

# R E P O R T S

## Academic Freedom and Tenure

### Westminster College of Salt Lake City<sup>1</sup>

**T**his report concerns the termination of the appointment of Dr. Jack J. Gifford, who held indefinite tenure as professor of history at Westminster College. The report also concerns the decisions taken by the administration and board of trustees of Westminster College to abandon the system of tenure previously in force at the institution and to end existing tenure for all faculty members upon whom it had been conferred.

Westminster College of Salt Lake City, affiliated with the United Presbyterian Church, the United Methodist Church, and the United Church of Christ, has been for more than ten years an independent, liberal arts college committed to continuing its academic programs within a broadly interpreted Judeo-Christian tradition. The college was founded in Utah in 1875 as the Salt Lake Collegiate Institute. It first offered instruction at the postsecondary level in 1898, and it granted its first

bachelor of arts degree in 1946. On July 1, 1983, the institution, then named Westminster College, as it had been since 1902, became Westminster College of Salt Lake City.

The board of trustees for Westminster College of Salt Lake City has thirty-three members. Mr. Robert Weyher, a resident of Salt Lake City, was serving as chairman of the board at the time of the events discussed in this report. President James E. Petersen assumed office in 1982, having previously served as interim president of the college from 1979 to 1980 and before that as an executive with the Kennecott Copper Corporation. Dr. Douglas W. Steeples was executive vice president and dean of the college from 1980 to 1983 and is presently serving as provost of Ohio Wesleyan University. Dr. Petersen is chief administrative officer for a campus of some 1,300 students and 50 full-time faculty members.

#### I. THE BACKGROUND

In the fall of 1982, several members of the Westminster College administration visited the University of Charleston in West Virginia. They met with President Thomas G. Voss, who subsequently visited Westminster College to discuss his experience in initiating significant changes at the University of Charleston, including the change of its name from Morris Harvey College, its reorganization into five colleges, the revision of its undergraduate curriculum, and the abolition of its system of academic tenure for current and prospective nontenured faculty members in favor of a system of extended probationary appointments renewable at the administration's discretion. The Westminster College administration also sought the advice of legal counsel with respect to the legal implications of the board of trustees' stated intention to "abolish the College in its present form, establish a university with four separate colleges, redesign the curriculum, [and] make substantial reductions in forces and trim all unnecessary operating expenses."

<sup>1</sup>The text of this report was written in the first instance by the members of the investigating committee. In accordance with Association practice, the text was sent to the Association's Committee A on Academic Freedom and Tenure, to the teacher at whose request the investigation was conducted, to the administration of Westminster College of Salt Lake City, and to other persons directly concerned in the report. In the light of the suggestions received, and with the editorial assistance of the Association's Washington Office staff, the report has been revised for publication.

On January 18, 1983, notices appeared on the Westminster College campus inviting faculty, students, and staff to attend a convocation to be held that morning in the college gymnasium. President Petersen and Chairman Weyher of the board of trustees informed those assembled of decisions taken the previous day by the board, which included a change in the name of the institution and the termination of all faculty appointments effective on June 30. The administration held a press conference after the meeting.

By letter dated that same January 18, each faculty member at Westminster College was informed by Executive Vice President Steeples that his or her service at the institution would cease "effective 11:59, June 30, 1983." The letter stated that this notice was issued because Westminster College would "undergo a major transformation" at 12:01 a.m., July 1, 1983, when it would become Westminster College of Salt Lake City. All faculty members, probationary and tenured, were invited to submit letters of intent and updated credentials by February 7 if they were interested in serving after June 30. Faculty members who had obtained tenure at the college were informed by the January 18 letter that their tenure status would continue to be recognized if they themselves were retained, but subject to a five-year "assessment process." Probationary faculty members who would be retained to teach at the newly named college would remain eligible for tenure. The letter stated further that faculty members who

began teaching at the college after July 1 would not be granted tenure after six years of successful service but would instead serve henceforth under a system of renewable five-year contracts.

By date of February 14, President Petersen informed the college faculty's Committee on Appointment and Rank, its Committee on Academic Planning, and its Committee on Curriculum of the administration's "proposals for redirection and reduction of academic programs and changes in our faculty needs." The committees were told that the "transformation... will mean nothing if we do not place the college on sound fiscal and educational bases." There followed detailed recommendations for reorganizing the college into four schools, and for making curriculum changes and reductions in programs and positions, the latter including a reduction in the number of faculty positions in the department of history. The three committees were asked to comment on the recommendations not later than February 25.

The committees issued a report on February 28. The report found that "budget cuts had to be made," but it also found that the administration had not consulted with any faculty committees, chairmen of existing departments, or individual faculty members before issuing its recommendations. It took issue with the data presented by the administration to justify its recommendations, finding the data "incorrect," "unsubstantiated," "inconsistent," or "confusing." It questioned the need for new programs, as had been proposed by the administration, in light of the college's financial problems. It proposed several actions to reduce faculty positions without terminating tenured faculty appointments, recommended reductions in administrative personnel and services, and proposed the discontinuance of academic and nonacademic programs through actions that would have a minimal impact on student enrollments. The committee further recommended that if the "real objective" of the administration's plans was to save money, it could be achieved through a 10 percent reduction of all faculty and administrative salaries. The report affirmed the central importance of tenure for preserving academic freedom. It concluded that "if traumatic measures are needed to save the college, surely the trauma should apply to all equally, rather than only a selected few."

By letter of March 21, President Petersen informed the faculty of fourteen specific actions taken by the executive committee of the board of trustees with respect to the "administration's proposals for program reductions and redirections, and the continuing transformation of the college." On March 22, President Petersen notified the faculty of actions affecting faculty appointments that were taken by the board's executive committee on that same day. The faculty was informed that all appointments at Westminster College of Salt Lake City for the 1983-84 academic year would be "for one year only" and, contrary to what Vice President Steeples had indicated in his January 18 letter about the continuance of existing tenure, that there would be no "faculty appointments on continuous tenure." New faculty regulations, to take effect on July 1, were set forth by the administration in a *Manual for Faculty* that remains in force. The *Manual* states that "Westminster College of Salt Lake City does not offer faculty appointments on continuous tenure."

Late in January 1983, a tenured professor at Westminster College had approached the Association, pur-

suant to the actions taken by the board of trustees on January 17, to request assistance in defending the rights of the college's tenured and probationary faculty members. On February 2, the Association's staff wrote to Vice President Steeples urging the administration to withdraw the termination notices of January 18 and reaffirm the college's commitment to academic freedom and tenure. The vice president replied on February 8. He stated that "the primary concern of the board of trustees in transforming... the college is in creating the framework within which they may achieve the definition of programs and economies of operation necessary for survival... The board is determined to undertake all measures necessary to accomplish that end." He added that "Westminster College has been and is firmly committed to the principles of academic freedom. Westminster College of Salt Lake City will likewise be firmly committed to the principles of academic freedom. This commitment has been, is, and will be independent of any regard for appointments on continuous tenure." A further exchange of correspondence between the staff and Vice President Steeples revealed no change in the administration's position. Responding to the staff's references to the 1940 *Statement of Principles on Academic Freedom and Tenure* and its applicability to the issues of concern at Westminster College, Vice President Steeples stated: "The AAUP may very well view its 1940 *Statement* as binding on all recognized colleges and universities... Whether one likes it or not, however, such a view amounts to wishful thinking and is utterly without force in the present case."

In an April 5 letter from Vice President Steeples, Professor Jack J. Gifford was informed that he would not receive a contract for the 1983-84 academic year. Four other faculty members, one of them tenured, received similar notifications. Professor Gifford received his bachelor's degree in 1949 from the University of California, Los Angeles. He obtained his doctorate in history from the same institution in 1964, and in that year he was initially appointed to the faculty of Westminster College. By 1973 he had been granted tenure and promoted to a full professorship. In an April 11, 1983, letter to President Petersen, he expressed his intent to contest the issuance of the notice of termination, and, since the April 5 notification had provided no reasons, questioned what he presumed to be the programmatic basis for the administration's action. An exchange of correspondence ensued between the president's office, Professor Gifford, and the college's Faculty Affairs Committee concerning the procedures available to Professor Gifford under the institution's regulations to contest the notice.

Vice President Steeples, replying on April 29 to an April 28 request from Professor Gifford for reasons in explanation of the termination notice, stated that it was issued because of financial exigency, overstaffing, and inadequate enrollment. On May 2, Dr. Steeples stated that in his haste to reply he had misspoken himself and had set forth reasons appropriate under stated college policies for the nonrenewal of a probationary appointment. Now, he said, he was stating that the reason for the termination of Professor Gifford's tenured appointment was solely the college's condition of financial exigency, which is recognized under college policies as grounds for termination of tenure. In 1979, the Westminster College board of trustees had declared the institution to be in a condition of finan-

cial emergency, and in January 1983 the board had resolved that the college continued to be in a condition of exigency.

Professor Gifford's appeal against the April notice was considered by the Faculty Affairs Committee. In a report dated May 19, the committee questioned the extent of the financial exigency and the severe brevity of the notice issued to Professor Gifford. The committee found that the termination of Professor Gifford's appointment for reasons of underenrollment and overstaffing was unjustified, and that the changes in emphasis announced by the administration in the history curriculum at the college, changes which would be to the detriment of American history (in which Professor Gifford was the department's specialist), were not appropriate. The committee concluded that Professor Gifford, in terms of teaching experience, professional activities, and length of service at the college, is "by far the most versatile of the three faculty [in the department of history] and . . . the administration has failed to make a case otherwise." The committee recommended that Professor Gifford be retained as a full-time faculty member at Westminster College. In a May 24 memorandum to the chairman of the committee, however, President Petersen stated that he disagreed with the committee's reasoning and conclusions and that the decision to terminate Professor Gifford's tenured appointment would stand.

On June 20, the Association's staff sent a detailed letter to President Petersen, questioning the soundness

of the administration's action against Professor Gifford under the standards set forth in the 1940 *Statement of Principles* and the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure*. The staff also restated its concerns with respect to the administration's decision to abandon the system of tenure and to end existing tenure at the institution. The president replied on June 24. He stated that the college was "bound only by its own regulations," which it had followed in the case of Professor Gifford. He stated that the reorganization of the college "rested on financial exigency," and that "no one has challenged the existence of exigency." As to breaking tenure commitments on short notice, he stated that "grave emergencies require grave responses."

The Association's general secretary authorized an investigation. The undersigned *ad hoc* investigating committee, having examined the extensive available documentation, visited the college on December 7 and 8, 1983, and met with Professor Gifford and several other members of the faculty. In its meetings with President Petersen and the new Academic Vice President, Allan A. Kuusisto, the committee found the administration to be cooperative in assisting the committee to secure information needed for its report. The administration also provided facilities on campus for the committee to conduct its interviews. The committee did not meet with Dr. Douglas W. Steeples, the former executive vice president of Westminster College, who had by then moved to Ohio.

## II. ISSUES RELATING TO THE DISMISSAL OF PROFESSOR JACK J. GIFFORD

### A. The Existence and Extent of Financial Exigency

The documents that have been examined by the investigating committee reveal the following with respect to the financial condition of Westminster College in the spring of 1983. For the previous eight years, the college's unrestricted fund balances had shown a deficit, ranging from \$76,355 (1982) to \$461,519 (1977). The accumulated deficit had reached \$1,756,711 at the end of June 1982, and an additional deficit of \$400,000 was projected for the fiscal year ending June 30, 1983. As of June 30, 1982, the college had borrowed \$741,679 from its endowment and \$443,543 from other sources to meet current cash obligations. In February 1983, the administration estimated that approximately \$1.2 million would have to be raised from outside contributions to balance an operating budget of just under \$5 million. The institution's external audit for the 1982-83 academic year included the statement that the college "may be unable to continue its existence." In mid-June 1983, the Commission on Colleges of the Northwest Association of Schools and Colleges, which initially accredited Westminster College in 1936, issued a "show-cause" report to the college. The report stated that the college's accreditation was in serious jeopardy and called upon the administration "to provide conclusive evidence that . . . minimal characteristics of financial stability have been achieved." As noted previously, the board of trustees declared a condition of financial exigency in 1979 and reaffirmed its existence in January 1983. From what the investigating committee has been able to determine of Westminster College's financial condition, the institution was in fact experiencing financial exigency in the spring of 1983.

The existence of financial exigency, however, is not of itself justification for the termination of tenured faculty appointments. Not only the exigency but the need for termination of tenure commitments must be established. The 1940 *Statement of Principles on Academic Freedom and Tenure* allows for termination of tenured appointments under extraordinary circumstances for demonstrably *bona fide* financial exigency. But that such action is not to be undertaken lightly was underscored as far back as 1925 in that year's joint *Conference Statement on Academic Freedom and Tenure* of the AAUP and the Association of American Colleges:

Termination of permanent or long-term appointment because of financial exigencies should be sought *only as a last resort*, after every effort has been made to meet the need in other ways and to find for the teacher employment in the institution [emphasis added].

In elaborating upon the principles of academic freedom and tenure set forth in the 1940 *Statement of Principles*, Regulation 4(c) of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure* defines demonstrably *bona fide* financial exigency as an "imminent financial crisis which threatens the survival of the institution as a whole and which cannot be alleviated by less drastic means." The regulation calls upon an institution to pursue "all feasible alternatives" to termination of tenured appointments. The investigating committee takes the following issue to be fundamental in Professor Gifford's case: given the existence of financial exigency, did the administration demonstrate that no action less drastic than the termination of Professor Gifford's tenured appointment could be undertaken to alleviate the exigency?

The investigating committee is unconvinced that the administration made every effort to meet the exigency in other ways before it acted against Professor Gifford. In his February 14 report to the faculty Committees on Appointment and Rank, Academic Planning, and Curriculum, President Petersen stated that the administration was planning a net reduction of budget expenditures for instruction of approximately \$103,000. The faculty committees, in responding to the president, suggested that the faculty personnel costs budgeted for the fiscal year 1983-84 may have been overstated by as much as \$150,000, creating a misleading impression of the portion of the college's operating budget actually allocated for personnel. The faculty committees observed that the administration's budget for the 1983-84 fiscal year was \$112,000 less than the previous year's final budget but that reduction in costs of faculty positions and academic programs that totalled \$103,000 would account for 92 percent of the proposed decrease. The faculty committees' proposal to reduce the 1983-84 budget by reducing faculty and administrative salaries had no apparent impact on the decision of the administration to terminate Professor Gifford's appointment.

There are additional reasons for doubting the administration's claim that the financial exigency required its action against Professor Gifford. An accreditation team that visited the college in the fall of 1983 found that the "financial situation of the college had improved." The team reported that the college's deficit on June 30, 1983, was \$57,180 instead of the projected \$400,000, that the college had sufficient cash reserves to pay back \$350,000 borrowed during the summer to meet current cash needs, and that enrollments for the fall semester had risen 10 percent over the previous year's figures, resulting in a net increase in tuition income of approximately \$350,000.<sup>2</sup> The investigating committee has been informed that the "show-cause" order relating to the college's financial stability that was issued by the Northwest Association has been removed.

The Westminster College administration apparently did not look upon its action to terminate Professor Gifford's tenured appointment on grounds of financial exigency as the extreme measure that is envisioned under the Association's recommended standards. The action against Professor Gifford followed action by the board of trustees to abolish the college's system of tenure and to end existing tenure for all faculty members upon whom it had been conferred. Vice President Steeples testified at length before the faculty committee which heard Professor Gifford's case when he contested the notice of termination. Commenting on the regulations then in force at the institution, which set forth several criteria for identifying individuals whose appointments are to be terminated for reasons of financial exigency, reasons described in the regulations as "contradictory," the vice president stated: "Broadly put, this statement means that tenure may be disregarded in decisions involving the elimination of positions under conditions of financial exigency, and that other considerations will instead rule. These considerations include the value of particular individuals." He added: "I have demonstrated that tenure may be set aside as a consideration." The investigating committee does not agree that the college's regulations that were then

in effect could properly yield the interpretation which the vice president placed upon them. The investigating committee disagrees with the administration's implied position that an exigent condition relieved it of its obligation to respect the rights of tenure. A federal appellate court has warned of "the obvious danger . . . that 'financial exigency' can become too easy an excuse for dismissing a teacher who is merely unpopular or controversial or misunderstood—a way for the university to rid itself of an unwanted teacher but without according him his important procedural rights."<sup>3</sup> Thus the 1940 *Statement of Principles on Academic Freedom and Tenure* requires that not only the financial exigency but also any resulting termination of tenured appointments be demonstrably *bona fide*.

The investigating committee finds that the Westminster College administration did not demonstrate that the college's financial exigency required that it terminate tenured faculty appointments and that it proceeded against Professor Gifford in disregard of the principles of academic tenure that are generally accepted at American institutions of higher learning.

#### B. The Role of the Faculty in the Foregoing

The role of the faculty at Westminster College in the decisions leading to the issuance of the April 5, 1983, notice of termination to Professor Gifford is usefully seen in the context of the faculty role in decisions leading to the announcement by the administration the previous January concerning the future of the institution and the abandonment of the existing system of tenure.

The college's policies on financial exigency and faculty governance enunciated in the *Faculty Handbook* that was in force during the 1983-84 academic year were as follows:

##### 3.7.3.2 Financial Exigency

The board of trustees must officially declare that financial exigency exists. Evidence of this financial exigency must be reported to the faculty. The faculty must be meaningfully involved in all decisions relating to the reduction of instructional programs.

##### 5.1 Governing Policies

The board [of trustees] may by motion, resolution, or other official action consistent with the [principles governing the conduct of College affairs] delegate functions to other elements of the College community. In doing so it effectuates the idea of shared governance.

##### 5.2 The Role of the Teaching Faculty

While [the board of trustees] possesses the legal capacity to alter contractual elements of the *Handbook* . . . , the board recognizes that as a matter of sound policy and practice such alterations should receive the assent of the faculty.

As a matter of convenience and policy, the board of trustees recognizes that the legitimate interests and expertise of the faculty invites its participation in deliberating about matters that are not either strictly academic nor contractual. Thus it is proper that the faculty enjoy the option of sharing in deliberations extending to such administrative areas as long-range planning and program evaluation, institutional budgetary planning, admissions and retention policy and efforts,

<sup>2</sup>For the fiscal year ending June 30, 1984, President Petersen is reported as having stated that the college's operating budget showed a surplus of \$400,000.

<sup>3</sup>*Browzin v. Catholic University of America*, 527 F.2d 843 (D.C. Cir. 1975).

instructional personnel policies and recommendations relative to faculty appointments and continuation in service, and the like.

These provisions comport with the standards set forth by the Association in prescribing a meaningful role for the faculty in decisions relating to financial exigency and the status of faculty members.<sup>4</sup> Faculty participation is based upon the competence of experienced professors in such fundamental areas as curriculum, the granting of tenure, and dismissal. Beyond competence, the administration as a matter of sound academic practice should consult with the faculty before embarking upon actions which have significant ramifications for the integrity of the academic program, for academic freedom, and for the professional security of every member of the faculty.

As has been stated earlier, the administration of Westminster College of Salt Lake City had sought the advice of the president of the University of Charleston and of legal counsel before it issued its January 18 letter to the college faculty announcing a "major transformation" in the college and the ending of the institution's tenure system. The administration, however, did not, so far as can be determined, consult with the faculty or any duly delegated faculty representative before it announced its specific decisions. Instead, the decisions were presented to the faculty without forewarning on January 18 at a meeting called that same day at which students and staff were also in attendance, and which was followed immediately by a press conference. Not surprisingly, faculty members described that meeting to the investigating committee as traumatic. The Committees on Appointment and Rank, Academic Planning, and Curriculum, in their report of February 28, were moved to observe: "that no faculty committee, that no chairmen of existing faculties, and that no faculty members were even consulted is an extraordinary and unusual method of redirecting any educational institution but especially one in a condition of financial exigency."

The three faculty committees were limited in their role to being invited to comment on recommendations that the administration had already publicly announced. In fulfilling this limited role, the committees were in turn constrained by the administration's insistence upon prompt action. They were given only eleven days (from February 14 to February 25, with the college closed for vacation for part of that time) to comment on several complex proposals affecting the future of the college and the professional careers of all of its faculty members. The committees nonetheless prepared a report that took vigorous issue with the administration's proposals. In an interview with *The Chronicle of Higher Education*, Vice President Steeples is quoted as stating that "we gain a tremendous advantage with the public in fundraising and in recruiting students by doing something that is bold and imaginative. That is why we are moving quickly." There may occur rare emergencies that require an administration to effect basic changes in an institution's academic pro-

gram without allowing time for meaningful faculty consultation, but Westminster College was not confronting any sudden and unexpected crisis in the spring of 1983. Rather, if the reason offered by Vice President Steeples is accurately reported, the administration acted swiftly in order to project an image of bold leadership that would help raise funds and attract students.

As to the case of Professor Gifford, the investigating committee could find no evidence of significant faculty involvement in the decisions leading to the issuance of the April 5 notice to him of termination of his appointment. Regulation 4(c) of the Association's *Recommended Institutional Regulations* calls for faculty participation in identifying the existence and extent of financial exigency and in determining whether feasible alternatives to the termination of appointments have been pursued. It calls for a primary faculty role "in determining the criteria for identifying individuals whose appointments are to be terminated." It goes on to place responsibility for identifying individuals who are to receive notices of termination of appointment in a "person or group designated by the faculty." In contrast, the Westminster College Board of Trustees, without the faculty having been consulted, declared and reiterated that a financial exigency existed. The college administration determined where within the overall academic program terminations were to occur and what criteria it would employ in selecting the faculty members to be released, and it acted unilaterally in identifying Professor Gifford as one whose appointment was to be terminated.

The administration proceeded in this manner contrary to the provision in the *Faculty Handbook*, then still officially in force, that called upon the administration to involve the faculty meaningfully in "all decisions relating to the reduction of instructional programs." The current *Manual for Faculty* repeats this language but adds the following: "Meaningful involvement means that the faculty through appropriate committees . . . must enjoy not less than two weeks to consider, respond to, and recommend in reaction to any administration proposals. . . ." The *Faculty Handbook* still in force when Professor Gifford's appointment was terminated assigned to the faculty the primary responsibility for initiating changes in curriculum, limiting the role of the administration to determining "whether or not there are resources to fund the offering." The succeeding *Manual for Faculty* continues to specify this faculty role but enlarges the authority of the administration to proposing curriculum changes which it may implement over the opposition of the faculty. The *Faculty Handbook* includes a detailed constitution and by-laws for the college faculty. These are not found in the current *Manual for Faculty*.

President Petersen, addressing a local chapter of the Kiwanis Club a year after the events being discussed here, is reported in the press as having commented on what happened to the faculty role in the government of the college: "Frankly, I took the power away from the faculty and gave it to me."<sup>5</sup>

The investigating committee finds that the Westminster College administration and board of trustees, in excluding the faculty from the deliberations which preceded their decisions to abolish the college's system of tenure, abrogate existing tenure commitments, and

<sup>4</sup>Regulation 4(c) of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure* calls for faculty involvement, early in the process and at every important stage, in decisions relating to financial exigency. *The Statement on Government of Colleges and Universities* (1966), jointly formulated by the AAUP, the American Council on Education, and the Association of Governing Boards of Universities and Colleges, discusses the several grounds for faculty participation.

<sup>5</sup>*Deseret News*, June 7, 1984.



terminate particular faculty appointments, including Professor Gifford's, disregarded applicable principles on academic governance enunciated in the *Statement on Government of Colleges and Universities* and the college's own *Faculty Handbook*. The committee finds that the current provisions for faculty participation in the government of Westminster College of Salt Lake City, as set forth in the *Manual for Faculty* issued by the administration, are seriously inadequate when measured against generally accepted standards of academic governance.

### C. Procedural Safeguards in Professor Gifford's Case

Under regulation 4(c) of the Association's *Recommended Institutional Regulations*, a faculty member notified of termination of appointment for reasons of financial exigency is entitled to a full hearing before a body of faculty peers. The issues in the hearing may include: the existence and extent of the financial exigency, with the administration having the burden to prove the existence and extent of the condition; the validity of the educational judgments and of the criteria for selecting those whose appointments are to be terminated; and whether the criteria are being properly applied. The regulation also calls, before an appointment is terminated because of financial exigency, for "every effort to place the faculty member concerned in another suitable position within the institution." The governing board is to be available for ultimate review. A tenured faculty member whose appointment is terminated is entitled to at least one year of notice or severance salary.

1. *The Hearing of Record and the Administration's Response.* The Westminster College policies in force in the spring of 1983 authorized a review by the Faculty Affairs Committee if requested by a faculty member whose appointment was to be terminated on grounds of financial exigency. Under these policies, the hearing was to conform to the "essentials of an adjudicative review," and the issues subject to review in the hearing were substantially similar to those set forth in the Association's Regulation 4(c). The policies did not provide for review by the board of trustees. As to notice, the college was to "make every effort" to issue it a year in advance of the effective date of termination.

The Faculty Affairs Committee, which heard Professor Gifford's case, was an elected faculty body. It held a hearing of record on May 2 and 9. Professor Gifford was permitted to examine documents, question witnesses, and submit oral and written statements. The committee also heard extensive testimony from Vice President Steeples. It received typescripts of the two-day hearing by May 16, and issued its report on May 19.

The faculty hearing committee concluded that the administration's action against Professor Gifford lacked justification. It found that the administration had not established that the college's financial exigency warranted the action. Noting Vice President Steeples' assertion in the hearings that the termination of Professor Gifford's appointment was "in large part necessitated" by the administration's decisions to reduce the American history curriculum, Professor Gifford's principal teaching area, the committee concluded:

enrollment figures over a period of several years do not indicate a trend among students of lessening interest in American history. . . . Since the college is

located in the United States, offerings in American history are crucial to a liberal education, however one might care to define it. . . . Since the college is located in Salt Lake City, topics within American history, such as The West and Studies of Native Americans, are also important in the curriculum, and students (see enrollments) have a continuing special interest in these areas.

The hearing committee presented a detailed comparison of Professor Gifford's past and potential contributions to the college with those of his two colleagues in the department of history. Professor Gifford began his service on the college faculty in 1964. His special areas included colonial history, the American West, modern Britain, and ancient history. The second tenured member of the department of history joined the faculty in 1972 and specialized in early English and European history. For the academic years 1981-82 and 1982-83, he was on leave of absence completing a degree in divinity. The third member of the department was completing her sixth year of service at the college during the 1982-83 academic year and had not attained tenure. Her specialty was Latin America. The hearing committee found that the "expertise of the individuals in their respective specialties is unquestionable," and it noted that each of the three had taught a wide variety of courses over the years, including both American and European history. The committee concluded, however, that Professor Gifford, in terms of his teaching experience in several areas in the history program and his "demonstrated capabilities" in other disciplines, was "by far the most versatile of the three," and best fitted to contribute to the future history program. The hearing committee also expressed concern that the completion of a degree in divinity, "a field not directly related to the history program or Westminster College as a whole," had ramifications for the second tenured professor's "service and commitment to the institution and the program." The committee stated that the "combined expertise and versatility" of Professor Gifford and the non-tenured faculty member "would best complement the current or a revised history curriculum." The committee concluded that Professor Gifford should be retained as a regular full-time member of the college faculty.

President Petersen, responding to the committee's report on May 24, said that his decision to terminate Professor Gifford's appointment would stand. He reaffirmed the existence of a condition of financial exigency and stated, without elaboration, that actions pursuant to the exigency were "responsible and necessary." He stated that "irrespective of enrollment figures over the past, or their decline or growth, the fact is that history is underenrolled and overstaffed." He stated that the administration shared the concern of the Faculty Affairs Committee about the importance of American history, but that the college nevertheless would be offering a reduced number of courses in the subject. He referred to courses in economics, political science, and sociology under a "Social Science Teaching Major" as obviously interrelated with and supportive of American history. Lastly, with respect to Professor Gifford's qualifications, the president made no mention of expertise or versatility but he asserted that "formal fields of graduate preparation that match or fit curriculum" mean more to the students than seniority, that a degree in divinity broadens rather than diminishes credentials for teaching history, and that the formal preparation

of the other two faculty members in combination was best suited to curriculum and student need.

The differences between the Faculty Affairs Committee and President Petersen over major issues in Professor Gifford's case are striking. The administration did not submit the matter to the board of trustees for its review, pursuant to advice of legal counsel, nor did it invite further consideration from the faculty committee on the basis of its specified objections before announcing a final decision. The investigating committee believes that both of these steps should have been taken.

The faculty Committees on Appointment and Rank, Academic Planning, and Curriculum had sharply criticized the administration for having announced decisions affecting the academic program, including a reduction in history, without meaningful faculty consultation. The administration had issued notice to Professor Gifford without having previously discussed the prospective termination of any faculty appointment with an appropriate faculty body. The report of the faculty hearing committee provided detailed reasons for rejecting the administration's position in Professor Gifford's case, and President Petersen's May 24 reply to the committee was unclear in several significant respects. If, as the president appeared to concede, enrollment over several years had shown no lessening of student interest in American history, the administration should have explained how enrollment or staffing problems in the department of history served in its mind to justify taking action against Professor Gifford. The president's assertion of an obvious relationship between courses in several social science disciplines and American history is, in fact, disputable. There may be some broad similarities in subject matter, but the disciplines are not fungible in such fundamental matters as methods and objects of inquiry and standards of relevance. The president's assertion that a degree in divinity broadens rather than diminishes teaching qualifications in history at least needed some explanation, and the president's reference to "formal fields of graduate preparation" as having more importance to students' needs than a faculty member's nearly twenty years of demonstrated good service was far from self-evident.

The investigating committee finds that the administration paid insufficient heed to the judgments of the faculty committee that held a hearing on Professor Gifford's case. The investigating committee finds, as did the faculty hearing committee, that the administration failed to demonstrate that financial exigency necessitated the termination of Professor Gifford's appointment.

2. *The Availability of Other Suitable Work; The Geography Course.* *Ad arguendo*, assuming that the administration could have demonstrated that the department of history needed to be reduced by one position and that Professor Gifford's was the one warranting elimination, there remains the question of further consideration due Professor Gifford before his tenured appointment was terminated.

As stated earlier, the Association's *Recommended Institutional Regulations* call for every effort to find a suitable position elsewhere within the institution for a faculty member whose appointment stands to be terminated as a result of financial exigency. The *Faculty Handbook* in effect at Westminster College in the spring

of 1983 contained the following language, which appears also in the institution's current *Manual for Faculty*:

#### 3.7.3.4 General Procedures for Termination

When financial exigency...require[s] the termination of tenured faculty members, every effort will be made to assist such faculty members to readapt within the institution, to continue their work elsewhere, or to reduce the injury to the faculty member in every appropriate way possible, such as providing for early retirement or changing the status of the faculty member from full-time to part-time if the faculty member is agreeable to either arrangement.

In 1979, the college discontinued a program in earth science but continued to offer a single course in geography each academic term. Professor Gifford, who had taught geography at the college from 1964 to 1968, became responsible for the course, which was listed in the catalogue as part of the history program. In his several statements to the administration and before the Faculty Affairs Committee appealing the termination notice, Professor Gifford reiterated that he was qualified to continue to teach geography. The faculty committee identified geography as one of the subjects Professor Gifford had successfully taught, and it also referred to his "demonstrated capabilities" in other areas. The investigating committee understands that geography continues to be taught at the college by a newly engaged junior faculty member who teaches in the college's education program. Professor Gifford could have continued to teach the geography course, and his experience in other disciplines seems to the investigating committee to have provided possibilities for offering Professor Gifford other assignments within the college amounting to at least a part-time if not a full-time position, but no further assignments were offered by the administration.<sup>6</sup>

By the time the Faculty Affairs Committee heard Professor Gifford's case in early May 1983, the administration had apparently decided to assign the geography course in the fall to another member of the faculty. Vice President Steeples commented on the administration's plans when he spoke to the faculty committee:

In the case of geography, it is important to note that there is no geography program, there is a course. The assignment to teach that course was a convenient way of bringing in a qualified instructor otherwise underemployed toward a more satisfactory level of employment in terms of credit hours generated. The matter involved the happy convergence of economic need and the fact that there was an instructor present who could offer that particular course. Given that we were overstaffed in history, the question was what to do in physical science, which is also a problem area as to enrollments.... The thought was that one of the physical science people should retrain to teach geography.

The investigating committee is struck by Vice President Steeples's statement that the faculty member the administration was thinking of assigning geography would have to be retrained while the incumbent tenured professor, whose qualifications were not in

<sup>6</sup>Dr. Steeples, commenting on a draft text of this report sent to him prior to publication, stated that he proposed "on several occasions... administrative assignments through which to continue Professor Gifford's connection with the college. The proposal was unacceptable, after searching discussion, to the officer responsible for the administrative area involved."

dispute, required no retraining to continue to teach the course. The committee rejects the concept that the "convenience" or the financial savings in assigning a course to an "otherwise underemployed" faculty member could outweigh the institution's obligation, specified in its own regulations, to "reduce the injury" to Professor Gifford in "every appropriate way possible."

The U.S. Court of Appeals in its decision in *Browzin v. Catholic University of America*, noted earlier, referred to the institutional obligation in this regard as a partial check against abuses detrimental to academic freedom. "An institution truly motivated by financial considerations," the court remarked, "would not hesitate to place the tenured professor in another suitable position if one can be found, even if this means displacing a nontenured instructor." The investigating committee finds that the Westminster College administration, after deciding to terminate Professor Gifford's services teaching history, failed to meet its obligation to retain him to teach the ongoing course in geography and potentially other courses as well.

3. *Brevity of Notice.* Professor Gifford received notice on April 5, 1983, that his appointment would be terminated at the conclusion of that spring semester. The *Faculty Handbook* then in effect stated that the administration was to make "every effort" to provide one year of notice if appointments had to be terminated because of financial exigency. In the event that the year of notice could not be given, the college was to "seek to conform to the notice dates that apply to reappointments of probationary faculty." These dates were the same as those recommended in the Association's *Standards for Notice of Nonreappointment* calling for at least twelve months of notice of nonreappointment after a faculty member has served two or more years in the institution.

In replying to the concern expressed by the Association's staff over the brevity of the notice provided to Professor Gifford, Vice President Steeples stated that the relevant provision in the *Faculty Handbook* is "clear-

ly permissive and indicates intention rather than a firm requirement." President Petersen stated in a letter to the Association that the college's provisions for notice in cases of financial exigency were "intentionally installed so as to permit prompt responses in periods of grave danger."

The Faculty Affairs Committee, in its report of May 19, stated that if the department of history was in fact overstaffed, as the administration had claimed in justification of its action against Professor Gifford, it became so between the academic years 1978-79 and 1979-80, "since the student credit production has not changed dramatically since then," and thus the condition that allegedly warranted the notice to Professor Gifford had long existed. The committee cited as precedent for timely notice in Professor Gifford's case the situation of a nontenured faculty member who, when in her fifth year of service at the college, had received notice of nonrenewal in March, 1981, effective at the end of that semester. The administration had asserted that the three months' notice was appropriate in that case, notwithstanding the provision calling for "every effort" to give a year of notice, because of financial exigency that had been declared by the board of trustees in 1979. Following an inquiry by a joint faculty-trustee committee, however, the board of trustees withdrew the March notice and issued a one-year terminal contract to that faculty member.

President Petersen addressed the notice issue in Professor Gifford's case in his May 24 reply to the Faculty Affairs Committee. He stated that "proper notice under financial exigency is not a specific or 'as usual' advance time procedure. Under financial exigency it is a matter of preparedness and timing for necessary change. . . . Board approval for reconstituting the College provided the planning framework and authority for the proper notice given Professor Gifford."

The investigating committee finds that the Westminster College administration made no discernible effort to provide the desired twelve months of notice to Professor Gifford.

### III. ISSUES RELATING TO THE ABOLITION OF TENURE

Under the policies governing faculty appointments at Westminster College previous to July 1, 1983, some 40 percent of the college's full-time faculty members held appointments with continuous tenure. On January 18, 1983, the administration announced that tenured members of the faculty who continued to serve at Westminster College of Salt Lake City after July 1 would have their tenure rights respected and that current probationary faculty members would still be eligible for tenure, but that faculty members beginning their service at the college after July 1 would not be eligible for continuous tenure but would instead qualify for five-year appointments renewable at the discretion of the administration. On March 22, however, President Petersen informed the faculty that by action of the board of trustees all faculty appointments at Westminster College of Salt Lake City after July 1 would be for "one year only," and that henceforth no faculty member at the college would have tenure. Thus the administration and the board of trustees, having acted in January to abolish *prospective* tenure in favor of renewable five-year term appointments, in March went yet further in shedding the institution's commit-

ments to its faculty by abolishing the *existing* tenure of those who had it and the expectancy of tenure of those who were eligible for it, and by announcing that beginning with the coming year no member of the faculty, new or old, would be appointed for a term to exceed one year in duration.<sup>7</sup>

From what the investigating committee has been able to determine and as it has indicated earlier, the administration justified these actions against the college faculty in terms of the following considerations. For several years the college had been experiencing declining student enrollments and growing budget deficits, to the degree that a condition of financial exigency had

<sup>7</sup>Dr. Steeples, in his prepublication comments on this report, stated that the "trustees abandoned tenure over the objections of the administration. The letter sent to faculty in January as to retention of tenure by those who possessed it represented the intentions of the administration, and the administration's best judgment as to what the board would accept. As matter of fact, the trustees at one point decided not only to eliminate tenure, but to place all faculty on 90-day notice clauses contractually. . . . There were those who were prepared even to go to . . . nonaccredited status to preserve Westminster. What this means is that we were hard pressed to preserve what we did in an atmosphere of crisis."



existed since 1979. Efforts at raising funds from private sources, although not without some success, had become increasingly difficult, for donors were reluctant to continue to give money to an institution that showed few signs of recovering from its severe financial difficulties or of having any apparent plan for recovery. A point was reached by late 1982 where, in Vice President Steeples's words, bold action was necessary to ensure the continuing academic and financial integrity of the college. Students, private benefactors, and the public at large needed to be shown that those in authority at the college were taking fresh and imaginative steps to deal with its chronic financial problems and to infuse it with vitality. Thus the administration determined that the college should undergo a "major transformation." The institution's name was changed to Westminster College of Salt Lake City to distinguish it from Westminster College in Missouri and Westminster College in Pennsylvania. An announced reorganization included restructuring with four distinct units and a revised curriculum. A significant component of the bold new image was apparently to be that of a strong administration, clearly in command. The college faculty, with tenure abolished and with other traditional faculty rights and prerogatives curtailed, was to be seen now as subordinate and subservient to a president who would later tell a local service club that he had taken power away from the faculty and given it to himself.

The investigating committee wishes to emphasize that faculty tenure is much more than some kind of symbol (in this case of power or of vigor), which, like the current name of the institution, might be dropped in order to give the institution a more attractive appearance in certain quarters. Tenure, with its requirement that cause for action against a faculty member be established under full safeguards of academic due process, secures the freedom to teach and to pursue knowledge by removing the fear of arbitrary dismissal. An administration or governing board that abolishes an existing system of tenure, and thus leaves vulnerable the academic freedom that tenure protects, jeopardizes the integrity of an institution of higher learning.<sup>8</sup>

The faculty of Westminster College, confronted with the administration's actions to abolish tenure, made clear that it, in contrast with the administration, appreciated tenure's basic importance. The Committees on Appointment and Rank, Academic Planning, and Curriculum spoke to the matter with eloquence:

Tenure is to academic freedom what the Bill of Rights is to the Constitution of the United States. Its function

is to allow faculty freedom of inquiry, freedom of expression, and freedom of assembly both in and out of the classroom. It is protection from capricious administrative decisions. We in no way suggest that our present board of trustees nor administration are capricious, just as we know that most citizens are fair. But just as the Bill of Rights exists to serve our personal freedom under extraordinary conditions, so does tenure exist to serve our professional obligations under unusual circumstances. Without tenure, excellence in performance becomes the necessity to please.

The entire Westminster College faculty gave voice as follows to the same concerns:

... [T]he faculty of Westminster College goes on record as supporting tenure as being indispensable to the success of Westminster College of Salt Lake City in fulfilling its obligations to its students and to society because it protects faculty members against pressure from inside and outside the academic community and protects academic freedom which, in turn, maintains the college's dedication to the search for truth.

The investigating committee has premised its preceding comments on abolishing tenure at Westminster College of Salt Lake City on the stated intent of the administration to "transform" Westminster College into an institution with greater appeal to prospective donors and students. There is the possibility, however, that the administration also had a more direct interest in acting against the faculty as it did. The faculty through its representative bodies had been highly critical of the administration's actions to abolish tenure, to revise the curriculum, and to terminate Professor Gifford's appointment. The administration that spring issued new policies for the college faculty, without prior faculty knowledge or discussion, that significantly narrowed the previous role of the Westminster College faculty in such fundamental areas as setting the curriculum and determining faculty status, that asserted that the administration could make changes in the curriculum notwithstanding faculty opinion to the contrary, and that no longer included a faculty constitution and by-laws. The investigating committee finds that the Westminster College administration and board of trustees not only abolished tenure over the faculty's objections but also took a series of other actions that served to reduce faculty independence and curtail the opportunity for faculty dissent. The committee finds that these actions by the administration and the board have imperiled academic freedom at Westminster College of Salt Lake City.

#### IV. CONCLUSIONS

1. The Westminster College administration, in terminating the appointment of Professor Jack J. Gifford, violated the 1940 *Statement of Principles on Academic Freedom and Tenure* by not having demonstrated that financial exigency mandated the action that was taken.

Less drastic means than the release of tenured faculty members could have been taken to alleviate the exigency. Professor Gifford was selected by the administration over others for release in disregard of his rights under academic tenure.

2. The unilateral actions of the administration and board of trustees of Westminster College of Salt Lake City to terminate faculty appointments, to release Professor Gifford, and to abolish prospective and existing tenure were inimical to the applicable principles of shared responsibility for academic governance that are enunciated in the *Statement on Government of Colleges*

<sup>8</sup>For discussions in other case reports approved for publication by Committee A that deal with abolition of an existing tenure system, see "Academic Freedom and Tenure: Bloomfield College," *AAUP Bulletin* (Spring 1974): 50-66; "Academic Freedom and Tenure: The Virginia Community College System: A Report on Tenure and Due Process," *AAUP Bulletin* (Spring 1975): 30-38.

and Universities and that were set forth in the college's policies then in force.

3. The administration rejected the findings and recommendations of the faculty hearing committee in Professor Gifford's case without having paid sufficient heed to them, and no opportunity was afforded for review by the board of trustees. In these respects, Professor Gifford was denied essential elements of academic due process.

4. The administration failed further to meet its obligation to respect Professor Gifford's tenure by declining to retain him to teach an ongoing course that he had satisfactorily taught and to consider offering him other suitable work at the college for which he was potentially qualified.

5. The notice the administration provided to Professor Gifford was extremely brief, and unnecessarily so, under the standard set forth in the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure* and when measured against the expressed intent of the institution's stated policies.

6. The board of trustees and the administration, acting without the faculty's prior knowledge and persisting in the face of the faculty's objections, have imperiled academic freedom at Westminster College of Salt Lake City by removing the safeguards of tenure: abolishing the college's existing tenure commitments; ending the expectancy of tenure for faculty members then serving on probationary appointments; abrogating prospective tenure for faculty members to be appointed in the future; and indeed limiting all commitments to faculty members henceforth to one-year appointments. These actions, though sought to be justified by the administration as decisive steps taken

among others to make Westminster College of Salt Lake City appear more attractive to potential donors and students, are to be condemned.

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Baylor University, *chairman*

WALTER E. OBERER (Law)  
University of Utah

*Investigating Committee*

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

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