

## Report

# Academic Freedom and Tenure Johnson & Wales University (Rhode Island)<sup>1</sup>

## I. Background

Johnson & Wales University, founded in 1914 by Gertrude I. Johnson and Mary T. Wales, began operation in Providence, Rhode Island, as a proprietary institution offering business education. In 1963, the state of Rhode Island authorized the Johnson & Wales Business School to operate as a nonprofit institution of higher education that could award associate degrees in the arts and sciences, and in 1970 the state extended the degree-granting authority to include the baccalaureate. In 1973, the school began its well-known program in culinary arts. The first master's degree programs were introduced in 1985, and in 1988 the institution changed its name to Johnson & Wales University. The university was accredited by the New England Association of Schools and Colleges (NEASC) in 1993.

The university has also expanded beyond its original base in Providence, although that remains its largest site. Between 1984 and 1993, the university started campuses in Charleston, South Carolina; Norfolk, Virginia; North Miami, Florida; Worcester, Massachusetts; and Vail, Colorado. The Providence campus is home to approximately 7,500 students and some 225 full-time faculty members. While the majority of the undergraduate students pursue studies in the culinary arts, associate and baccalaureate degrees are also awarded in the university's School of Technology, Hospitality College, and College of Business. Programs offered in the Center for Business and the Center for Education (the two centers make up the Alan Shawn Feinstein Graduate School) lead to master's degrees and, in one program, educational leadership, the Ed.D. degree.

1. 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, the report was subsequently sent to the faculty members at whose request the investigation was conducted, to the administration of the university, and to other persons directly concerned in the report. In light of the responses received and with the editorial assistance of the Association's staff, this final report has been prepared for publication.

Johnson & Wales University presents itself to the public as "America's career university." Its mission is to "employ its faculty, services, curricula, and facilities to equip students with the conceptual and practical tools required to become contributing members of society and to achieve success in employment fields with high-growth potential."

Dr. John A. Yena became president of Johnson & Wales University in 1989, and he has served at the university in one capacity or another, including dean of the college (1968) and executive vice president (1987), since 1963. Dr. Clifton J. Boyle is dean of the university's graduate school, and at the time of the events discussed in this report was director of the educational leadership program.

This report is concerned with the decision of the Johnson & Wales University administration not to renew the appointments of Professors Stephen J. Nelson and Korynne Taylor-Dunlop. In separate meetings with Dean Boyle on May 18, 1998, Professors Nelson and Taylor-Dunlop were notified that their appointments would not be renewed for the 1998-99 academic year. The two professors sought assistance from the Association, alleging that the notice was not timely, that they were not afforded an opportunity to appeal the notice, and that the administration's decision was based in significant part on reasons that violated their academic freedom. Subsequent correspondence between the Association's staff and President Yena led to no resolution of the matter, whereupon the general secretary authorized the appointment of the undersigned ad hoc committee to investigate the cases of Professors Nelson and Taylor-Dunlop.

The investigating committee visited Providence on December 11, 1998. The Johnson & Wales general counsel, Christopher T. Del Sesto, had informed the Association's staff by letter of November 18 that the administration would not meet with the committee, and that the committee would not be welcome on the campus. He contended that the AAUP's investigation was unnecessary because Professors Nelson and Taylor-Dunlop had filed a complaint with another agency (presumably NEASC), which had declined to act on it. "The matter was concluded," Mr. Del Sesto asserted, "and need not be reopened. Further, it has been the policy and consistent practice of the University not to discuss indi-

vidual personnel matters with outside organizations." Accrediting bodies do not ordinarily concern themselves with the substance of individual complaints, and the staff and the investigating committee did not see the apparent lack of NEASC interest in this case as reason for the Association to withdraw its interest. While the investigating committee could not meet with the administrative officers at Johnson & Wales University, it believes that the available written record and the testimony of those it interviewed are sufficient to support the findings and conclusions that follow.

## II. The Cases of Professors Stephen J. Nelson and Korynne Taylor-Dunlop

Professors Nelson and Taylor-Dunlop joined the educational leadership program at Johnson & Wales University as full-time faculty members in 1997 at the rank of associate professor. Professor Nelson had been a part-time faculty member at the university during the 1996-97 academic year. He completed his graduate studies at the University of Connecticut, where he received a Ph.D. degree in higher education administration in 1996. He had served previously as director of student activities at Dartmouth College (1983-87), dean of students at Bard College (1987-90), and director of the Campus Partnership, a statewide consortium of forty-two colleges and universities in Connecticut that deals with the prevention of alcohol and drug abuse (1991-95).

Professor Taylor-Dunlop entered the educational leadership program as a new faculty member. She has an Ed.D. in educational administration from Teachers College of Columbia University (1995). Before joining the Johnson & Wales University faculty she held the rank of assistant professor at Indiana University, South Bend (1996-97), where she taught in the graduate Division of Education.

The doctoral program in educational leadership at Johnson & Wales University was conceived by Dean Boyle in 1990, while he was serving as director of academic affairs in the university's graduate school. The university administration, in a report prepared in August 1997 as part of the process to obtain accreditation by NEASC, described the program as "designed to exhibit the same core attributes that mark all offerings at this institution: career and professional orientation, student-centered approach, employment focus, innovative program design, experiential learning, and action rather than theoretical research." The program would have two "tracks": elementary and secondary education, and higher education. The program admitted its first students in fall 1996. At the time, the program had four full-time faculty members, all of whose principal specialties were in the areas of elementary and secondary education. In spring 1997, the NEASC accrediting commission, in a preliminary review of the program, expressed concern that it lacked faculty members whose primary research interest was higher education. As a result, Professors Nelson and Taylor-Dunlop were offered and accepted appointments begin-

ning in August 1997. A NEASC accrediting team visited the campus in October 1997, and accreditation of the program was approved the following April.

A new academic program often inspires lively discussions about its priorities and standards, and the educational leadership program at Johnson & Wales University was no exception. Throughout the 1997-98 academic year, Professors Nelson and Taylor-Dunlop took an active role in discussions with the other faculty members in the program and with Dean Boyle over curriculum, course procedures, examinations, and related matters. In particular, they and their colleagues spent a good deal of time discussing whether to require a comprehensive doctoral examination, and, if so, what it should entail and whether it should be administered on campus or not. Professors Nelson and Taylor-Dunlop favored a comprehensive examination administered on the campus. Other faculty members in the program initially resisted the idea of such an examination, as did Dean Boyle, and then preferred that students be allowed to take it at home, which was the position eventually adopted. On the question of the content of a take-home comprehensive examination, Professors Nelson and Taylor-Dunlop argued that it should be in the form of a major research paper that would take into account the literature in the field. Their colleagues and Dean Boyle preferred a much shorter paper that focused on the content of materials covered in the classroom. Professors Nelson and Taylor-Dunlop were also at odds with their colleagues concerning the importance and content of dissertation proposals. The two wrote that they "consistently took the position that in the absence of thoughtful proposals, decent doctoral-level dissertations would be an impossibility." Other faculty members assigned less importance to the dissertation proposal, at one point suggesting that students be required to submit proposals one month after completing their course work. Lastly, there were disagreements over whether and to what extent courses offered in the doctoral program should be online. In general, these discussions were spirited but also sometimes sharp in tone, as implied by a remark attributed to Dean Boyle when talking about the use of comprehensive examinations: "[W]e are Johnson & Wales and we can do what we want."

Beyond the discussions that Professors Nelson and Taylor-Dunlop had with Dean Boyle and other faculty members about the content of the educational leadership program, they were actively engaged in their teaching and other duties. The student evaluations of Professor Nelson's teaching were generally good; he accepted assignments from Dean Boyle to prepare courses on short notice (for which the dean expressed appreciation), and his syllabus for a course he taught on student development continued to be used in the same course after he left the university in spring 1998. He also pursued research interests, writing several articles and preparing his doctoral dissertation for publication.

Professor Taylor-Dunlop's teaching received high student evaluations, and during the 1997-98 academic year she presented papers at several conferences. Indeed, in March the administration

issued her a round-trip plane ticket so that she could present a paper in France. In addition, Professor Taylor-Dunlop served as the representative of the graduate school on the University Committee on Academic Rank, a joint faculty-administrative body that reviews all faculty candidacies for promotion. On May 15, 1998, three days before Professor Taylor-Dunlop received notice of nonrenewal of her appointment, the members of the committee unanimously elected her as its chair for the next academic year.

On the morning of May 18, Professors Nelson and Taylor-Dunlop each met with Dean Boyle. They both assumed that the dean wished to discuss his evaluation of their work. Much to their surprise, however, he informed each of them that their faculty appointments would not be renewed beyond the end of the academic year. Professor Nelson reports that the dean told him that he "did not fit the culture of the doctoral program" or the "culture of the university," and that he "belonged at a place like Brown." He also reports that the dean stated several times that his decision was "not negotiable" and "not debatable." The meeting lasted approximately ten minutes. Professor Taylor-Dunlop's meeting with Dean Boyle took less than five minutes. She reports that the dean told her that he need not give a reason for the decision and that it was "not negotiable." He asked that she return the previously issued plane ticket, which she did. Shortly after returning to their offices, the two faculty members discovered that their access to the university's computer server had been discontinued, depriving them of immediate e-mail access to students before the semester ended. They were able to reestablish e-mail contacts with students through their own computer servers, however, and turned in final grades.

The Johnson & Wales University faculty manual sets forth a "faculty resolution procedure" under which an "individual can seek a fair, objective, and impartial review of one's concerns." Several matters are exempt from the procedure, however, including "areas involving employer prerogatives." Professors Nelson and Taylor-Dunlop each filed an appeal with Irving Schneider, the vice president for academic affairs, alleging that the nonreappointment decisions were unjust and should be withdrawn. In identical responses to each faculty member dated May 27, Vice President Schneider stated in reply that the "offer of a new contract to a faculty member whose contract has expired is an employer prerogative and, accordingly, is not covered by the faculty resolution procedure to which you referred in your letter. The decision of the Dean is final in this case."

Professors Nelson and Taylor-Dunlop wrote to the Association in June, seeking its advice and assistance. They stated that, *inter alia*, there was little tolerance for freedom of expression over curricular matters in the educational leadership program at Johnson & Wales University. The staff, in a letter of July 9 to President Yena, questioned the adequacy of the procedures available to Professors Nelson and Taylor-Dunlop to appeal the notices of nonreappointment and the lateness of the notices. The staff also raised concerns about the reasons for the notices of nonrenewal

and their potential ramifications for academic freedom. Receiving no response, the staff wrote again on August 19. In a letter to the staff dated August 27, General Counsel Del Sesto stated that the "matter currently resides in another forum," apparently a reference to the complaint filed by the two professors with NEASC. As noted previously, the Association's general secretary then proceeded to authorize an investigation, and President Yena was so informed by letter on September 1.

### III. Issues and Findings

#### 1. Adequacy of Notice

There is no system of tenure at Johnson & Wales University. Instead, all faculty members serve under indefinitely renewable term contracts, and most contracts are for only one year. Under new policies that went into effect in September 1998, faculty members who have served for a minimum of six years and hold the rank of professor, or who have served for twelve years and have the rank of associate professor or senior instructor, are eligible to apply for two- or three-year contracts. Two-year contracts are available to faculty members who have served for a minimum of eight years and hold the rank of associate professor or senior instructor. The university's faculty manual is silent with respect to standards for issuing notice of nonreappointment.

Association-supported standards call for notice not later than March 1 of the first academic year if the appointment is to expire at the end of that year. (AAUP standards also require that notice should be issued not later than December 15 of the second year of service if the appointment is to expire at the end of that year, and at least twelve months before the expiration of an appointment after two or more years of service at an institution.) These standards recognize the practical difficulty faced by an individual moving from one position to another in a profession in which vacancies are normally filled in accord with the academic calendar. While notice as late as March 1 in the first year of service places a faculty member at some disadvantage in seeking another position—the placement activities of most professional organizations will have been concluded, and many vacancies for the following year will have been filled—the disadvantage can be greater if the decision on reappointment is premature. The March 1 deadline allows the institution a reasonable amount of time to determine whether or not the appointment of a first-year faculty member should be renewed.

In the cases of Professors Nelson and Taylor-Dunlop, they say that, prior to their respective meetings with Dean Boyle on May 18, they had no reason to believe that their appointments would not be renewed, and thus had no reason to seek faculty positions elsewhere. Whatever opportunity they might have had to obtain other faculty appointments if they had received timely notice of nonrenewal according to the above-cited standards was lost by May 18, and each was left without a full-time faculty position for the 1998–99 academic year. The investigating committee finds

that the notice given to Professors Nelson and Taylor-Dunlop, when measured against Association standards, was egregiously late.

## 2. Reasons and the Opportunity for Review

The Association's *Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments* provides that recommendations regarding renewal of faculty appointments should be "reached by an appropriate faculty group in accordance with procedures approved by the faculty." The *Statement* calls for providing a faculty member who receives notice of nonreappointment with an oral explanation for the decision if so requested. If the faculty member then requests the reasons in writing, they are to be provided. The *Statement on Procedural Standards*, incorporating Regulation 10 of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure*, further calls for a faculty member who alleges that a decision against reappointment was based significantly upon considerations violative of academic freedom to be afforded the opportunity for review of the allegation by a faculty committee under specified procedural safeguards.

Renewal of faculty appointments at Johnson & Wales University is left entirely to the discretion of the administration. With respect to reasons, the Johnson & Wales University faculty manual is silent on the subject. Professor Nelson reports having been told by Dean Boyle only that in some unspecified way he did not "fit" the educational leadership program or the university. Professor Taylor-Dunlop states that she was given no reason at all. As for the matter of faculty appeals, the university's "faculty resolution procedure" offers faculty members who have one-year contracts the opportunity to have a "fair, objective, impartial review of one's concerns," but exempts from the procedure "areas involving employer prerogatives." Arguably, the exception swallows the procedure, for any appeal by a faculty member against an action of the administration concerning the renewal of an annual appointment would seem to implicate the "employer's prerogatives." Indeed, the reference to "employer prerogatives" has no legitimate place in an institution of higher learning. A different appeal procedure is available for faculty members who have multiyear contracts, and there is no mention of "employer prerogatives."

The lack of a faculty role at Johnson & Wales University in the renewal of faculty appointments, the refusal to provide a meaningful reason to Professor Nelson, and the refusal to provide any reason to Professor Taylor-Dunlop, leave abundant room for the two faculty members and others in the academic community to question the administration's motives. Professors Nelson and Taylor-Dunlop, in not having a procedure available through which they could appeal the notices of nonreappointment, were denied safeguards of academic due process that are commonly accepted in the academic profession and to which they were entitled under Association-supported standards. The investigating committee finds that the lack of these safeguards leaves the faculty of Johnson & Wales University with inadequate protections against an improper exercise of administrative authority.

## 3. Academic Freedom

The 1940 *Statement of Principles* declares that academic freedom is essential to the purposes of institutions of higher education and should be assured for all faculty members. The faculty regulations at Johnson & Wales University state that the "term 'academic freedom' is understood to mean the freedom to learn, the freedom [of faculty members] to teach their own subject, and the freedom to participate in the lawful governance of the Johnson & Wales academic community as established through several democratic forums."

The investigating committee finds that Professors Nelson and Taylor-Dunlop were acting within the ambit of academic freedom in dissenting as they did on curricular matters in their discussions with Dean Boyle and with other faculty members in the educational leadership program. The refusal, however, of the Johnson & Wales University administration to give meaningful reasons to the two professors, to afford them opportunity for appeal, and to enter into discussion with the investigating committee has hampered the committee in considering the allegation of the two faculty members that the decision of the administration not to reappoint them was based on its displeasure with their dissent, and, hence, that they were not reappointed for reasons violative of their academic freedom. Nonetheless, the committee believes that there is sufficient evidence for the observations and conclusions that follow.

The appointments of Professors Nelson and Taylor-Dunlop were made in response to concerns expressed by NEASC that the educational leadership program lacked faculty members whose primary research area was higher education. Accreditation of the program was granted in April 1998, but for most of the academic year, the two professors had dissented from other faculty members and Dean Boyle about the content of the program and the requirements for students completing the doctoral degree. In their accounts of what happened to them, Professors Nelson and Taylor-Dunlop suggest that these disagreements were rooted in the academic and work experiences that the other faculty members and Dean Boyle had as researchers, principals, and superintendents in primary and secondary schools, and in the influence these experiences had on their expectations for students seeking a doctorate. Whatever the accuracy of their opinion, the investigating committee thinks it likely that the timing of the accreditation of the doctoral program played an important role in the administration's decision not to reappoint them. The disputes about the doctoral program took on greater significance when viewed in the context of the accreditation process. Had the accreditation not been approved that spring, the committee doubts that the dissent of Professors Nelson and Taylor-Dunlop would have led the administration to notify them of nonreappointment then. On the other hand, it would seem that the dissents loomed larger because the April decision on accreditation rendered moot the key reason for initially appointing Professors Nelson and Taylor-Dunlop and potentially retaining them.

As discussed earlier in this report, the academic performance of both Professors Nelson and Taylor-Dunlop in the areas of teaching, research, and service appears to have been successful. If anything occurring during the 1997–98 academic year with regard to their professional work contributed to the decision not to renew their appointments, other than their discussions about the doctoral program in educational leadership, the administration has not revealed what it is. Indeed, to the extent that the administration has offered any explanation for its actions, namely, that Professor Nelson did not fit the program and belonged at another university, it has strengthened the investigating committee's belief that the administration had no legitimate academic basis for its decisions. The investigating committee accordingly finds prima facie evidence, un rebutted by the administration, that the activities of Professors Nelson and Taylor-Dunlop in dissenting from the views of other faculty members and Dean Boyle—activities in which they had a right to engage under generally accepted principles of academic freedom—were the determining factor in the administration's decision not to reappoint them.

Evidence of the climate for academic freedom at Johnson & Wales University was revealed to the members of the investigating committee before they traveled to Providence, and while there. The administration suggested to one current faculty member that meeting with the committee was not necessary, but this individual did so. Another current faculty member had initially agreed to be interviewed by the committee, but twenty-four hours later told the Association's Washington staff that he preferred to work for change at the university through campus channels. A third faculty member canceled his scheduled interview with the committee without explanation. A fourth faculty member declined to meet face to face with the committee, but agreed to speak by telephone with the committee chair. Several current faculty members, expressly fearful of retaliation by the administration, emphasized that what they told the investigating committee was off the record and should not be attributed to them. These incidents appear to the investigating committee to reflect an atmosphere of intimidation that effectively forestalls the appropriate exercise of academic freedom at Johnson & Wales University.

#### IV. Conclusions

1. The administration of Johnson & Wales University, in providing an inadequate explanation to Professor Nelson, no reasons to Professor Taylor-Dunlop, and no opportunity to the two professors for faculty review of the nonreappointment decisions, denied them generally accepted procedural safeguards to which they were entitled under the Association's *Statement on Procedural Standards*

*in the Renewal or Nonrenewal of Faculty Appointments*. The notice of nonreappointment that they received was severely inadequate under the Association's standards.

2. The prima facie evidence, un rebutted by the administration, indicates that the administration's adverse actions against Professors Nelson and Taylor-Dunlop were occasioned by its displeasure with their disagreements with other faculty members in the educational leadership program and with their dean, and thus in not renewing their appointments the administration violated their academic freedom. ☞

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#### *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*

Members: ANITA L. ALLEN (Law), University of Pennsylvania; JEFFREY HALPERN (Anthropology), Rider University; CANDACE C. KANT (Social Sciences), Community College of Southern Nevada; IRWIN H. POLISHOOK (History), Herbert H. Lehman College, CUNY; ROBERT C. POST (Law), University of California, Berkeley; LINDA RAY PRATT (English), University of Nebraska-Lincoln; WENDY W. ROWORTH (Art), University of Rhode Island; JOAN WALLACH SCOTT (History), Institute for Advanced Study; GERALD TORRES (Law), University of Texas at Austin; DONALD R. WAGNER (Political Science), State University of West Georgia; MARY A. BURGAN (English), AAUP Washington Office, *ex officio*; JORDAN E. KURLAND (History and Russian), AAUP Washington Office, *ex officio*; JAMES T. RICHARDSON (Sociology and Judicial Studies), University of Nevada at Reno, *ex officio*; BERTRAM H. DAVIS (English), Florida State University, *consultant*; MATTHEW W. FINKIN (Law), University of Illinois, *consultant*; ROBERT A. GORMAN (Law), University of Pennsylvania, *consultant*; LAWRENCE S. POSTON (English), University of Illinois at Chicago, *consultant*; WALTER P. METZGER (History), Columbia University, *senior consultant*; BEULAH M. WOODFIN (Biochemistry), University of New Mexico, *liaison* from Assembly of State Conferences.