

## 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.<sup>32</sup>

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.<sup>33</sup> 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.”<sup>34</sup> 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.<sup>35</sup> 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.<sup>36</sup> 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.<sup>37</sup>

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.’”<sup>38</sup> 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.<sup>39</sup>

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.<sup>40</sup> 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

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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.

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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.<sup>41</sup>

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.<sup>42</sup>

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.”<sup>43</sup>

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.<sup>44</sup> 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.<sup>45</sup> 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.<sup>46</sup> 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

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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."<sup>47</sup> A key paragraph under "Overarching Goals," entitled

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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.”<sup>48</sup>

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.<sup>49</sup>

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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-

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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.