the matter on May 3, 2006, after separate presentations (the administration declined to make an appearance, providing only a written response and no opportunity for cross-examination), the medical school grievance committee supported the administration's contention that a condition of financial exigency existed, that Regulation 4c of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure* (which the complainant had adduced in support of his

case) was not binding on the Tulane administration, and that it was "beyond the scope of an Article V review [under the Tulane faculty handbook] to evaluate the establishment and implementation of criteria for dismissal of programs or faculty." It added that the administration had the authority to redirect endowed funds (which had provided a portion of the salary in this case) to other retained faculty with appropriate qualifications, assuming that the donors were notified of the intent to redirect, and that "because so many other positions were terminated post-Katrina, there were no other 'suitable positions'" to which the faculty member could be reassigned. The report concluded that the dismissal was carried out in accordance with handbook guidelines, though in what might be termed a slap on the wrist it did state that its assessment of the case "would have been expedited by the presence of an Administrative representation" at the hearing, and it suggested that the appeal would be best served by the FTFR Committee, which could ensure uniformity in the application of termination standards.

Regulation 4c of the Association's *Recommended Institutional Regulations* speaks to procedural standards in the termination of faculty appointments for reasons of financial exigency. In asserting a right on behalf of the faculty member for a full hearing, it states that such a hearing "need not conform in all respects with a proceeding conducted pursuant to Regulation 5 [which governs dismissal for cause], but [that] the essentials of an on-the-record adjudicative hearing will be observed." By contrast, Article V of Tulane's faculty handbook states only that the faculty member has the right to have the issues reviewed by the divisional faculty and the FTFR Committee. The Special Committee believes that the right of each party to cross-examine the other at a hearing, and the provision of the same evidence to the complainant that is given to the hearing committee, are essential components of a hearing on termination of appointment and that their absence constituted a serious departure from AAUP-supported standards of academic due process.

E. The Appointment Terminations of December 2005: The School of Business

On December 9, 2005, the provost sent out termination notices to several tenured members of the School of Business faculty similar in wording to those received by tenured faculty members in the medical school. The business school professors were issued contracts expiring June 30, 2007. On December 23, Dean DeNisi notified his faculty that as a result of the financial straits in



which the university found itself, the school would have to share in the burden of reducing faculty costs.

The School of Business is organized not by departments but by programs, each with a coordinator. According to the dean's memorandum, two programs were now scheduled for elimination and replacement by a differently named entity. One was Marketing, to be replaced by a new unit called Consumer Behavior/Marketing, and the other was Operations Management/Information Systems, or as it is also referenced in the material, Information and Operations Management. According to the dean, each area would be staffed by faculty members with expertise specific to the new nomenclature, supplemented by one or two others whose versatility would make them logical additions. The result of this restructuring, not previously discussed by the general faculty of the school, was the appointment terminations of two of the three tenured professors in information and operations management and four of the six tenured professors in the marketing program. Two of the three nontenured, tenure-eligible professors were retained in the first unit, and both of the nontenured, tenure-eligible in the second, so that the weight of the terminations fell most heavily on the tenured, and older, professors, several of whom had two or more decades of service to the university—two as tenured full professors after thirty and twenty-nine years respectively and two others as tenured associate professors after thirty-four and seventeen years respectively.

In the marketing program, one of the four released professors took a position elsewhere and the others retired; as of the date of preparation of this report, only one case of involuntary termination of tenure in the business school, that of a more recently tenured faculty member in information and operations management, remains unresolved. While tenure, as in the School of Medicine, has been acknowledged in notice and severance arrangements, the Special Committee was told that three of the tenured professors over sixty-five years of age were offered a one-year buyout to leave July 1, 2006, with a 17 percent bonus if they relinquished any further claims against the university. A similar offer was reported in information and operations management.

F. Program Terminations in the School of Engineering

As reported above, the Plan for Renewal envisioned the dissolution of the School of Engineering as a separate entity and its absorption, with a considerably reduced faculty, into a newly constituted School of Science and Engineering. On December 10, 2005, Dean Nicholas

Altiero of the engineering school sent an e-mail message to Tulane engineering students expressing his disappointment that the board of administrators had decided to discontinue the departments of Civil and Environmental Engineering, Electrical Engineering and Computer Science, and Mechanical Engineering, and that he had opposed the move. "President Cowen agreed that I presented a very strong case but he said that this is a strategic decision and that, in his view and that of the Board, the three affected engineering departments are far too small relative to their counterparts to effectively compete for national prominence," Dean Altiero wrote. The existing departments of Biomedical Engineering and Chemical Engineering would be merged into the new School of Science and Engineering as of July 1, 2006, while the degree programs offered by the other three departments would not end until June 30, 2007, so that all current juniors and seniors in those majors could complete their degrees. With additional adjustments contemplated for sophomores, only first-year students, according to the administration, would be affected and would have to transfer to another major if they remained at Tulane. Dean Altiero wrote with respect to the affected professors that "President Cowen, Provost Lefton, and I have all offered our assistance in helping them secure positions elsewhere and I am certain that there will be many universities around the country eager to recruit such talented colleagues."

The dean stated that he had been offered, and accepted, the new position of dean of science and engineering because he was "intrigued by the new model that will be implemented at Tulane and would very much like to play a part in its implementation." He argued that the new model would make cooperation between science and engineering, and between both areas and the medical school downtown, more effective.

G. Faculty Appeals in the School of Engineering

The three affected departments decided to press their appeals separately and sequentially. The first in line was the Department of Mechanical Engineering, whose chair, Professor Monte Mehrabadi, and his colleagues addressed an appeal to President Cowen complaining that the department's fate had been decided without consultation with them. In this, its first documented protest, the department rested the case for its continuance on arguments that continued to be mainstays of its case over the next several months: (1) that the department was financially independent, with two endowed chairs, a named professorship, a named



undergraduate scholarship, and a high undergraduate enrollment, ranking fourth among all uptown programs; (2) that the department was nationally competitive as gauged by the employment record of its graduates and their recruitment by top graduate programs, its ability to attract high-performing undergraduates, its ability to attract highly qualified junior and senior faculty, and its record of external funding; and (3) that the discontinuance of mechanical engineering was unsound because it served as “the foundation for Biomedical Engineering and provide[d] crucial support for Chemical Engineering.”

As the following narrative illustrates, the process followed in mechanical engineering’s appeal was analogous to that in the single medical school case examined by the Special Committee: the department prepared a careful statement of its case, the administration responded in terms that were at best obliquely related to the matters at hand and in some cases inconsistent with the understanding that the complaining person or body had brought to the table, and in neither case did both parties have opportunity to question the other in an adjudicative proceeding as called for in the Association’s *Recommended Institutional Regulations*.

In a letter of March 7, 2006, the department took its appeal to the FTFR Committee, asking for a hearing to determine first, whether a state of financial exigency existed at Tulane and had been determined with adequate faculty participation, and second, whether the extent of the exigency and the plan to resolve it involved appropriate faculty participation. Third, it asked whether the process by which the department was being eliminated was consistent either with “principles of faculty governance of Tulane University or with AAUP guidelines,” and fourth, whether every effort had been made to place the department’s faculty members in other suitable positions as called for in the Tulane faculty handbook.

The initiation of proceedings by the FTFR Committee was marked by extended procedural wrangling. When the committee outlined a procedure under Article V in the handbook that would request written testimony in advance of the hearing, a presentation by both parties, and the right of each side to pose questions to the other if such questions were also submitted in writing to the committee, the provost objected that the FTFR Committee seemed to have in mind the more formal provisions of Article VI governing the dismissal of faculty. Article V, under which program terminations were discussed, stipulated only a general right of the faculty

“to have the issues reviewed.” According to the provost, the administration, under this reading, was obligated only to submit written statements in advance. Provost Lefton suggested that the FTFR Committee have a separate one-time session in private with Yvette Jones, senior vice president for external affairs and chief operating officer, and Anthony Lorino, senior vice president for operations and chief financial officer, “to explore and respond to questions about the issue of financial exigency.” Such a private session could then serve as a source of information for any future challenges to the programmatic decisions, on which the two administrators would provide no specific information.⁴¹

The department protested what it thought was an unnecessarily restrictive reading of Article V (which, while it did not require, also did not prohibit additional procedural guarantees). It objected also to what it contended were the inadequacies of a procedure based solely on an oral interview of two senior vice presidents, without any obligation to produce documented evidence for the decision and without permitting the department to cross-examine. The administration’s position, however, ultimately prevailed. On May 11, when the mechanical engineering chair and two of his colleagues were permitted to meet with the FTFR Committee, the administration sent no representatives. The committee’s meeting with vice presidents Jones and Lorino took place on June 8 with two professors from the department present as observers. They provided the FTFR Committee with a list of nine questions that they requested to be asked of the vice presidents, and eight of them were asked and answered in the presence of the observers. Before discussing the findings of the FTFR Committee, this report moves now to the substantive, as opposed to the procedural, matters in dispute.

To read the exchange of documents that set forth the grounds of the dispute, both procedural and substantive, between the two parties is to experience a mounting sense of the surreal. On April 28, still in advance of the proceeding, the administration provided a general state-

41. Professor Edward C. Strong, chair of the FTFR Committee, to Provost Lefton and Professor Mehrabadi, April 11, 2006; Lefton to Strong, April 25, 2006, and to Strong and the other committee members, May 2, 2006. In his first letter, the provost additionally requested that a member of the FTFR Committee who was also a member of the department be disqualified from participation in the proceedings. That individual recused himself from participating.

ment on the discontinuance of this and the other two departments in the engineering school and attached a confidential second statement—to which neither the department nor this Special Committee, as a result of that provision, has had access—on the state of financial exigency confronting the university.⁴²

The statement to which this Special Committee does have access proceeds with what might be described as an air of serene imperturbability. In fact, it provides nothing more than a restatement of the original decision, which was by this time a matter of public record:

In deciding which programs to retain, which to discontinue, and which to reorganize, the administration took into account, for example, such factors about the University's academic programs as: past and projected ability to meet enrollment goals; revenue generation, including the extent of tuition discounting in the program, and whether tuition from students in the program may be replaced by enrolling additional students in other programs at little or no incremental cost; reputation and ranking in national surveys; quality and extent of competitive research funding per faculty member compared with other institutions; external support for the program, including restricted and unrestricted gifts; costs associated with operating, improving and expanding the program; program size compared to other programs around the country; and external reviews. Application of these considerations resulted in the decision to eliminate the Departments of Civil & Environmental Engineering, Electrical Engineering & Computer Science, and Mechanical Engineering.

Such a statement provided neither the FTFR Committee nor the department with any new information. If more powerful reasons specific to the dismantling of the department were expressed in the confidential financial statement, then the requirement of confidentiality blocked the department from access to precisely the information that it needed to contest the decision in the first place.

42. President Cowen in his response to the draft report stated that the department was provided with detailed information, including "confidential financial information and personnel information on termination decisions that the parties had an opportunity to review although it was not copied for confidentiality reasons."

In a document of the same date (April 28), and in a subsequent document dated May 10, 2006, that provided tabular evidence of its contentions, mechanical engineering offered the FTFR Committee extensive evidence in support of its view that, far from representing a fiscal drain on the university incommensurate with its achievements, the department had been highly successful in developing endowment and alumni giving; that it bore its share of indirect-cost recovery funds for the college, outstripping its two nearest competitors in 2004 and 2005; and that it served the fourth largest enrollment of all departments on the uptown campus and ranked fifth place in all aggregate undergraduate enrollments. The April 28 document, which gave much of the May 10 data in a preliminary form, questioned the "existence and severity of a state of financial exigency at the University." It presented a defense of the fiscal role of the department in the school, and it questioned "the nature and extent of faculty participation in the decision to terminate the Mechanical Engineering Department," challenging the adequacy of the discussions within the President's Faculty Advisory Committee. A final section dealt with the efforts made, or not made, to find other suitable positions for the affected faculty. Since the new School of Science and Engineering contained a Physical and Material Sciences Division, the department argued, its faculty would provide crucial support for both biomedical and chemical engineering.

The April 28 document also raised questions about the bona fides of the university's declaration of financial exigency, inasmuch as new programs were being put forward, open positions in some fields were being filled, and several new commitments were made, notably the reinstatement of several athletic programs and a recently announced \$20-million Research Enhancement Fund from which faculty could apply for research expenses.

Provost Lefton replied in a letter of May 10 that, since engineering faculty who had received notices of termination were being retained and given their full salaries until June 2007, it was not yet known what positions might become available before then. Any faculty member notified of termination of appointment was at liberty to express an interest in any open position and would be considered. "I note," added the provost, "that the Faculty Handbook does not require the university to attempt to place faculty terminated by reason of financial exigency in other available positions." As for the question of participation in decision making, the provost responded, "President Cowen and the Tulane board made the decision to eliminate the Mechanical



Engineering Department. As described in prior communications, President Cowen consulted [his Faculty Advisory Committee] extensively during the process of formulating the Renewal Plan, during a time when other faculty members were scattered across the country.” Once more, the provost’s letter of May 10 did not go beyond a recounting of familiar events consequent upon the decision. It did not discuss the grounds for that decision.

Finally, with respect to how the elimination of the department would contribute to the alleviation of the condition of financial exigency, Provost Lefton wrote as follows:

Professor Mehrabadi’s assertions, that there cannot be financial exigency because the University has invested in new and existing programs, filled open positions, and was able to reopen this year, are unsound. The University was not required to run other programs into the ground in order to save the discontinued programs. To the contrary, strategic investment and revitalization are necessary measures to position the University for survival and success in the future. Further, to the extent that the University’s financial position appears stronger today than it did last Fall, that is a result of the Renewal Plan; it does not indicate that the Plan was not needed. As we have noted previously, the success of the Plan to date cannot be cited to argue that it should not have been implemented. We will not know for some years whether the Plan, taken as a whole, has succeeded in positioning the University for success in the post-Katrina environment. To unwind prematurely elements of the Renewal Plan would have disastrous consequences. Moreover, Professor Mehrabadi’s argument that financial exigency should not take into account projections about the future is unrealistic and illogical. Fundamental management principles required the University to gauge the financial condition of the University going forward, based on available information.

Under Association-recommended policy, “bona fide financial exigency” is defined as “an imminent financial crisis that threatens the survival of the institution as a whole and that cannot be alleviated by less drastic means [than termination of continuous faculty appointments].” By January 2006, with the Plan for Renewal unveiled, the Tulane administration apparently

saw the university as remaining in a state of financial exigency but able to make decisions in the direction of “strategic investment and revitalization.” Since the discontinuance of the mechanical engineering department and the release of the faculty members in that department could not take place until the end of June 2007, it is not clear on what other grounds than the launching of new investment the Plan for Renewal could be considered to have succeeded as early as May 2006.

Given the difficulties under which both the department and the FTFR Committee may be said to have labored as a result of the administration’s insistence on a narrow interpretation of Article V and its refusal to enter into any direct discussion with the department, it is notable that the report of the committee, issued on June 12, amounted to a comprehensive repudiation of the grounds adduced by the administration for closing the department. It found that the vice presidents who had appeared before the committee “did make a plausible case that the University was facing a severe financial problem in the form of a likely large recurring operating deficit,” but that there was a gap between the general statement presented to the FTFR Committee and the specific decisions leading to the elimination of particular units. It stated that extraordinary actions taken to relieve the state of financial exigency should be linked specifically to the reduction of financial stress. “This is essentially a conservator’s approach, aimed at preserving those parts of the institution that are viable, while eliminating those that cannot support themselves and/or are not central to the institution’s financial mission,” the committee stated. Absent such a link, “financial exigency could be invoked to circumvent fundamental university principles that are articulated in its constitution and faculty handbook.”⁴³

The FTFR Committee observed that, on the basis of material submitted, mechanical engineering had made a substantial net contribution to the financial health of the school, and that the department met its budgetary goals while “adding to its endowment, enrollment, and indirect cost recovery.” It noted the absence of any countervailing data from the administration. Given

43. President Cowen, rejecting the “conservator’s approach” in his comments on the draft report, stated that “a paramount fiduciary duty of those responsible, including faculty as well as administrators, for the institution is to preserve its mission. Selecting units to close based solely on financial condition would be inconsistent with mission preservation.”



these facts, the FTFR Committee concluded “that the Mechanical Engineering Department was terminated for reasons other than its financial performance and that, in effect, its elimination worsened rather than improved any exigent financial condition that may have existed.”

On the question of faculty consultation, the FTFR Committee further found no evidence that the advisory committee had provided specific advice on the discontinuance of the department, and it noted that broader consultation was not impossible in an era in which the administration routinely used e-mail, telephone, and video-conferencing to contact faculty. It recalled the fact that the advisory committee had been restricted by confidentiality, thus reducing whatever channels for consultation might otherwise have existed. It quoted the faculty handbook on the obligation of the administration to make affirmative attempts to place terminated tenured faculty in other suitable positions, and recommended, finally, that the decision be evaluated by the Senate Committee on Educational Policy, that the department be retained within the new School of Science and Engineering pending the evaluation results, and that the administration comply with the handbook requirement “concerning placement of faculty terminated because of abandonment of a department or program of instruction.”

On July 13, Professor Mehrabadi sought a meeting of representatives of the department with President Cowen on the grounds that in January the president had stated his willingness to be available for discussions arising out of the events of the preceding fall. The next day President Cowen replied by stating that, inasmuch as the administration was “in the midst of a formal grievance process,” such a meeting would not be appropriate “at this time.” Faculty members concerned about their particular status (a question not raised in the department’s request) could consult Dean Altiero or Paul Barron, who had by this time succeeded Provost Lefton as interim provost and senior vice president for academic affairs. It should be noted that the grievance was regarded as ongoing because the administration itself had decided to pursue the matter to the next stage, an appeal to the board challenging the FTFR Committee’s report. The administration rejected the reviewing body’s defense of a “conservator’s approach,” arguing that “the law on point does not limit faculty terminations based on financial exigency to financially troubled units.” Nonetheless, the administration was prepared to assert that “the decision to discontinue Mechanical Engineering would pass even [this] unrealistic test as a net contributor to the university’s financial losses.” The

only point at which the administration directly addressed the department’s tabular data, however, was in its observations that the tables

generally purport to show only that the Mechanical Engineering department met financial targets—without showing that the targets were sound; the endowment level associated with the department—although the University can apply much of the endowment to other programs and is working to ensure productive use of all the related, and undergraduate [mechanical engineering] enrollment—without showing associated expenses or effect on the University’s financial condition. None of the cited data refute that discontinuance of the School of Engineering strengthened the University and was a key element of the Renewal Plan.

On September 13, the department submitted its own response to the administration’s most recent statement. In a closely reasoned thirteen-page document, it pointed out, among other things, that the targets were set by the administration itself, not the department, and that the discontinuance of the school was not the focus of the grievance, but rather the status of the department as the chief source of contribution to the material science curriculum in the proposed new School of Science and Engineering. To this the Special Committee would add that the administration’s reference to endowments would appear to concede that the department’s endowment offered an attractive target of opportunity for redeployment, whether or not on terms that might have been acceptable to the original donors. Perhaps the most striking feature of the administration’s response was its demand that the department be held to a standard of financial proof that was not in any respect met by the administration itself in its rebuttal. Indeed, it can hardly be said that its rebuttal met the standard already set by the department.

On September 21, 2006, the governing board’s attorney notified President Cowen and Professor Mehrabadi of a hearing scheduled for October 26, at which the administration and faculty would each be allowed a maximum of three representatives plus counsel, a maximum of twenty-five minutes per side to present their respective arguments, and ten minutes on each side for rebuttal. Whatever the constraints of the format, the meeting on October 26 was the first occasion, and then only at the behest of the board, on which the two parties actually spoke with each other in a hearing.



By letter of December 8, 2006, Chair Greer of the board of administrators informed Professor Mehrabadi and President Cowen that the board had adopted recommendations from a subcommittee relating to the termination of the department. The board thereby determined that a state of financial exigency existed at the time the decision to discontinue the department was made and that it continues to exist; that Tulane handbook provisions regarding the termination were followed; that faculty participation in the decision on financial exigency was not a handbook requirement (although consultation with the faculty did in fact occur); that, in the context of financial exigency and a reasonable recovery plan, a department can be discontinued based on factors other than past financial performance; and that placing tenured mechanical engineering faculty in available new positions is not a handbook requirement.

The outcome of the mechanical engineering appeal brought no immediate word from the two other engineering departments being discontinued regarding their previously expressed intent to follow with their own appeals.

Meeting on December 27, the officers of the Tulane AAUP chapter adopted the following statement for appearance on the chapter's Web site and transmission to the president of the university, the vice chair of the senate, the chair of the FTFR Committee, and the Association's national office:

The recent action of the Board of Administrators in denying the appeal of the Department of Mechanical Engineering confirms a dismaying current pattern at Tulane: an utter refusal to give either financial or academic reasons for abolishing a particular program or department; a similarly pointblank refusal to respond to the detailed case that the department put forward for its continuance and the FTFR Committee firmly supported; and a basic disregard for the university's obligations to its tenured faculty members. Moreover, new programs, e.g., Materials Science and Engineering and Engineering Physics, are being proposed in the School of Science and Engineering for the Physics Department without reference to the faculty in the Department of Mechanical Engineering whose professional expertise falls in this area Neither faculty tenure nor academic governance at Tulane University will be secure until the administration acknowledges the key role of professional expertise in programmatic decisions and the need to demonstrate why it

believes such expertise should be overridden by other considerations in a specific case.

H. Major Issues


The Association's Washington office was in touch on a monthly, and sometimes more frequent, basis with the Tulane University administration beginning in January 2006 and continuing as more information and additional faculty complaints, whether about terminations of appointments or closing of programs, reached the office. A recurring theme of administrative communications to the faculty at Tulane, as well as in President Cowen's correspondence with Association staff members, is the premise that Tulane is obligated to observe only the procedural standards set forth in the faculty handbook, not those standards (except where they conform with Tulane's) promulgated by the Association. Accepting for the moment the president's view of the matter, the Special Committee will confine itself in this section of the report to asking how faithfully the Tulane administration adhered to the provisions that are set forth in Tulane's own faculty handbook. The Special Committee notes, however, not only the broad acceptance of AAUP-recommended policies and principles across the academic community, but also the flexibility that an institution of higher learning enjoys in exceeding its own minimal standards in furtherance of academic freedom and due process.

1. TERMINATION OF TENURED APPOINTMENTS

Article IV of the Tulane Faculty Handbook sets forth three grounds for the termination of a tenured appointment: (a) dismissal for adequate cause, (b) "extraordinary circumstances caused by financial exigency or by bona fide discontinuance of a program or a department of instruction," and (c) demonstrated medical reasons that render the faculty member incapacitated from performing his or her duties. Article V, Section 1, "Termination of Tenure," refers to the specific procedural standards of Article VI ("Dismissal Procedure") to be exercised in cases where adequate cause has been alleged. Section 2 of Article V states that where the termination of a faculty appointment

is based on financial exigency or bona fide discontinuance of a program or department of instruction, Article VI shall not apply, but faculty members shall be able to have the issues reviewed by the faculty of the division in which they hold appointment, then by the Senate Committee on Faculty Tenure, Freedom and Responsibility, with





ultimate review of all controverted issues by the Tulane Board of Administrators. In every case of financial exigency or discontinuance of a program or department of instruction, the faculty members concerned shall be given notice as soon as possible and never less than twelve months notice, or in lieu thereof they shall be given severance salary for twelve months. Before terminating an appointment because of the abandonment of a program or department of instruction, the institution shall make every effort to place affected faculty members in other suitable positions. If an appointment is terminated before the end of the appointment period because of financial exigency or because of the discontinuance of a program of instruction, the terminated faculty member's place shall not be filled by a replacement within a period of two years following the effective date of termination, unless the terminated faculty member has been offered reappointment and a reasonable time within which to accept or decline it.

As has been seen, although the School of Engineering Grievance Committee recused itself from a division-level review of the closing of the mechanical engineering department, review by the FTFR Committee and ultimate review by the board did take place under the terms of this provision. The administration also points out, correctly, that it gave notice not only in accordance with, but also in excess of, the faculty handbook's twelve-month notice requirement, and, in the case of tenured medical school faculty whose services were terminated immediately, twelve months of severance pay.

With respect to the obligation of the institution to "make every effort to place affected faculty members in other suitable positions," the Tulane administration has been less forthcoming. In response to a staff letter of May 10, 2006, President Cowen and Board Chair Pierson wrote that "the Faculty Handbook does not require the university to attempt to place faculty terminated by reason of financial exigency in other available positions. A sentence in the Handbook regarding placement of faculty, cited by some faculty members, when read in the context of the several sentences that precede it, does not apply under financial exigency." This reading of Article V, which figures in subsequent correspondence and declarations made intramurally, strikes the Special Committee as strained and illogical. If the discontinuance flows from an assertion of financial exigency, as occurred at Tulane late in 2005, then the administration is making a distinction without a difference, in

curious contrast to the president's widely reported impatience with normal bureaucratic processes under extraordinary circumstances. Indeed, it is conjectural at best whether, but for the extraordinary fiscal consequences of Hurricane Katrina as they were perceived by Tulane's administration, efforts to close or eliminate the mechanical engineering department would have proceeded in the precipitate manner in which they did.

The May 10 letter to the staff from President Cowen and Chair Pierson continues, "Nonetheless, the university intends to consider terminated faculty members for any open positions in which they express interest if they are qualified." Given the June 2007 notice, "it is not yet fully known what positions may become available before then or in what positions terminated faculty members may be interested."

In the case of mechanical engineering, the administration had already made plans for material science courses in the new school, and a proffer of appointment to affected faculty would appear to be a logical consequence that, whatever the fate of the department as a unit, need not have been deferred until June 2007. But a still more fundamental point lurks behind the administration's reply and has implications beyond the status of the department. Instead of making every effort of its own, the administration has placed the burden on the dismissed (tenured) faculty—the "talented colleagues" of Dean Altiero's letter—both to apply for such positions and to shoulder the evidentiary burden for being restored to the Tulane faculty. In effect this places the affected professors in the same position as candidates for junior positions. The Special Committee regards this as an unacceptably insensitive way of proceeding in the case of tenured faculty members, all of whom had been granted security of position by the university after rigorous assessment, and some of whom have given a career of service to the institution. The Tulane administration appears to have lost sight of the fact that it was obliged itself to make every effort to place affected tenured professors in suitable positions elsewhere in the university before acting to terminate their appointments.

The final sentence of the handbook's Section 2, quoted above, spells out a different consequence in the case of terminated tenured appointments in the School of Medicine, where notice under the twelve-month standard did not apply because of immediate drops in revenue. As has already been stated, the Special Committee received disquieting reports that in some cases non-tenured faculty were retained to teach courses that tenured faculty had taught and in some cases trained them to teach. The Association's staff raised this ques-

tion on several occasions with the Tulane administration, but its only response turned on the earlier decision of the medical school's grievance committee (in that committee's own words) not to "evaluate the establishment and implementation of criteria for dismissal of programs and/or faculty," including dismissal of tenured as opposed to nontenured faculty. The administration argued that that committee had concluded in regard to such matters that (again in its words) "due process had been initiated and is being carried out in a manner consistent with the Faculty Handbook."

But even if, as in this case, the administration's position is that the scale of dismissals in the School of Medicine did not permit the relocation of affected faculty in other departments, the faculty handbook does stipulate that "the terminated faculty member's place shall not be filled by a replacement within a period of two years following the effective date of termination, unless the terminated faculty member has been offered reappointment and a reasonable time within which to accept it or decline it." The AAUP's own principles do not preclude the retention of nontenured over tenured faculty, but they permit such an action only if a serious distortion of the academic program would otherwise result.⁴⁴ While new faculty members have been appointed in the School of Medicine, the Special Committee is unaware of the administration's first having offered appointment to any displaced tenured professor whose teaching responsibilities had been thus reassigned.⁴⁵ In effect, some of the proceedings overseen and approved by the administration provided no greater obstacle to the termination of a tenured than that of a nontenured

appointment, even where some deference was paid to tenure by the terms of the notice or severance pay.

2. ACADEMIC GOVERNANCE AND THE BONA FIDES OF THE DECLARATION OF FINANCIAL EXIGENCY

As the foregoing discussion indicates, the only faculty committee to play a role in the decision to declare a state of financial exigency was the President's Faculty Advisory Committee, which acted to endorse the statement on what appears to have been a multitude of considerations: the recognition that the fiscal situation at Tulane did seem to be very serious, the need to show some degree of unanimity at a moment of crisis, and, less positively, the sense that, as one person put it, "the train had left the station." While the advisory committee is a creature of the senate and therefore presumably has some reporting obligations to that body, it seems also to have been the case that, on occasions in the past, the nature of its exchanges with the president had been treated as confidential. Nonetheless, the repeatedly recited view of the administration, that consultation with the committee represented all that was possible or indeed necessary under the circumstances of looming fiscal crisis and a faculty scattered in all directions, warrants some additional analysis.

While communications with the faculty were no doubt difficult in the first few weeks following Katrina, they were not impossible, and technological difficulties appear to have been alleviated well prior to the reopening of the uptown campus. Certainly at the school level, where communications among smaller groups of peers facilitated exchanges, academic decision making continued. Thus the dean of the business school, who was in touch with most if not all of his faculty, had formed a faculty task force to redesign the MBA curriculum, a task completed before the campus opened in January.

Once the advisory committee had begun its meetings prior to the declaration of financial exigency, the stipulation of confidentiality made it impossible for faculty members not on that committee to ascertain the course of events. Even assuming, however, that the committee itself was given only an overview of the facts and, in broad outline, their implications, individual faculty members facing termination of their appointments, and faculty representatives of programs threatened by discontinuance, could and should have had access to something more than a blanket statement of criteria that are far from self-explanatory in their application to individual cases. At a certain juncture in circumstances such as Tulane faced, therefore, the Special Committee would argue, if suspicion about the administration's

44. *Recommended Institutional Regulations on Academic Freedom and Tenure*, Regulation 4c(3). In light of the Special Committee's decision to restrict the discussion in this section to Tulane's compliance with its own regulations, it does not adduce this reference to argue that under Tulane policy it should have been applied, but only to dispel the frequent misunderstanding that the Association under all conditions, without respect to the facts of a given case, favors the retention of tenured faculty over nontenured faculty. That is a guiding presumption, indeed, but it is not without exceptions.

45. President Cowen, commenting on this paragraph in the draft text, stated that it "is inaccurate to the extent that it implies that positions of terminated faculty members in the medical school have been filled. Their critical duties have been taken over by other faculty members or in some cases part-time faculty retained to fill a particular limited need."

motives was to have been either forestalled or dispelled, that openness and candor rather than a continued adherence to confidentiality would have been in the administration's own best interest.

Much of the effective power in Tulane's system of faculty governance rests, the Special Committee is informed, at the school level. The Faculty of Liberal Arts and Sciences, however, contrary to its own bylaws, played no part in recommending its own division into a School of Liberal Arts and a new School of Science and Engineering, the creation of a category of "professors of the practice", or the elimination of Sophie Newcomb College and Paul Tulane College as separate entities.⁴⁶ Similar reports, documented in varying degrees, have reached the Special Committee from faculty representatives of other schools. The role of department chairs seems equally unclear, with some of them claiming that the personnel decisions reached by senior administrators and reported to them, particularly in the School of Medicine, bore little or no resemblance to the recommendations they had made. The Special Committee has also noted several instances in which deans made similar disclaimers to their faculties and stressed their own resistance to the plans finally implemented. This pattern of decision making does not augur well either for the faculty as a whole, deprived as it was during this critical period of a strong central body to press its needs and interests, or for spirited and independent administrators.

I. Concluding Remarks

The bona fides of the declared state of financial exigency and its continuance—which the administration

46. The language of the constitution of the Faculty of Liberal Arts and Sciences, Section II ("Responsibilities of the Faculty"), reads in part that the faculty has primary responsibility for "(1) Formulation and implementation of academic plans and policies; (2) Its own governance; (3) Election of faculty representatives to advisory and decision-making bodies at the University-wide level; (4) Discharging the following responsibilities ... (d) Establishment and maintenance of educational and instructional standards and policies and the recommending of procedures and decisions governing faculty status ... ; (5) Formation, elimination, division, and merger of academic departments."

President Cowen in his comments on the draft report stated that the constitution's assigning to the faculty primary responsibility for its "own governance," "whatever its import in times of financial normalcy, does not apply in times of financial exigency."

has argued (in letters to the Association) must for now be seen as indefinite—need also to be weighed. The Special Committee takes no position regarding the likelihood of adequate financial recovery through insurance, a point still unsettled (and indeed, the committee is informed, in at least one case in litigation). Neither does the committee object that more attention was not given to across-the-board salary cuts, briefly canvassed by the advisory committee but not endorsed by the administration, since a plausible argument can be made that a proper response to financial exigency does not necessarily include an action that might have in fact precipitated resignations in the units that were singled out for survival and long-term strengthening, as well as among faculty members whom the institution might be most eager to keep. Nor would the Special Committee presume to second-guess decisions regarding the possible use of the Tulane endowment for operating expenses; indeed, the administration's decision not to draw down the endowment in such a manner has powerful arguments in its favor. As matters presented themselves in December 2005, the committee would acknowledge further that the administration may have had strong prudential grounds for fearing a more substantial loss of returning students and tuition income.

Since December 2005, however, the administration has publicly announced a recovery of more than \$200 million from a variety of insurance, federal, and private sources. It did not freeze hiring, and according to press reports it purchased an apartment building from an investor who sold it to the university within a week after his own purchase at an estimated 30 percent above the market price. It has also made advances on a new stadium. (Possibly in both these instances it drew upon auxiliary fund sources not available for instructional purposes.) The repeated declarations of President Cowen that the public has reason to trust in a revitalized Tulane sit oddly with the continued arguments directed internally at the faculty for the draconian cuts of the fall 2005 semester and the continued refusal to entertain arguments that some of the cuts have in fact adversely affected the university's income prospects.

In the meantime, the School of Medicine has released a draft of its 2007 strategic plan, which sets forth the next stage of the "remarkable recovery efforts following Hurricane Katrina," including the hiring of "additional research-active faculty" and, perhaps ominously if imprecisely, a removal of "the institutional barriers that currently exist."⁴⁷ A key paragraph under "Overarching Goals," entitled

47. Tulane University School of Medicine, *2007 Strategic Plan, Draft for Review*, n.d., 10.



“Retention and Recruitment of Faculty,” reads:

The loss of faculty within the School of Medicine will have a significant impact on the number of faculty available to teach medical students, graduate students and residents; to practice medicine; and to conduct basic, translational, and clinical research. It will be important for us to focus on retaining the remaining faculty and recruiting additional strategically-targeted faculty to help support the education, research, and clinical missions.

With this kind of public language, it is difficult to accept President Cowen’s representations to the Association that a state of financial exigency continues to exist at Tulane. Indeed, the conclusion seems inescapable that the administration of Tulane University and its medical school used the declaration of financial exigency to enable it to undertake a major reshaping of the existing body of faculty and a new set of commitments.

The Tulane administration appears to have used the declaration of financial exigency to justify decisions and actions that, as the Special Committee has seen in a number of cases, do not provide any obvious relief from financially exigent circumstances. Thus the FTFR Committee pointed out, correctly, that except when such a link is shown, financial exigency may simply be a means of circumventing “fundamental university principles that are articulated in its constitution and Faculty Handbook.”

The apparent alternation between an overly literal reading of certain rules and a dispensing of others, depending on whether or not they support the administration’s position, may derive in part from the role of President Cowen as an energetic administrator, impatient with precedent and eager to shape and implement a new vision for the university. His own field is management, and he is a well-published writer on management issues. Revealing, perhaps, is a comment attributed to President Cowen in the online *Times-Picayune*, which interviewed him in his capacity as a member of the mayor’s Bring New Orleans Back Commission with special responsibility for public education reform. Citing the need to move more quickly in that area, he is quoted as saying, “We’re moving at what I call bureaucratic time, rather than entrepreneurial time, where you realize speed is of the essence.” He reports, when informed that his idea for running the city’s schools with a board of business and community leaders would violate the Louisiana state constitution, that “my view was I’d find

a way around it, because these are strange times. We’re at a tipping point with the school system, and one way to proceed is to throw out the old rule book, which we didn’t do. Instead people said, ‘We’ve still got the old rule book out there and we’ll do the best we can with it,’ but unfortunately that always leads to suboptimal results.”⁴⁸

Equally disturbing to the Special Committee was the general sense of betrayal that some faculty members said they initially felt, and continued to feel, because of the termination of their appointments. The chief harvest of the events of fall 2005, not only in the School of Medicine but also on the uptown campus, seems to be a pervasive mistrust. President Cowen and Board Chair Pierson, in their correspondence with the Association, repeatedly and correctly pointed to the unprecedented disaster Hurricane Katrina represented for the entire city of New Orleans. It is not clear, however, that an appropriate response was to bring about an equally unprecedented disaster in terms of what was among the highest numbers of tenured faculty terminations, at a single blow, in the history of American higher education. Those professional institutions of academic freedom, tenure, and governance all derive ultimately from the classic formula of the 1940 *Statement of Principles on Academic Freedom and Tenure*, which describes faculty members not as employees but as officers of their college or university, and the 1966 *Statement on Government of Colleges and Universities*, which assigns to the faculty the primary responsibility for “such fundamental issues as curriculum, subject matter and methods of instruction” as well as “faculty status.” The great public and private universities with which Tulane is properly compared are those where, over many years, these standards have been upheld and where, as a result, faculty quality as well as faculty morale has flourished.

J. Conclusions

1. The Tulane University administration’s failure to provide any but the most generic evidence with respect to the declared state of financial exigency, as well as its refusal to elaborate on its reasons or in at least one major case to participate directly in the hearing process, effectively deprived individual faculty members, whether tenured or nontenured, of the ability

48. Steve Ritea, “Bell’s about to Ring,” *Times-Picayune*, July 3, 2006, <http://nola.com>.



to assess the bona fides of the declaration and its application to their particular case. The administration's actions thereby disregarded the applicable provisions of the 1940 *Statement of Principles on Academic Freedom and Tenure* and the Association's derivative *Recommended Institutional Regulations on Academic Freedom and Tenure*.

2. In declining to seek to relocate affected tenured faculty members in other suitable positions, the administration of Tulane University acted at sharp variance with the procedural standards of the Association set forth in Regulation 4c(4) of the *Recommended Institutional Regulations*.
3. In reorganizing the Faculty of Liberal Arts and Sciences into separate schools of liberal arts and sciences and engineering without faculty consultation, the administration also acted in disregard of the *Statement on Government of Colleges and Universities* as well as that faculty's bylaws with respect to its right to determine its own organization.
4. In decisions to terminate more than two hundred faculty appointments on the grounds of financial exigency, the Tulane University administration made no meaningful distinction between tenured and nontenured faculty members except in the terms of notice and/or severance pay. Coupled with recent and ambitious plans for rebuilding, the administration has not only undercut its own claims of continuing financial exigency but has also demonstrated a view fundamentally inimical to the system of academic tenure.⁴⁹

49. President Cowen in his response to the prepublication draft of this report described his general reaction to it as follows:

Throughout, the report conflates two roles: advocacy and adjudication. Fairness requires that the distinct differences between those roles be articulated and specified, and that those differences not be obscured by rhetorical flourishes, speculation, insinuation, implication, and analytical ellipsis. Tulane's faculty—members of the professoriate whose interests AAUP purports to advance and who have been through an extraordinarily challenging time—deserves a clear and accurate exposition of what happened, an exposi-

tion that illuminates and does not obscure. Accuracy and fairness of a report on so weighty a matter is important, coming as the report does from the national professoriate's main associational voice, involving as the report acknowledges a disaster of unprecedented scope, severity, and public concern, and purporting as the report purports to be objective. Readers will be unsure, given the language used, whether the report is in the nature of a lawyer's advocacy brief or a judge's decision. Because AAUP's role is not made clear, and can be perceived as both advocate and judge, conflation of these roles in the report is problematic and misleading.

VII. OVERALL OBSERVATIONS

From the investigations and the resulting findings and conclusions, several overall observations emerge as prelude to general conclusions.

First, none of the authors of the applicable existing personnel or other policies could possibly have imagined conditions approaching the gravity of those that the New Orleans universities faced in the days following Hurricane Katrina. Such policies were framed in the context of fathomable, if not familiar, challenges, and could not have anticipated the inconceivable.

Second, however, the relevant AAUP-supported policies—most notably those that recognize the special challenge of “financial exigency”—are sufficiently broad and flexible to accommodate even the inconceivable disaster. These policies have, in fact, been successfully invoked (as documented through AAUP experience) by institutions in situations that, while perhaps not matching the gravity of those in New Orleans in fall 2005, surpassed in severity those imagined.

Third, applicable AAUP policies that address financial exigency might—but should not—be confused with other policies that permit termination of continuing appointments because of the bona fide discontinuance of an academic program or department essentially for educational reasons. There are situations in which financial considerations lead to program discontinuance. Whether financial exigency *mandates* the discontinuance is crucially important in determining which procedures are followed.

Fourth, the AAUP’s recognition that a condition of financial exigency may justify termination of tenured and continuing appointments presupposes extensive faculty consultation both in the making of such a declaration and in its implementation, as well as rigorous procedural safeguards to protect affected faculty members. However grave the institution’s fiscal situation may be, and however clearly a lay observer might assume that a state of fiscal exigency does exist, adverse personnel judgments are permissible only if the attendant procedures have been scrupulously observed.

Fifth, however cumbersome faculty consultation may at times be, the importance and value of such participation become even greater in exigent times than in more tranquil times. The imperative that affected faculties be consulted and assume a meaningful role in making critical judgments reflects more than the values of collegiality; given the centrality of university faculties in the mission of their institutions, their meaningful involvement in reviewing and approving measures that vitally affect the welfare of the institution (as well as their own) be-

comes truly essential at such times. The Special Committee has been impressed with how deeply devoted the vast majority of faculty appeared to be to their institutions at a time of stress and, often, of significant personal economic loss. Administrators were able effectively to draw from that wellspring in dealing with the immediate aftermath of the disaster, in pulling their institutions together. But an institution cannot be rebuilt on mistrust or worse on a broadly shared sense of betrayal. Action that manifests regard for the faculty’s collective role is essential in order to rebuild commitment and trust.

Sixth, the Special Committee is unaware of evidence that the faculties of the New Orleans universities failed to appreciate the gravity of the post-Katrina environment and the severe consequences of drastically changed conditions. Indeed, it is evident to the committee that the faculties by and large understood the critical challenge their institutions faced and were prepared to share in the sacrifices that would be required in the rebuilding process.

Seventh, the central issue before the Special Committee has not been whether, given the benefit of hindsight and time for reflection, it might have addressed the post-Katrina situation at the particular institution differently. Rather, the committee believes the fair and proper issue to be whether key actions that were taken at the five investigated institutions departed significantly and detrimentally from their own and AAUP-recommended policies designed to protect academic freedom and due process.

Eighth, the Special Committee learned of examples of commendable practice on the part of several of the beleaguered institutions, and appropriate note has been taken in the preceding chapters. The laudable incidents do not, however, mitigate or diminish the Special Committee’s deep concerns about reprehensible actions, nor do they excuse lapses in other areas.



VIII. OVERALL CONCLUSIONS

The wide variations in both practice and policy make generalization in this concluding section difficult. Yet the Special Committee has identified several areas of overarching concern and importance, affecting (albeit differently) the faculties of all five of the institutions it has studied. Recognizing the limits of aggregation under such circumstances, the committee offers the assessments that follow.

1. Pre-Katrina Policies

Pre-Katrina faculty policies, though reflecting varying degrees of commitment to academic freedom and due process, provided templates that, if scrupulously followed, would likely have averted many of the harmful results. Although the relevant policies to be found in the pre-Katrina faculty policies of some of the New Orleans universities conformed more closely to AAUP recommendations than did others, rigorous adherence to those pre-existing policies would almost certainly have done much to ensure due process and fairness even in the face of catastrophe. As the preceding reports have noted, significant departures from or complete abandonment of the established procedures cannot easily be explained, since it appears to the Special Committee that compliance was by no means impossible. Specific areas of such deviation will be noted in the paragraphs that follow; suffice it to say that the established rules, had they been followed, would probably have prevented most of the problems noted in these reports.

2. Disaster Preparation

Disaster preparation was also uneven, and might well have included keener anticipation of problems in communicating with faculty and obtaining information.

Although the Special Committee does not have full information about the degree of disaster preparedness, its members were not surprised to learn that major flooding and storm damage had been widely anticipated, as one would have expected in a community so prone to such natural occurrences. At least one of the New Orleans universities had an information technology and electronic data backup immediately available a thousand miles to the north, while another had detailed evacuation plans that made possible prompt relocation to Houston of vital programs and activities. The gravity of Katrina did, however, severely impede physical relocation, and for a time precluded access to theoretically available backup systems. Thus, while the affected institutions were certainly prepared for an imaginable disaster, they could not have anticipated the systemic disruption that actually occurred.

3. Adherence to Policy

Widespread failure to adhere to stated policy almost universally created serious, sometimes inexplicable, lapses in protecting academic freedom and due process.

In only one of the five investigated cases did the institution invoke a preexisting basis for termination of continuing faculty appointments. The governing board of Tulane University initially declared financial exigency in a manner that drew minor Special Committee concerns, but was basically consistent with handbook provisions. The boards of two public institutions, however, the LSU Health Sciences Center and Southern University at New Orleans, reverted to the concept of “force majeure,” nowhere recognized or defined in prior personnel policies, and accordingly bypassed or preempted policies that, if conscientiously applied under the drastic conditions of post-Katrina New Orleans, might well have warranted a prompt and faculty-endorsed declaration of financial exigency. Several months later, financial exigency rather than “force majeure” was declared for the third public institution, the University of New Orleans, but the declaration was accompanied by procedures for implementation that discarded essential safeguards of academic due process for tenured faculty that the existing financial exigency policies had clearly mandated. The board and administration of Loyola, the fifth institution, made no attempt to invoke the financial exigency provisions in the faculty handbook (which apparently were seen as not justifying a consequent declaration at a campus that suffered much less physical devastation than the three publics). Instead, the Loyola administration invoked established provisions for program discontinuance that (as the Special Committee has recognized) virtually track the AAUP-recommended policies—but then proceeded to disregard attendant procedural safeguards that are vital in order to terminate continuing faculty appointments when programs are closed out even for the soundest of educational reasons.

4. Rationale for Extraordinary Action

The rationale for extraordinary action not only varied widely but also in several cases failed to invoke conditions that might have warranted draconian steps, albeit within procedures that were seldom actually observed.

Here, too, the response to the Katrina disaster varied widely. Although the Special Committee is not sufficiently informed to make an independent appraisal of the financial condition of any of the five institutions, it notes that the extent of reliance on what were sharp declines in income reflected no consistent pattern across the city.



A highly sensitive issue should be addressed here. The Special Committee heard statements to the effect that several of the New Orleans universities took advantage of Katrina and its aftermath to effect major changes—both programmatic and personnel—that would otherwise have been impossible or difficult and time consuming to accomplish. At least three of the institutions, before Katrina, had considered plans for significant change along lines that actually were initiated after the storm. Such a concordance would not, by itself, necessarily taint the eventual response. Indeed, it would have seemed unwise to disregard such prior plans in the rebuilding process. There is surely no imperative that an institution suffering such devastation must recreate its former self without modification. A question that has troubled the Special Committee, however, is whether Katrina created an opportunity to make major changes—specifically, to terminate the appointments of certain tenured faculty members—that could not have been made in the absence of such devastation. The Special Committee has been made aware of allegations in a few instances that the Katrina emergency was used as a subterfuge to rid the institution of faculty troublemakers or critics of the administration, but the committee has not been provided with requisite evidence that would warrant pursuing these complaints. The concerns here are subtler, and simply prompt the committee to question whether Katrina provided a convenient occasion for effecting major programmatic and personnel changes without following procedures that would have been unavoidable in the absence of a natural disaster.

5. Quantity of Terminations

The numbers of persons affected also varied widely, though at all institutions the number who were initially notified of adverse personnel action exceeded the inescapable or minimal needs of the institution, sometimes substantially. It is too early as of this writing to prepare a reliable tally of the number of persons whose teaching careers were severely disrupted or terminated by Katrina-related actions. The scale of announced involuntary temporary or permanent release of faculty members varied widely—from well over two hundred at Tulane to much smaller numbers at the University of New Orleans and Loyola. There also remains a substantial discrepancy between gross and net figures. Some persons who had initially been targeted for furlough or termination have been reinstated, and some still may be. Others simply resigned, retired, or took jobs elsewhere, and thus might not be counted as Katrina victims in a final tally—even though the adverse effects on many of them may have been al-

most as harsh as on those who did not leave on their own. In a few cases, internal review procedures have not yet run their course, and in others litigation is in prospect.

6. Faculty Consultation

Faculty consultation in most cases not only fell far below minimal AAUP standards but also below the level of consultation that could have been achieved.

The actual extent of faculty consultation, a vital element in declaring financial exigency or discontinuing academic programs, varied widely. At Tulane, the administration did seek and obtain the concurrence of the designated faculty committee before seeking such a declaration, though members of that committee were uncertain whether less drastic alternatives had been fully canvassed. Consultation with respect to the implementation of the declared state of exigency—Tulane’s Plan for Renewal—was less extensive. At the University of New Orleans, the faculty, its representative bodies, or both were kept informed of the Restructuring Plan at various stages, but how much actual consultation occurred is uncertain. At the other end of the scale, consultation was virtually nonexistent at the three other investigated institutions. (Apparently this was also the case at Xavier University, whose president, Norman Francis, stated in response to the Association’s concerns that “it was totally unrealistic to suggest that we had time to consult with faculty regarding our reduction decisions.”) Consultation with the faculty was not even attempted in two cases, and sought in so perfunctory a fashion at Loyola as to be almost meaningless. Loyola’s president has insisted that he spent “countless hours in one-on-one and small group meetings with faculty,” but there is no record of actual consultation with the most appropriate faculty bodies or indeed of recognizing the official role of these bodies under Loyola policies in the decisions that were reached.

The distinction between “knowledge” and “notice” is crucial; though some, even many, professors may have been aware of the administration’s planned course of action, and may even have had an opportunity to speak with the president, there simply is no substitute for a scheduled meeting with the duly constituted faculty committee, affording it an opportunity to review and appraise all relevant data. Indeed, the data component identifies one other failing of consultation. Even at Tulane, where data sharing seems to have been by far the most extensive, faculty committee members were enjoined to silence, while the administration’s posted data at Loyola were so incomplete and inaccurate that even their systematic review availed a faculty committee



little. As for Tulane's medical school, there does not seem to have been any consultation in shaping the criteria that drove the massive number of faculty terminations.

One final comment about the perplexing paucity of consultation seems in order. The avoidance of any faculty review at some campuses and its limited use at others seem to reflect an administration view that professors could not be trusted to assess the perilous condition of their institution or to advise on appropriate responses—a disheartening inference at best.

7. Notice

The notification and timing of personnel actions at most institutions also failed to meet AAUP standards and created needless, even at times unconscionable, uncertainty.

In this regard the variation among the universities was perhaps most pronounced. Tulane, most conscientious in this respect (as chapter VI on Tulane recognizes), gave notice to tenured faculty “not only in accordance with, but exceeding, the [AAUP] twelve-month notice requirement, and in the case of the medical school faculty whose services were terminated immediately, twelve months’ severance.” The same could not be said of the other New Orleans universities. Loyola did provide a year of severance payment for laid-off faculty but otherwise severed the targeted professors from campus responsibilities and privileges within a brutally brief time period. Teaching by some of the professors that had already been scheduled for the next semester was immediately reassigned to others, thus disregarding a basic AAUP premise that removing a faculty member from assigned teaching responsibilities is tantamount to summary dismissal unless that person is the subject of a current dismissal proceeding and his or her continued presence poses an immediate threat of harm. Moreover, the affected Loyola professors were deprived of their offices, computer access, and library and parking privileges. No reasons were given for such peremptory and summary eviction. Nor was any cogent explanation given for similarly abrupt displacement of most of the furloughed faculty at the two public campuses following the “force-majeure” declarations. Although arguably the concept of “furlough” implies immediacy in implementation, the absence of preexisting policy left matters of timing, as well as the selection of the faculty members to be furloughed, to the unfettered discretion of the administration.

8. Alternative Placement

Alternative placement of affected faculty universally fell below AAUP standards but also fell short of the institu-

tions’ apparent capacity to mitigate the harshest effects of inevitable personnel reductions.

It was in the area of placement and help in finding suitable alternative positions that all the investigated New Orleans universities may have failed most seriously. At the LSU Health Sciences Center, faculty furloughs seem to have been made (quoting from this report’s chapter II on the LSU Health Sciences Center) “without acknowledgment or apparent recognition of eligibility of potentially furloughed faculty to a preemptive right to transfer to other positions for which they were qualified.” While furloughed faculty have apparently been considered for reinstatement as positions reopened at the Health Sciences Center, and some have been reinstated, tenured furloughed professors have apparently not been recognized as having the right to be recalled that AAUP’s Regulation 4c requires. The situation at Loyola was most puzzling; although the official university policy on program discontinuance expressly imposed a pretermination obligation to “make every effort to place the faculty member concerned in another suitable position” and, failing such a placement, only with “severance salary equitably adjusted to the faculty member’s length of past and potential service,” there does not seem to have been even cursory compliance with the placement provision. Finally, the Tulane experience is uniquely complex. Although a fair reading of the financial exigency provisions—adapted almost verbatim from AAUP-recommended policy—seems unambiguously to create a duty of alternative placement, the university’s administration drew no such inference. In what this report’s Tulane chapter terms a “tortuous” exercise in close reading, the university administration insisted that the placement duty applied only to program discontinuance and not to the effects of financial exigency—a curious irony for an administration that had generously construed the timing and notice provision in the affected professors’ favor.

9. Internal Review

Opportunity for internal review of adverse judgments failed to meet most accepted standards of due process as well as the institutions’ own established review procedures.

In no case did the opportunity for internal review of an adverse decision match the expectation that AAUP-supported policies or the institution’s own pre-Katrina procedures would have sustained. Nor did any of the five institutions adequately explain the need for such a departure. Loyola, for example, provided in its AAUP-based policy on program discontinuance for substantial hearings of record, yet layoffs were implemented before



the scheduling of hearings in which the administration is required to demonstrate the need for the layoffs. Tulane's financial exigency policies also provided for substantial hearings on the record; there were problems with the administration's cooperation, and in the one completed case the administration and then the governing board rejected the findings and recommendations of the faculty hearing body that strongly supported the faculty complainants. The public institutions that operated under the "force-majeure" declaration had effectively replaced the substantial existing official procedures with a manifestly inadequate substitute—a five-day window within which to seek review by the very campus administrators who had made the adverse judgment, followed by an even briefer period within which to seek review by the system's chief executive. The Special Committee notes that the procedure actually offered to these affected faculty members fell far short of AAUP-recommended standards or of the institution's previously existing policies for any adverse personnel action with such grave consequences.

10. Tenure

Faculty tenure, previously recognized and generally respected by all the institutions, received far less deference than AAUP policy and prior practice of these institutions would have required.

The pervasive and troubling conclusion from the separate reports is that faculty tenure received little if any of the deference that both institutional tradition and AAUP policy would compel. Each of the New Orleans universities had long accepted the institution of tenure and had conferred that status upon postprobationary members of its faculty. Pre-Katrina policies uniformly recognized the special status of tenured faculty. Yet in the application of the storm-driven policies, that distinction seems to have been all but obliterated in several ways. In the process of selecting faculty for termination of appointment or furlough, the most that could be said is that tenured status appears to have been one among myriad relevant factors. Even where affected faculty members applied for alternative positions within the institution, the burden fell upon them in ways that strike the Special Committee as quite inconsistent with traditions of tenure. Particularly outrageous to the committee were reports it received of situations in which tenured professors were replaced by—or at least their teaching tasks were assigned to—nontenured persons whom in several cases the released senior person had actually trained for that task. The distressing conclusion from such data is that faculty tenure, contrary to AAUP policy and the

institutions' own historic commitment, made far less difference than it should have made, and received substantially less deference than it deserved.

11. Prospects for Academic Freedom

The condition of academic freedom in the investigated New Orleans universities remains alarmingly uncertain. A recurring theme echoed at all the institutions investigated was the concern that Katrina provided the occasion to single out faculty for separation who were disliked by those in authority for having previously opposed or criticized their actions or who were seen as expendable. The Special Committee has not attempted to assess these charges, nor could it. Given the manner in which these decisions were made—the malleability of standards, the absence of meaningful faculty involvement, the disregard for tenure, and, often, the inadequacy of review—it is almost inevitable that such would be a common perception. This leaves all the affected institutions under a cloud of suspicion that cannot be dispelled and that augurs ill for the future absent effective remedial action.



IX. ADDENDUM

A Response to the Draft Report from Louisiana's Commissioner of Higher Education

On August 29, 2005, the State of Louisiana and all of its governmental entities were confronted with unprecedented challenges that changed our state. The catastrophic impact of Hurricane Katrina cannot be overstated. The operations of every campus in the impacted area was totally disrupted. The colleges and universities that were intact after Hurricane Katrina were converted into medical triage centers, evacuee shelters, and support facilities for first responders and military personnel. Just as flood waters were receding, our state was hit by another enormous storm, Hurricane Rita, expanding the number of colleges and universities disrupted and inflicting additional damages to the Katrina-affected campuses.

While reading the first few pages of the draft report, I believed that our efforts to convey the enormity and urgency of the moments, days, weeks and months following Louisiana's nightmare were understood. Upon reading the conclusions drawn by the Special Committee, I realized that we had failed.

The combination of two major hurricanes hitting our coast within thirty days and the collapse of the levee system in New Orleans caused the entire coast of Louisiana to be placed on life support. When I convened our system presidents for our initial meeting immediately following Hurricane Katrina, the first concerns expressed regarded students, faculty, and staff.

You correctly describe that communications were down and that documents were lost. Day-to-day decisions had to be made without the benefit of knowing if the physical structure of institutions still existed. It was nearly two weeks before special permission was granted by federal authorities to even access these damaged campuses in Black Hawk helicopters with military escorts due to looting and security concerns.

Just as the state, our institutions, students, and faculty members began to assess the damage from Hurricane Katrina and achieve some calm, Hurricane Rita hit. Weary first responders and campus administrators had to re-evacuate the little occupancy they had and secure their physical premises once again.

At the same time, there were discussions of what the loss of 35 percent of the state's revenue base would do to Louisiana. There were discussions of bankruptcy and mass layoffs of public workers and closure of some regional offices, including colleges and universities.

During all of this and even knowing that they would have to answer to legislators concerned about the draining of existing state revenue, our postsecondary education leaders were steadfast in their commitment to keep faculty fully paid for as long as possible. We creatively took advantage of policies developed by the Civil Service Commission for state employees to retain faculty and staff through the months of September, October, and November 2005. Constitutionally, it is an unlawful donation to pay someone who is not performing duties. However, using the aforementioned strategy, we were able to justify paying faculty and staff if they made themselves available if needed.

Our colleagues from across the nation provided assistance to our faculty and students. Our regional accreditor, the Southern Association of Colleges and Schools, agreed to several accommodations for our institutions in the process of accreditation as well as working through multiple other problems presented by the crisis. The Southern Regional Education Board helped us to establish an online registry so students could continue to take classes and faculty could perform work to develop online courses. We established a registry for faculty members to teach at other institutions, especially those taking in a significant number of displaced students. The U.S. Department of Education provided multiple waivers and accommodations for student financial aid.

Unfortunately, the Civil Service Commission could no longer justify its leave policy after December 1, 2005, and universities were unable to continue paying faculty who had no classes, no labs, and no campus. The state cut \$75 million from higher education budgets, and tuition income took a dramatic downward turn. Projections of future student enrollment were best guesses.

No one laments the actions made necessary by these events more than those of us in Louisiana's postsecondary education system. It is an understatement to say that we agonized over each and every decision that adversely affected a student or faculty member. In addition to faculty and students, our state lost millions of dollars in assets and years of positive momentum. While reading the report, I could not help but feel as I did when dealing with some of the federal agencies guiding us through the disaster and now through recovery. In our initial meetings, one representative said that they had been instructed to "not only think outside of the box but to get rid of the box." In the next breath, he began to describe all of the rules and regulations we needed to follow.

This report does much of the same. It eloquently describes that “(w)hat actually befell New Orleans higher education on August 29 far exceeded even the worst fears” and then concludes that actions taken by Louisiana did not follow established policies and procedures.

The chair of the Louisiana Recovery Authority, Dr. Norman Francis, often answers claims that something was not done fast enough or well enough in the hurricane response with “As compared to what?” There are no comparables. Standards developed to guide single institutions in a well defined circumstance barely apply.

It is clear that great effort went into your investigation and report. I know that your mission is to protect faculty. During these difficult times this has been our mission as well, and we have taken extraordinary measure and advantage of every creative avenue available to keep our faculty whole for as long as possible. Not because of policies and procedures but because it was the right thing to do.

Thank you for providing me an opportunity to respond.

E. Joseph Savoie
Commissioner of Higher Education
State of Louisiana

A Postscript from the Special Committee’s Chair

The Special Committee recognized that in many respects this document is not a final report. More than a year and a half after Katrina, the outcome of the cases of many affected faculty members is still to be determined. Hearings and appeals are still to be held, recalls from furlough still occur, and litigation in some cases may prolong the process further. Important institutional plans and decisions, moreover, are still to be fully implemented and remain subject to modification. We hope, as conditions on New Orleans university campuses improve (often slowly and painfully, to be sure), more of the harshest of the post-Katrina personnel actions may be mitigated. Although some of those draconian decisions and their effects have become permanent by default—as faculty members simply departed or ceased resisting, or programs were irretrievably recast—we note more optimistic prospects in other areas. We take comfort from the degree to which faculty leaders at the five institutions we studied have been resilient in their advocacy of professional interests on their campuses and throughout the region. We have also been heartened by an apparent commitment—not only by the affected New Orleans institutions but also by many col-

leges and universities across the country—to heed the lessons of Katrina, and to prepare far more thoroughly for future calamities and disasters.

The president or chancellor at all five of the investigated New Orleans universities reviewed and commented in detail upon a draft of this report, as did the general counsel of one of the cognizant university systems and the president of another, and we would be remiss if we did not convey our appreciation for their thoughtful and informative responses. We believe we have improved the report by taking these comments into account, often simply by changing or elaborating the text, and occasionally by adding footnotes that convey the writer’s concern.

The above-printed response to this report from Louisiana’s commissioner of higher education, Dr. E. Joseph Savoie, bears special note. As stated in the report’s introductory chapter, during the Special Committee’s late August 2006 visit to New Orleans Commissioner Savoie not only devoted a half day to meeting with us, ensuring the presence at that meeting of several other key officials. He also arranged a lengthy tour of the heavily affected parts of the city, providing us with a profound impression of the devastation that the hurricane had wrought.

The commissioner’s comments poignantly remind us of the gravity of the natural forces that traumatized New Orleans and its universities, and continue to make living and working there so difficult. Moreover, his letter reminds us of the common values and interests we share—those who are charged with leading New Orleans institutions, and those whose task it is to appraise the stewardship of those leaders. Where we diverge—and inevitably, on certain issues, we do diverge quite substantially—I trust that it is not so much because we have incompatible values or interests, as because we differ on the appropriate and permissible response to the calamity brought by Katrina.

Robert M. O’Neil 



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

Chair: DAVID M. RABBAN (Law), University of Texas

Members: RONALD M. ATLAS (Chemistry), University of Louisville; LINDA COLLINS (Sociology), Los Medanos College; SHELDON KRIMSKY (Biomedical Ethics and Science Policy), Tufts University; SUSAN E. MEISENHOLDER (English), California State University, San Bernardino; DAVID MONTGOMERY (History), Yale University; ROBERT C. POST (Law), Yale University; ADOLPH L. REED (Political Science), University of Pennsylvania; ANDREW T. ROSS (American Studies), New York University; CHRISTOPHER M. STORER (Philosophy), DeAnza College; MARY L. HEEN (Law), University of Richmond, *ex officio*; CARY NELSON (English), University of Illinois at Urbana-Champaign, *ex officio*; ERNST BENJAMIN (Political Science), Washington, D.C., *consultant*; JOAN E. BERTIN (Public Health), Columbia University, *consultant*; MATTHEW W. FINKIN (Law), University of Illinois, *consultant*; ROBERT A. GORMAN (Law), University of Pennsylvania, *consultant*; JEFFREY R. HALPERN (Anthropology), Rider University, *consultant*; LAWRENCE S. POSTON (English), University of Illinois at Chicago, *consultant*; MARTHA McCAUGHEY (Interdisciplinary Studies), Appalachian State University, *liaison* from Assembly of State Conferences.

