

V. LOYOLA UNIVERSITY NEW ORLEANS

A. Introduction

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

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

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

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

B. The Pathways Plan: A Chronology

Even before Katrina, President Wildes announced his

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

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

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

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

A. Specific Causes for Termination

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



E. Procedures for Termination Because of Discontinuances

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

21. The more salient are:

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

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

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

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

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

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- on inaccurate compilations and misinterpretations of data from just the 04-05 fiscal year.
 6. The attrition of both students and faculty that has been caused by the mere announcement of the plan has not been assessed.
 7. Alternative cost-cutting measures have not been proposed and explored by the whole university community.



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. The Association's Involvement

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





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

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

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

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

D. Issues

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

1. "PATHWAYS" AND PROGRAM DISCONTINUANCE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

But the Senate report proceeded to add the following:

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

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

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

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

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

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

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

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

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

2. THE TERMINATIONS

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

2. Before the administration issues notice to a faculty member of its intention to terminate an appointment because of formal discontinuance of a program or department of instruction, the University will make every effort to place the faculty member concerned in another suitable position. If placement in another position would be facilitated by a reasonable period of training, financial and other support for such training will be proffered. If no position is available within the University, with or without retraining, the faculty member’s appointment may then be ter-

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

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

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

E. A Concluding Observation

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

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

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

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



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

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

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

F. Conclusions

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

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

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

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

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

G. Epilogue

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

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

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

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

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

The University Senate’s Call for Action

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

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

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



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

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

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

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

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

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

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

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

