

# Report

## Academic Freedom and Tenure

### Savannah College of Art and Design<sup>1</sup>

#### Introduction

Most artists would agree that the idea of bringing an art school into the heart of the historic section of downtown Savannah verges on brilliance. Savannah's charm owes much to the human scale of Governor Oglethorpe's rational plan for Georgia's first capital; one never feels far from anything. Maritime breezes filter through live oaks, magnolias, and flowering palmettos. Students lean portfolios on park benches or gather for impromptu discussions. In short, the town itself provides a hospitable, if unorthodox, campus, with the college occupying a number of historic public or commercial buildings that had previously suffered from lack of habitation or use.

Richard G. and Paula S. Rowan founded the Savannah College of Art and Design (SCAD) in 1979, beginning with approximately seventy students and eleven full- and part-time faculty members. It was headquartered at the old Savannah Volunteer Guards Armory Building, renamed Preston Hall. The college experienced phenomenal growth during its first dozen years. By 1992 there were more than 120 faculty members, offering nine undergraduate and eight graduate programs to some 2,200 undergraduate and 230 graduate students, candidates for the Bachelor and the Master of Fine Arts degrees. Now occupying nearly three dozen buildings, SCAD is reputed to be the largest art school in the country. It received accreditation from the Southern Association of Colleges and Schools in 1983; its bachelor of architecture program (School of Building Arts) won accreditation from the National Architectural Accrediting Board in 1991.

Mr. Richard Rowan serves as SCAD's president; his wife, Paula, is provost; and Ms. Nancy H. Weber is executive vice president. Ms. Nancy Verell and Dr. Harry M. Dixon were respectively vice president for academic affairs and academic dean during the events discussed in this report; each left SCAD in the summer of 1992.

<sup>1</sup>The text of this report was written in the first instance by the members of the investigating committee. In accordance with Association practice, the text was then edited by the Association's staff, and as revised, with the concurrence of the investigating committee, was submitted to Committee A on Academic Freedom and Tenure. With the approval of Committee A it was subsequently sent to the faculty members at whose request the investigation was conducted, to the administration of the Savannah College of Art and Design, and to other persons concerned in the report. In the light of the responses received and with the editorial assistance of the Association's staff, this final report has been prepared for publication.

The board of trustees is chaired by Hugh M. Dorsey III, Esq., who has also served as general counsel for the college.

#### Background

##### *Events During April–June 1992*

During the spring of 1992, the regional and national press carried numerous accounts of unrest and dissension at SCAD, particularly after students began agitating for a student government. A group of graduate students, supported by certain members of the faculty, formed a Graduate Student Association and invited the undergraduates to join in an expanded organization. In the pre-dawn hours of April 7, following a late-night student meeting on forming an organization, a bomb was exploded outside the administration building, causing slight damage. (That and four subsequent explosions during the month of May led to the arrest and eventual conviction of two 19-year-old students who had not been active in the movement for a student government.) On April 8, Executive Vice President Weber wrote to several of the student leaders, noting that "an explosive device was detonated" after their meeting and that they (and their parents) need "to make certain that [their] statements and activities do not contribute to alienation, mistrust or irrational acts of violence." On April 16, Dean Dixon addressed a memorandum to "Selected Faculty," instructing them to make "extra assignments...so that [their] students will be kept busy." On that day and on April 17, some 1,055 students (out of approximately 1,097 who cast ballots in a non-binding referendum) voted for a proposed constitution that would assure them basic rights in such areas as speech, privacy, due process, and assembly. A number of students met individually with President Rowan in the days immediately following. According to the April 29 *Savannah Morning News*, the students reported President Rowan as being unsupportive of the proposed constitution, at least in its current form.

On May 5, members of the SCAD faculty met and voted to support the proposed student government and to initiate steps to form a faculty senate. President Rowan, who attended the meeting, wrote to the faculty on May 7 that he was "in favor of a faculty senate as described." On the evening of May 7, there was a meeting of about 300 students. Attending were some twenty members of the faculty. Four of them spoke, supporting the students. On that same day, Executive Vice President Nancy Weber wrote to all members of the faculty concerning the renewal of their appointments:

Due to the recent upheaval, faculty contracts have been delayed. We apologize for the delay; however, our small administrative staff has been concentrating on the issues at hand in order to resolve the present situation in an expeditious fashion....

The evaluation process is complete and contracts will be issued as soon as possible. We are in the process of individualizing each contract. You will receive your contract as it is processed.

A few days later, on May 11 and 12, members of the faculty voted to form a faculty senate (by a vote of 89 in favor, 2 against, and 2 abstentions). Professor David Wells was elected chair *pro tem*.

By letters dated May 20, Executive Vice President Weber notified certain members of the SCAD faculty, twelve in number from what the undersigned investigating committee could determine, that their services would not be required for the 1992-93 academic year and that they were to turn in their identification cards and keys no later than June 1.<sup>2</sup> Student leaders responded by calling for a boycott of the SCAD graduation ceremonies scheduled for May 30. Early in the morning of May 28, a device was exploded at the Savannah Civic Center, the site of the planned graduation. The SCAD administration thereupon canceled the ceremonies and postponed a meeting of the board of trustees scheduled for the same day. An alternative graduation ceremony, organized by the students and concerned faculty, was held that day in its stead. More than one thousand people attended. A major address was delivered by a member of the faculty, Professor Russell Barclay, who had been notified of the termination of his services ten days earlier.

The board of trustees meeting was rescheduled for June 5, in Atlanta. Before the meeting began, three persons who had expected to participate were informed that they had not been re-nominated and that their terms as trustees had expired. Subsequently, they and a fourth former board member sent a nine-page "Open Letter to the Board of Trustees of the Savannah College of Art and Design," in which they expressed concern over burgeoning problems at the college and "the manner in which the current administration has seen fit to address those problems."

## The Association's Involvement

The Association began hearing from concerned faculty members at the Savannah College of Art and Design in the middle of

<sup>2</sup>The investigating committee learned that letters of termination, identical in most or all cases, were received by Professors Russell Barclay, Ron Chandonia, Gary Gelfenbein, Virginia Kupritz, Jim Loser, Douglas MacLean, Paul Marquardt, James Rogers, Bonnie Sparling, David Stout, Dennis Vernon, and David Wells. The committee learned further that Professors Loser and Vernon were subsequently reinstated to their former positions.

April, 1992. Among them were Professors Russell Barclay, James G. Rogers, and David Stout. Later that month the Association received a request for assistance from Professor Robert G. Nulph, who had been appointed to the SCAD faculty for the 1990-91 academic year and had been dismissed in December 1990. By letter of May 6, the Association's staff wrote to President Rowan about Professor Nulph's case, expressing concern that he had not been afforded a hearing and asking that corrective action be taken.

Upon being informed of the May 20 notices of termination, the staff wrote again to President Rowan, on May 29, urging him to rescind the actions against the twelve faculty members. On June 2, the staff sent copies of its May 6 and May 29 letters to President Rowan to the members of the board of trustees. On June 3, writing on behalf of President Rowan, Executive Vice President Weber stated to the staff that Professor Nulph's written permission was necessary for the release of any information about him. She also stated that the staff was misinformed about the number of faculty members not being retained, but she did not offer a correct number. Replying to her on June 17, the staff provided a statement of permission from Professor Nulph while reiterating the Association's concerns bearing on his case and the cases of those who had received notices of termination the previous month.

A month later, in the absence of any further word from the SCAD administration, the Association's general secretary authorized an investigation of the cases of concern, and President Rowan was so informed by letter of July 23. A staff letter of August 6 further informed him that a visit of the undersigned investigating committee was being scheduled for October 8 and 9. President Rowan did not answer these communications. In a letter dated October 6, Mr. Hugh M. Dorsey, writing as general counsel for the college, commented as follows with respect to the impending visit:

...Obviously, the AAUP, its agents and associates are free to visit Savannah and I am sure that their trip will be an enjoyable one. However, given the particular bias of the AAUP, its employees and its agents are not authorized to go upon College property or attend College functions held upon other property. Should the AAUP, its employees, agents or members of any team come upon College property or intrude upon any College function, such person or persons shall be considered to be trespasser(s) and shall be treated accordingly which could include, but not be limited to, prosecution for criminal trespass.... Also, please be advised that no one is authorized to speak on behalf of the institution other than President Rowan, and the College's Office of Communication is the only authorized source of information regarding the institution....

The investigating committee arrived in Savannah on October 8, residing and working in a downtown hotel until October 10. The committee telephoned President Rowan's office and was in-

formed that he was out of town and that all other members of the administration would be unavailable to the committee. The investigating committee conducted personal interviews with current and former SCAD faculty members and administrators.

## Issues

### *A. The December 1990 Dismissal of Professor Nulph*

Mr. Robert G. Nulph joined the SCAD faculty late in September, 1990, holding a one-year appointment as professor and chair of the video department. He was soon to experience a series of difficulties arising out of his duties as chair. On November 19, Mr. Robert J. Brick, Vice President of Business and Fiscal Affairs, wrote to admonish Professor Nulph regarding several administrative matters, stating that his handling of them had "generated grave doubts about [his] continued employment at the college." On December 3, Director of Personnel Faye S. Edwards wrote to him about reports of his having allowed employees under his supervision to assist certain students with their assignments. On December 11, Academic Dean Harry M. Dixon wrote to Professor Nulph to apprise him of what he characterized as extremely negative student evaluations of the courses he taught in the fall quarter. "To be blunt," the dean stated, "they are disastrous." Professor Nulph has stated that he cannot comment on these evaluations because he was not given a copy of them and did not see them.

One day later, on December 12, Dean Dixon wrote to notify Professor Nulph that "the college administration, in consultation with representation from the board of trustees, has determined that it is not in the college's best interest to continue your employment... Your derelictions of responsibilities, including your failure to uphold the policies and principles of the college, has resulted in your termination." On the next day, December 13, Director of Personnel Edwards wrote to inform him that, "as stated in the Faculty Handbook, you may request a hearing in front of a college committee, in your own defense, concerning the decision by the college administration to terminate your employment. The specifics of this hearing may be found on page 21 of the Faculty Handbook." Professor Nulph replied on December 19, requesting "a hearing and a list of alleged infractions." He indicated where he could be reached while travelling with his family during the Christmas holidays. In her reply of December 20, however, Director of Personnel Edwards stated that, according to page 21 of the handbook, "a hearing will be granted if 'the facts are in dispute.' The facts are *not* in dispute.... However, if you wish to appeal the decision to terminate your appointment, you may do so to the Vice President for Academic Affairs, Nancy Verell." On December 28, Professor Nulph submitted an appeal to Vice President Verell, who replied on February 15, 1991, affirming the decision to dismiss him and informing him that he could appeal further to Provost Paula Rowan. His appeal to Provost Rowan, sent on February

25, did not result in a reply until May 15; denying his appeal, she referred him to President Rowan if he wished to appeal still further. Professor Nulph states that he was not paid for the second and third quarters of the academic year.

The procedures for "Termination of Appointment" in the SCAD Faculty Handbook, as cited by Director of Personnel Edwards in her December 13 letter to Professor Nulph, are as follows:

The termination of an appointment for causes specified above requires consideration by a committee consisting of the Vice President for Academic Affairs, the Executive Vice President, two members of the Board of Trustees, and the President. In all cases where the facts are in dispute, the faculty member involved has the opportunity to be heard by the joint committee in his or her own defense. The faculty member will be informed before the hearing of the charges against him or her. He or she will be permitted to have with him or her an adviser of his or her own choosing who may act as counsel. A full stenographic record of the hearing will be made available to the parties concerned.

In cases involving professional incompetence, the faculty member involved may introduce the testimony of other scholars in the same and related fields. The final decision in all cases rests with the Board of Trustees.

The 1940 *Statement of Principles on Academic Freedom and Tenure*, a joint document of the American Association of University Professors and the Association of American Colleges that has been endorsed by over 150 professional and educational organizations, calls for a hearing before a faculty committee in cases of dismissal for cause prior to the expiration of a term appointment. The complementary joint 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings* specifies that the hearing committee should be an elected faculty body. The hearing committee for cases of dismissal that is set forth in the SCAD Handbook—consisting of the president, two vice presidents, and two trustees—is manifestly not an elected faculty body, and this investigating committee accordingly finds it unacceptable when measured against the applicable provisions in the 1940 *Statement of Principles* and the 1958 *Statement on Procedural Standards*.

Using language identical to that in the 1940 *Statement of Principles*, the SCAD Handbook states that the faculty member is to be afforded opportunity for a hearing "in all cases where the facts are in dispute." As has been noted, the director of personnel initially informed Professor Nulph that he could have a hearing and then, after it was requested, indicated that there would be no hearing because "the facts are *not* in dispute." Professor Nulph, however, has disputed the accuracy of alleged infractions with which he was charged. He did so in a memorandum of November 29, 1990, to Dean Dixon, and his differences with the administration over one alleged infraction are recounted in an April 6, 1991, Georgia Department of Labor decision relat-

ing to unemployment insurance. It seems clear to the investigating committee that, when one party disputes the facts as alleged by the other party, the facts are indeed in dispute. The investigating committee finds that the SCAD administration acted in disregard of the 1940 *Statement of Principles* by dismissing Professor Nulph without granting him a hearing of record on the charges against him.

Also of concern in Professor Nulph's case is the matter of severance salary. Under the Association's recommended standard (Regulation 8 of the *Recommended Institutional Regulations on Academic Freedom and Tenure*), he should have received, as a first-year member of the faculty dismissed before March 1, three months of additional salary. The investigating committee finds that in the case of Professor Nulph, who has stated that his December dismissal led to no payment of salary beyond the fall quarter of the academic year, this standard was not met.

#### *B. The May 1992 Notices of Termination*

Unlike the case of Professor Nulph, which was an in-term dismissal, the recipients of the May 20, 1992, notices were simply told that at the end of their term of appointment their services for a future term would not be required. The policy of the Savannah College of Art and Design governing such cases, included in the Handbook and stated in an attachment to the annual faculty contract that each faculty member is to initial, is as follows:

All faculty members are non-tenured and have no claim on future employment with the College beyond the life of this [1991-92] contract. Should the College not wish to further contract with the non-tenured faculty member, notice shall be provided following the termination of the existing contract and no explanation or review of the matter shall be required. The contract having been fulfilled by both the College and the individual faculty member allows both parties to contract or to not contract with one another once again without any explanation on the part of either—one or both shall have the unfettered right to simply decline a further contract relationship, without prejudice or stigma.

With one exception, those who received the May 20 notices were, so far as the Association could determine, completing their first or second year of service on the SCAD faculty. The exception was Professor Russell Barclay, and the issues raised by his case will be treated first.

Dr. Russell Barclay joined the SCAD faculty in 1984 as Professor of Liberal Arts. His responsibilities over the years included chairing the steering committee that worked to attain institutional accreditation from the Southern Association of Colleges and Schools and a term as chair of the Liberal Arts Department. By the time his services were terminated after eight years, he had become one of the senior professors at the college. In the weeks preceding the termination of his services, he had become closely identified with the student efforts to form a stu-

dent government and with the faculty efforts to form a faculty senate. As noted earlier, Professor Barclay was selected to give an address at the alternative graduation ceremony that was held on May 30, 1992, the day before his involuntary separation from the college became effective.

As is made abundantly clear in the above-quoted attachment to their annual contracts, faculty members at SCAD are not granted indefinite tenure. The 1940 *Statement of Principles*, however, calls for continuous appointment or tenure for faculty members who are retained beyond a maximum probationary period of seven years, with their services then to be subject to involuntary termination, with a year of notice, only upon demonstration of adequate cause or because of financial exigency. The SCAD administration terminated Professor Barclay's services at the end of his eighth year on the faculty, providing only a few days of notice, without stating any cause let alone demonstrating its adequacy in an adjudicative hearing. The investigating committee accordingly finds that the administration proceeded in disregard of the 1940 *Statement of Principles* in its action against Professor Barclay.

The attachment to the annual contracts of SCAD faculty members not only rules out attainment of tenure or indeed any claim to retention beyond the expiration of that year's appointment, it also makes no provision for any advance notice of non-retention, and it requires neither any explanation of a decision not to retain a faculty member nor any opportunity for review of that decision. Applicable Association-supported standards, set forth in the *Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments*, are in sharp contrast. They assert that all full-time faculty appointments, excepting only those clearly designated at the outset as temporary, are either with tenure or probationary term appointments with an expectation of renewal. They provide for advance notice in the event of nonreappointment: at least three months for those in their first year of service; six months for those in their second year; and twelve months thereafter. They call for giving the faculty members notified of nonreappointment the reasons, upon request, in explanation of the decision, and they specify procedures for review of the decision if the faculty member alleges that it was based on inadequate or impermissible considerations.

Accordingly, under the Association's recommended standards, the SCAD faculty members whose services were terminated at the end of the 1991-92 academic year should have been so notified by March if it was their first year at the college and by December if it was their second year; instead, notifications were sent on May 20. No reasons for the notification were stated, and no procedure for review was afforded. The investigating committee therefore finds that the SCAD administration acted in disregard of the Association's *Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments* in issuing the May 1992 notices of termination.

Foremost among the impermissible considerations in termi-

nating the services of a faculty member at an institution of higher learning is taking such action for reasons violative of academic freedom. This was the concern that led to the founding of the American Association of University Professors in 1915, and it has remained ever since at the center of the Association's interests and responsibilities. Six of the recipients of the May 20 notices—Professors Ron Chandonia, Gary Gelfenbein, Paul Marquardt, James Rogers, David Stout, and David Wells—have alleged that a significant consideration in the administration's decision to terminate their services was their activities in support of the students' movement for student government.<sup>3</sup> Accounts in the *Savannah Morning News* and *Savannah Evening Press* identify Professor Marquardt as having spoken in favor of the movement at a rally of some three hundred students on April 2, Professor Stout as having made a supportive speech at a rally of some one hundred students on April 9, and Professors Chandonia, Gelfenbein, Rogers, and Wells as having addressed some 300 students in support of the movement at a rally on May 7. The activities of the six professors at these rallies, as they have been reported in the press and described to the investigating committee, should constitute, in the committee's judgment, protected conduct under generally accepted principles of academic freedom.

As noted earlier, the April 29 *Savannah Morning News* reported that several students who had met individually with President Rowan found him hostile to the movement and particularly to the proposed constitution for student government.

Several of the professors whose services were terminated shared communications they received from the administration with the investigating committee that predated their support for student government and that praised their teaching and other professional work. In the case of Professor Chandonia, Dr. Harry Dixon, the academic dean at the time, informed the investigating committee that in April both he and Vice President Verell had recommended Professor Chandonia's appointment as chair of his department for the following academic year.

The allegation that the services of the six faculty members were terminated as a consequence of speaking out in support of student government states a *prima facie* violation of Association-supported principles of academic freedom. In its letter to President Rowan of May 29, 1992, the Association's staff expressed concern that faculty members being subjected to termination were alleging infringement of their academic freedom. The staff proposed a procedure for review at the college of the allegations, in the manner provided in Regulation 10 of the Association's *Recommended Institutional Regulations*. The SCAD administration was not responsive to this proposal. The administration did not accept the Association's invitation to meet with

<sup>3</sup>Professor Wells has alleged that his role in forming a faculty senate and his willingness to serve as that body's chair *pro tem* also figured significantly in the administration's decision in his case.

the investigating committee, and the committee is unaware of any response from the administration that addresses the substance of the six professors' allegations.

The investigating committee finds that the six professors named in the preceding paragraph have presented a *prima facie* case, unrebutted by the administration of the Savannah College of Art and Design, that the administration's decision to terminate their services was based on considerations violative of their academic freedom.<sup>4</sup>

## Conclusions

1. The administration of the Savannah College of Art and Design, in dismissing Professor Robert G. Nulph without affording him a hearing of record at which adequacy of cause would be demonstrated, acted in disregard of the 1940 *Statement of Principles on Academic Freedom and Tenure*.

2. The administration also acted in disregard of the 1940 *Statement of Principles* in terminating the services of Professor Russell Barclay, whose length of time on the faculty entitled him under that document to the protections of tenure, without stated cause, without opportunity for a hearing, and with only a few days of notice.

3. Professors Ron Chandonia, Gary Gelfenbein, Paul Marquardt, James Rogers, David Stout, and David Wells have presented a *prima facie* case, unrebutted by the administration, that the administration's decision to terminate their services was based on considerations violative of their academic freedom.

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<sup>4</sup>An invitation to administrative officers of the Savannah College of Art and Design to offer corrections and comments on a draft text of this report led to a response from an attorney representing the college that included the following paragraph:

Please consider yourself on formal notice that the subject matter of your report is materially intertwined with matters currently in litigation and under investigation pertaining to litigation and, therefore, cannot be substantively addressed. The College does not accept your version of the facts set forth in your report, and the College reserves all rights and remedies should you suggest or represent that the College has admitted or agreed with any of your report.

In a subsequent reply to a renewed invitation to provide corrections and comments, the attorney stated:

In the near future, I anticipate substantial revelations in the pending litigation will cast a new light upon both the substance of and motive behind the complaints filed with the AAUP. Due to the sensitive nature of the litigation, I cannot review in detail the evidence in our possession.

*Investigating Committee*

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

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

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University of North Carolina at Chapel Hill; JAMES E. PERLEY (Biology), College of Wooster; IRWIN H. POLISHOOK (History), Herbert H. Lehman College, CUNY; CAROL SIMPSON STERN (Performance Studies), Northwestern University; ERNST BENJAMIN (Political Science), Washington Office, *ex officio*; JORDAN E. KURLAND (History and Russian), Washington Office, *ex officio*; LINDA RAY PRATT (English), University of Nebraska-Lincoln, *ex officio*; RALPH S. BROWN (Law), Yale University, *consultant*; BERTRAM H. DAVIS (English), Florida State University, *consultant*; JUDITH J. THOMSON (Philosophy), Massachusetts Institute of Technology, *consultant*; WALTER P. METZGER (History), Columbia University, *senior consultant*. ☞