

Report

Academic Freedom and Tenure: University of Dubuque¹

On May 13, 1999, the Reverend Jeffrey F. Bullock, president of the University of Dubuque, sent letters to fourteen faculty members notifying them of the termination of their services effective May 13, 2000: five were in business, one in chemistry, two in foreign languages, two in history, two in mathematics, one in music, and one in political science. Of the fourteen faculty members, ten had tenure. Among the latter, three accepted severance offers from the administration, and one left the university for a new position before the start of the 1999–2000 academic year.

Of the six remaining tenured faculty members, one continued to teach during the 1999–2000 academic year, but the other five were notified on August 9, 1999, by Provost Paul J. Kessler, III, that they would not be assigned any duties during the fall semester because “we do not have a need for your services.” They were required to vacate their offices and return all university property in their possession. Salaries and benefits were continued for these five faculty members, and the spring semester saw no change in their status. Two of them, Professors Julia K. McDonald and Steven A. Walstrum, had asked the Association for advice and assistance. When the ensuing correspondence between the Association’s staff and the administration of the University of Dubuque did not lead to a resolution, the undersigned ad hoc committee was appointed to investigate the cases of concern.

After examining the Association’s extensive file on the cases, the investigating committee visited Dubuque on October

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 the light of the responses received and with the editorial assistance of the staff, this final report has been prepared for publication.

The recipients of the draft text of this report had been asked to provide their comments by April 14, 2001. Mr. J. Bruce Meriwether, chair of the University of Dubuque’s board of trustees, requested an extension of the response date until after the board’s meeting on May 10 and 11. The request was granted, for which Mr. Meriwether expressed appreciation. Under cover of a letter dated May 17, President Jeffrey F. Bullock submitted “the university’s response.” The full text of that response can be found on the Association’s Web site <www.aaup.org/a01dub.htm>.

19–21, 2000. President Bullock and a member of his staff met with the committee for some ninety minutes. The committee also interviewed twelve current and former faculty members.

The University of Dubuque, founded in 1852 as the Van Vliet Seminary, is a coeducational liberal arts college and a theological seminary. Although its initial mission was to train ministers for the Presbyterian Church, in the 1870s it inaugurated instruction at the postsecondary level. It became the University of Dubuque in 1920, and the institution was initially accredited by the North Central Association of Colleges and Schools in 1921.

The board of trustees of the University of Dubuque has thirty members. Mr. J. Bruce Meriwether began serving as chair of the board in August 1996 and was acting president of the university from summer 1996 to June 1998. President Bullock assumed office in 1998, after having served as vice president and dean of the university’s seminary from 1996 to 1998 and before that as an adjunct faculty member at Seattle Pacific University and the University of Washington. Dr. Bullock is the chief administrative officer for a campus that currently has some six hundred full-time students and forty full-time faculty members.

Professor McDonald received the B.S. degree (1980) in mathematics and the M.E. degree (1981) in mathematics education from the University of Wisconsin, Platteville, and the M.S. degree (1988) and the Ph.D. (1990) in mathematics from the University of Iowa. She joined the faculty of the University of Dubuque in 1982, and at the time of the action against her held the rank of full professor and was chair of the Department of Mathematics. She was also chair of the university’s Faculty Assembly.

Professor Walstrum earned a B.S. degree from Wheaton College in Illinois (1978), and was awarded the M.S. degree (1981) and the Ph.D. (1983) in organic chemistry by Cornell University. He began teaching at the University of Dubuque in 1991 and rose to the rank of full professor in 1997. He was chair of the Department of Chemistry at the time of the action against him.

I. Background

From 1973 to 1988, the faculty at the University of Dubuque was represented for purposes of collective bargaining by the Faculty Association of the College of Liberal Arts, a local unit of the National Education Association. In 1972 the administration

had terminated the services of a tenured faculty member on grounds of financial exigency. The termination of this professor's appointment helped spark support among the faculty for a union. Concerns about the university's financial condition would continue through the decades ahead.

Collective bargaining for the faculty ended in 1988, when the National Labor Relations Board, pursuant to the action of the university administration, rescinded the union's certification on grounds that the faculty were managers and therefore were not entitled to unionize. A year later, the faculty and the university's board of trustees voted to adopt a new faculty handbook. In the early 1990s, the board of trustees sought to make changes in the faculty handbook in order (in the words of a June 23, 1999, Iowa court decision) "to create a more competitive University and place the institution on a better financial foundation." The court's decision was issued in a case brought by the board of trustees against the faculty concerning the legal status of the handbook. This highly unusual step—a board of trustees taking faculty members to court—occurred after two years of inconclusive and increasingly divisive discussions between the administration and the faculty over changes in the handbook. The court held that the faculty handbook constituted a "unilateral employment contract between the University of Dubuque and individual faculty members," and that the handbook's terms and conditions are "legally binding and enforceable on both parties." The court also held that the board of trustees could adopt changes to the handbook regardless of whether they had been approved by the faculty at large. Neither side appealed. In spring 2000, the faculty and the board of trustees approved revisions to the faculty handbook, which will be discussed below.

In a memorandum of March 19, 1999, addressed to the University of Dubuque community, President Bullock announced that on the previous day the board of trustees had approved a series of resolutions set forth in a *Plan for Transformation* to "begin the processes that would lead to an extensive transformation of the University of Dubuque." The university never released the plan. Faculty members who served on standing committees were allowed to read it and take notes but not to copy it.

The resolutions approved by the trustees on March 18 included the statements that "without radical restructuring and cost reductions the very survival of the University is in serious jeopardy," and that the "financial crisis of the University cannot be remedied by less drastic means than the substantial modification and discontinuance of academic programs and termination of the contracts of employment of faculty and staff, including tenured faculty." In his March 19 memorandum, the president stated that the "current fiscal year is now projected to end with a net deficit of \$1.35 million," that "decades-long deficit spending simply cannot and must not continue," and that "[c]hanges must be made—first and

foremost—in managing the vital issues of student recruitment and retention: the keys to long-term financial solvency and academic excellence." The president announced that only fourteen of the university's thirty-seven program majors were to be retained. He described the implications for faculty members as follows: for a "significant number" of them, including those with tenure, the "closing of low-enrollment programs will require termination of their employment contracts."

On the same date, President Bullock met with students, staff, the general faculty, and two faculty bodies: the Educational Policies Council (EPC) and the University Planning, Advancement, and Finance Council (UPAFC). According to the minutes of the EPC (prepared by Professor Walstrum in his capacity as recorder for that meeting), the president stated that the trustees had given "unanimous preliminary approval to the *Plan for Transformation*, and that the *Plan* included dramatic cuts in faculty, staff, and programs." The president provided the following summary fiscal data:

The plan involves budget cuts totaling \$2.1 million over the next two years. Over two years, reductions in faculty will reduce the budget by \$339,000; reductions in staff by \$365,000; and reductions in athletics' costs by \$250,000. Reductions in the undergraduate tuition discount rate will reduce the budget by a total of \$1.1 million over 2 years, and reductions in the seminary discount rate will result in \$45,000 or \$150,000 savings depending on the accounting method used.

The president anticipated a balanced budget by fiscal 2001–02.

Professor McDonald, in her capacity as chair of the Faculty Assembly, issued a statement on March 29, 1999, in response to the president's announcements. After summarizing the content of President's Bullock's remarks on March 19, 1999, she stated that "it appears that the *Plan* has been in the works for almost nine months. However, there had been absolutely no faculty input during that time. The *Plan* was first presented to the [EPC and the UPAFC] and the faculty on March 19."

In a report dated April 14, 1999, the UPAFC stated as follows about the *Plan for Transformation* and the university's financial condition:

Financial distress is presented in the form of budget deficits for the past ten years. Financial distress seems to be a subjective term. According [to] the *Plan*, the University is in extreme financial difficulty. The University's audited financial statement makes no mention of financial difficulty. The University's IRS Form 990 shows net assets of nearly \$3.5 million. Which truly represents the situation at the University? That is not possible to determine in the short time period that the UPAFC was given to address this question. What is clear,

however, is that the changes to be implemented by the *Plan* will result in loss of students, decreased revenues, and increased expenses.

With respect to the university's accumulated deficit, the UPAFC report stated:

Part of this deficit is the result of increased debt being incurred by the University. Current operating lines of credit exceed \$3.5 million. Debt service will exceed \$1 million by FY 03. Part of this debt is the result of using capital project gifts to pay for operating expenses and then financing the capital projects with external financing.

As stated in the plan, "while it would be easy to say these actions mortgaged the future, would any future have been possible without the actions[?] These previous actions may, at the highest level, be no better or worse than the current practice of funding operations with anticipated unrestricted estates." It is easy to say that these actions mortgaged the future. The *Plan* attempts to remedy this, not by addressing the debt issue, but by reducing other types of costs.

More generally, the report stated that "[a]ll of the changes to be made by the *Plan* result in cuts; there are no plans relating to increasing revenues or changing current practices relating to financial management, fund raising, or spending and revenue projections." The report expressed concern that the UPAFC did not have sufficient time to offer alternatives to the plan, and that it had not been consulted "at any time during the formation of the *Plan*." The report concluded that "it is unclear what the true financial situation of the University is" and recommended that the trustees not approve the plan. The report also recommended that "the administration, in conjunction with the faculty committees charged with these types of changes, spend the next year reviewing alternatives to this plan."

The EPC issued its report on April 16. It stated that the administration's financial projections "do not justify faculty terminations, and the projected revenue increases due to higher enrollment are purely subjective and unsubstantiated." It concluded that the board's plan was "seriously flawed and should not be implemented," and it recommended that the administration adhere to the faculty handbook and the policies of the AAUP and of the North Central Association of Colleges and Schools. "All three," the report stated, "require substantial faculty participation in determining the curricular changes to be made."

The university's board of trustees convened a special meeting on April 28. Responding to the reports of the EPC and the UPAFC, the board concluded that they were "factually inaccurate or engage in faulty analysis." According to the board, the "faculty response suggests that the administration should

focus on reducing the debt service as a mechanism to reduce the deficit." The board disagreed. It could not, "in the exercise of its fiduciary obligations, authorize the continuation of the operations of the University status quo while facing a projected unfunded deficit for the current fiscal year of approximately \$1.35 million based on January 31, 1999, actual, and for FY 2000 of approximately \$2.3 million." It resolved that the university's "financial condition has steadily declined to the point where it is in a state of financial urgency," and it directed President Bullock to prepare notices of termination for faculty and staff. The president was further directed to provide the board by May 13 with a final resolution for implementing the *Plan for Transformation*.

On May 13, 1999, the board adopted such a resolution, and President Bullock, by letters of that same date, notified the fourteen faculty members of the termination of their services effective May 13, 2000. The president met with some of these faculty members the day before he issued notices to them. Each letter stated that "[a]n integral component of the Board's action was the discontinuance of your program." Faculty members with tenure were informed that the trustees had found that the "conditions specified in the first paragraph of section 7.12 of the Faculty Handbook existed and necessitated the termination of the services of tenured faculty members." The paragraph in the handbook stated:

In the event that it is found necessary to terminate the services of a tenured faculty member because, in the [University's] judgment, (a) a demonstrably *bona fide* financial exigency exists, or (b) a substantial modification or discontinuance of a program or department has [occurred] or will occur, the faculty member will be given notice as soon as practicable. The notification shall take place not less than twelve (12) months before the termination date.

Faculty members were assured that the administration would "make every effort to place [them] in any open position at the University that is suitable for [their] qualifications and credentials." Attached to the letter was a list of faculty and staff positions that were then open at the university. The letter also stated that the administration was "willing to consider, under certain conditions," a lump-sum distribution of salary and a release from duties during the terminal year of service.

As recounted above, Provost Kessler, in a letter of August 9, 1999, notified five tenured faculty members who had been issued termination notices, including Professors McDonald and Walstrum, that they would not be assigned teaching duties during the fall semester. The provost responded as follows to Professor McDonald's written questions about her not teaching:

Q. Were my courses cancelled or reassigned? On what grounds was either of these done?

A. There are no courses that are yours. The University is free to assign courses as it sees fit.

Q. What criteria were used in determining which faculty members were to receive a letter like the one I received dated August 9, 1999[?]

A. The needs of the University.

Of the faculty members whose appointments were terminated, only Professors McDonald and Walstrum filed grievances under the university's faculty regulations. In her grievance, Professor McDonald stated that eliminating the major in mathematics did not "substantially change or discontinue the math program or department," that courses she had taught or could teach would still be offered at the university, and that the procedures for developing and implementing the *Plan for Transformation* had violated applicable provisions of the university's handbook concerning the faculty's role in the governance of the institution.

In his grievance, Professor Walstrum stated that, consistent with the administration's commitment to make "every effort" to identify a "suitable position" for faculty members whose appointments were being terminated, he should have been retained to teach the courses in environmental chemistry. Alternatively, if the administration believed that he needed additional training to teach the subject, the university should have provided him the opportunity to obtain it. In light of the fact that the university had appointed a full-time, tenure-track faculty member to teach the environmental chemistry courses, Professor Walstrum questioned whether the university was in a bona fide condition of financial exigency. Lastly, like Professor McDonald, Professor Walstrum claimed that the *Plan for Transformation* violated the handbook's provisions on governance.

President Bullock rejected both grievances (as did the board of trustees shortly thereafter). With respect to Professor McDonald's desire to continue teaching mathematics at the University of Dubuque, he stated that the "only sure fact is that there will be no major, degree, diploma, or certificate in mathematics in the future and there will be no mathematics program or department." The termination of her appointment was "predicated upon financial exigency and program or department elimination. All three occurred in this case."

As for Professor Walstrum, President Bullock asserted that he was "not qualified for the environmental chemistry position nor is he capable of becoming qualified in any reasonable fashion." The president added, "'Every effort' does not encompass placing an unqualified and unprepared faculty member into a position and defrauding students from the education for which they contract."

Under the grievance procedure set forth in the University of Dubuque faculty handbook in effect in 1999, a faculty member who exhausted the first five steps of the procedure "may request a panel hearing by an impartial panel made up of one individual designated by the grievant, one individual designated by the President, and a third selected by the two designees" (Step 6). With respect to the authority of the hearing panel, the handbook stated that its "decision shall be the final administrative action in the matter."

Professor Walstrum filed a request for a Step 6 hearing panel on October 4, 1999, and Professor McDonald followed suit on October 26. The two faculty members identified their respective designees to serve on the panel; the administration selected one person to serve as its designee for both panels. The designees exchanged names in order to select the third member of the panel. The parties were not able to agree on the third member of the panel, however, and as of this writing no hearing of any sort has occurred.

II. The Association's Investigation

In an April 5, 1999, letter to President Bullock, the Association's staff drew attention to Regulation 4 of the AAUP's *Recommended Institutional Regulations on Academic Freedom and Tenure* and the standards concerning the termination of faculty appointments for reasons of financial exigency or program or department discontinuance. The staff expressed the hope that the administration and governing board would act in conformity with these standards. Officers of the Iowa state conference of the AAUP expressed similar hopes to President Bullock.

Replying to the staff on April 8, President Bullock stated that the board of trustees "is committed to following the provisions of the University Faculty Handbook." The AAUP staff, in a September 1 letter to the president, questioned the administration's terminating faculty appointments and not assigning teaching duties for the fall semester to Professors McDonald and Walstrum, and three other faculty members. In a reply of October 29, the president referred to Step 6 of the grievance procedure that had been initiated by Professors McDonald and Walstrum. Expressing his admiration for the work of the AAUP on behalf of the academic profession, he noted that he was scheduled to be in Washington in February and suggested the possibility of meeting the staff for lunch. Family obligations kept the president from traveling to Washington, however.

From the beginning of November 1999 to the end of March 2000, the respective designees of Professor McDonald, Professor Walstrum, and the university administration sought to identify the third member of each of the hearing panels. In letters of November 4, 1999, and February 1, 2000, the staff reiterated its concerns that Professors McDonald and Walstrum "be afforded safeguards of academic due process in any forthcoming hearings." The staff referred to the same issue in a

March 31 letter, adding, "Under Association-supported standards, Professors McDonald and Walstrum should have been afforded a full hearing with respect to the actions taken against them. The administration, we believe, was responsible for providing opportunity for such a hearing in a timely manner." The staff recommended that if Step 6 of the grievance procedure could not be implemented, the administration come forth with an acceptable alternative before the appointments of Professors McDonald and Walstrum expired in May. President Bullock replied to the staff's March 31 letter as follows: "I recommend that you advise Ms. McDonald and Mr. Walstrum to redouble their efforts to find an acceptable panel member. If they are of the opinion that the existing process will not work, I would be interested in hearing that directly from them."

Replying on April 26, the AAUP staff again stated that, in its view, the "initiative properly rests with the administration to discuss with the faculty members what may be feasible with respect to an alternative procedure." The Association's general secretary, noting that the two appointments were being terminated without hearings having taken place or in prospect, authorized an investigation. The staff so informed President Bullock in its letter of April 26.

Just over two months later, President Bullock informed the staff that Professors McDonald and Walstrum had agreed to waive their rights under the "old" faculty handbook, "which no longer has any contractual status at the University," and to have a hearing in accord with procedures adapted from the AAUP's *Recommended Institutional Regulations*. He asked the staff to confirm that the alternative procedure would satisfy the AAUP's concern about the university's "providing academic due process to these two individuals."

The staff wrote on July 6 that the alternative procedure was "overall" consistent with AAUP-supported standards. The staff's letter continued: "Whether and to what extent, however, in this case as in any other case, there is actual adherence to sound procedure remains to be seen, and we will want to make our own assessment in this matter." In a letter of August 3 to the staff, President Bullock stated that "[w]e thought you were representing the interests of these two faculty, however, it has become clear that you are representing organizational interests." The letter continued:

The University's only concern is that the faculty are afforded the process which they are due. Therefore, we will proceed to resolve this issue under the procedures of the old faculty handbook process, and have our panel representative again initiate interaction with the representatives selected by the two faculty. . . . As far as your investigation is concerned, that is an AAUP organization issue. In fact, it is quite clear that you are trying to leverage a decision with regard to these two faculty. The University will not condone an AAUP investigation of any kind.

III. Issues

1. NEED TO TERMINATE FACULTY APPOINTMENTS

According to the 1940 *Statement of Principles on Academic Freedom and Tenure*, a tenured faculty appointment continues until retirement unless it is terminated for adequate cause or as a result of a financial exigency that is demonstrably bona fide. Regulation 4(c) of the Association's *Recommended Institutional Regulations* defines financial exigency as "an imminent financial crisis which threatens the survival of the institution as a whole and which cannot be alleviated by less drastic means [than terminating tenured appointments]." The *Recommended Institutional Regulations* also recognize, as a basis for termination of tenure, discontinuance of a program or a department of instruction not mandated by financial exigency.

The 1999 University of Dubuque faculty handbook, in Section 7.12, stated that tenured faculty appointments could be terminated when a "demonstrably bona fide financial exigency exists," or because a "substantial modification or discontinuance of a program or department has [occurred] or will occur."

The position of the University of Dubuque administration is that the terminations were consistent with the standards set forth in Section 7.12. There was, however, some dispute between faculty representatives and the board of trustees as to the exact reasons for the terminations. The EPC, in its report of April 16, 1999, stated that "[v]irtually all the critical issues that the *Plan [for Transformation]* recognizes are financial, and thus the *Plan* is financially motivated and not educationally motivated." In its response of April 28 to the EPC's report (and to the April 14 report of the UPAFC as well), the board of trustees stated that the EPC

criticizes the *Plan* for basing program discontinuance decisions on financial motivations when, in fact, with the adoption of the revised Mission, the University set out on a course that refocused the academic emphases of the University based on long-term educational considerations. . . . The reformation of the Mission was not an exercise in financial planning, but a search for the heart, soul, and essential purposes of the University of Dubuque.

In the same document, however, the board stated that the university's "financial condition has steadily declined to the point where it is in a state of financial urgency." Moreover, the board, in its earlier resolutions of March 18, had declared that the university was facing a financial crisis, and that the *Plan for Transformation* "offered the means best calculated to relieve the University of its current critical financial condition."

Although the *Plan for Transformation* emphasized positive elements in the university's condition, the documents that have been examined by the investigating committee leave little doubt that the university's financial situation was the central consideration in the board's adopting and the administration's implementing the *Plan*.

From the administration's perspective, the university's dire financial situation could be seen in the operating deficits that had steadily accumulated since 1991. The trustees anticipated that the deficit for 1999 alone would be \$1.35 million, and that it would climb to approximately \$2.3 million in 2000. Faculty members did not disagree that the deficits were real. In its report of April 14, 1999, the UPAFC, after reviewing the university's audited financial statements for the past five fiscal years, found that by 1999 the accumulated deficits had reached \$5.9 million. But the UPAFC report questioned whether an emphasis on the university's operating deficits gave a complete picture of the institution's true financial condition. It noted that the audited financial statements did not state that the university was in financial trouble, and that the information provided by the university to the Internal Revenue Service revealed net assets for fiscal 1997–98 of nearly \$3.5 million. "Which truly represents the situation at the university?" the UPAFC report asked.

The trustees, in the resolutions they adopted on April 28, 1999, acknowledged the growth in the university's assets, and, indeed, identified the factors that accounted for it, including an increase in the university's permanent endowment by nearly \$1.3 million and unrealized gains on that endowment of just over \$1.5 million. The trustees insisted, however, that they could not, in the exercise of their fiduciary responsibilities, "fund the projected deficit for the next year based on the status quo."

The investigating committee does not doubt that the financial condition of the University of Dubuque in spring 1999 was serious, and that the board of trustees was properly concerned to take action to deal with continuing deficits. The investigating committee is skeptical, however, as to whether the university was confronted with such a severe financial crisis as to justify the termination of tenured appointments. One reason for skepticism is that, while the administration claimed that the operating deficits placed the university's survival in jeopardy, it did not provide information to the faculty to demonstrate that fact. It did not explain how deficits would have developed in the absence of new policy initiatives and economizing efforts, and it did not explain how the reduction or elimination of deficits would avert the threat to the university's survival. The administration also placed serious limitations on the faculty's access to financial information.

Members of the UPAFC were not allowed to have their own copies of the *Plan for Transformation* or supporting documentation because the administration reportedly considered the information "confidential and proprietary." The investigating committee also notes that, however serious the deficits, they seem less critical when viewed against the rise in the university's revenues from \$20 million in fiscal 1998 to \$30 million in fiscal 1999, and the growth in the institution's total net assets/fund balance from \$31 million to \$40 million. The

administration maintains that these increases were largely attributable to the growth in temporarily and permanently restricted funds, which were not available for general operating purposes outside the intent of the donor or grantor. The administration did not release information to the faculty about the specific conditions attached to restricted funds, and the investigating committee has no basis for questioning the administration's position concerning these funds. The undisputed rise in revenues and net assets, however, bespoke confidence in the university's financial condition and its financial future. President Bullock was understandably pleased to report to the faculty in January 2000 that the draft report of a North Central Association evaluation team had recommended continuation of the university's accreditation "with no progress, monitoring, or contingency reports required."

There is another reason for skepticism about the claim that the termination of tenured faculty appointments could not be avoided. The 1940 *Statement of Principles* allows for termination of tenured appointments under extraordinary circumstances for a demonstrably bona fide financial exigency. But that such action is not to be undertaken lightly was underscored as far back as 1925 in that year's joint *Conference Statement on Academic Freedom and Tenure* of the AAUP and the Association of American Colleges: "Termination of permanent or long-term appointment because of financial exigencies should be sought *only as a last resort*, after every effort has been made to meet the need in other ways and to find for the teacher employment in the institution." (Emphasis added.)

In elaborating upon the principles of academic freedom and tenure set forth in the 1940 *Statement*, Regulation 4(c) of the Association's *Recommended Institutional Regulations* calls upon an institution to pursue "all feasible alternatives" to termination of tenured appointments. Thus, the 1940 *Statement* and the *Recommended Institutional Regulations* require that not only the financial exigency but also any resulting termination of tenured appointments be demonstrably bona fide.

The investigating committee is struck by the fact that, with respect to members of the faculty, the administration called for one fundamental course of action, the termination of tenured appointments. The administration announced other steps for dealing with the university's financial problems, including elimination of staff positions and reduced spending on athletics. But if the administration gave serious consideration as to whether the release of tenured faculty members could have been avoided or minimized by taking into account, for example, attrition, offers of early retirement, or reduced faculty and administrative salaries, there is no evidence that it shared these considerations, or the assumptions that might have informed them, with the faculty.

The investigating committee finds that the termination of tenured faculty appointments at the University of Dubuque was initiated by the board of trustees and the administration

without a showing of a financial exigency that actually threatened the continuance of the university, and without a showing that the university's financial condition required the termination of tenured appointments.

As was noted earlier, the administration stated that it was working under the provisions of Section 7.12 of the faculty handbook, which allowed for termination of a tenured faculty appointment not only on grounds of a "demonstrably *bona fide* financial exigency" but also on grounds of "substantial modification or discontinuance of a program or department." In the absence of financial exigency, the Association's recommended standards do not permit the termination of tenured faculty appointments because of the reduction, as opposed to the discontinuance, of an academic program. Regulation 4(d) of the Association's *Recommended Institutional Regulations* further provides that the institution is required, before issuing notice of termination of appointment for reasons of program discontinuance, to "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." Section 7.12 of the University of Dubuque faculty handbook also required the institution's adherence to a "suitable-position" rule, but was silent on the issue of training.

The board of trustees discontinued the Department of Mathematics and the Department of Chemistry. The board also ended the academic majors in both departments. Classes in mathematics that Professor McDonald had taught continued to be offered at the University of Dubuque, however, and were assigned to part-time faculty members. Courses also continued in chemistry, and Professor Walstrum, in his several statements concerning his grievance, reiterated that he was qualified to teach those classes, including new courses in environmental chemistry assigned to a junior faculty member appointed at the start of the 1999–2000 academic year. In rejecting Professor Walstrum's grievance, President Bullock stated that he was unqualified to teach environmental chemistry and "not capable of becoming qualified in any reasonable fashion." The president offered no explanation for his statements about Professor Walstrum's competence, and the validity of his assertions—aimed as they were at a faculty member who had been promoted to the rank of full professor in 1997—is not apparent to the investigating committee.²

2. Commenting on Professor Walstrum's case, the university's response stated that the institution "had a review conducted of his transcripts by an outside faculty expert to determine if there was any reasonable scenario by which the University could redirect his talents to a position in environmental chemistry taking into account the needs of that program and the incumbent responsibility of the University to provide instruction to its students by appropriately prepared instructors. The conclusion was that he did not possess the academic preparation or the experience base to be a competent professor

The investigating committee rejects the proposition that the board of trustees and the administration, having discontinued the academic departments and academic majors in mathematics and chemistry, had no obligation to retain Professors McDonald and Walstrum to teach courses that they had taught and that continued to be offered at the university. The investigating committee also rejects the proposition that President Bullock's assertion regarding Professor Walstrum's professional competence sufficed to discharge the university's obligation to offer him additional training, if such was necessary for him to teach environmental chemistry. Instead of seeking to have Professor McDonald and Professor Walstrum continue to teach at the University of Dubuque, which the investigating committee believes was appropriate and feasible, the board of trustees and the administration acted in a manner that eliminated any possibility of their remaining at the institution.

2. ROLE OF THE FACULTY

The university's policies on termination of tenured appointments for financial or programmatic reasons set forth in the 1999 faculty handbook stated the following about the faculty role:

Prior to the notice of termination of a tenured faculty member's appointment as a consequence of financial exigency or substantial modification or discontinuance of a program or department, a joint meeting of the EPC, the Division Chairs, the Academic Dean, and the President shall be called for a thorough discussion of the situation. In the discussion, the Board shall provide information indicating the necessity for a declaration of financial exigency or requirement that a program be substantially modified or discontinued.

Subsequent to the discussion and within thirty (30) calendar days, the EPC will submit through the President to the Board [of Trustees] a written report and specific recommendations on the reduction of faculty positions. The report shall address the impact of financial exigency and/or substantial modification or discontinuance of a program or department on the academic program of the [university] and shall include specific recommendations based on academic considerations and priorities. If, after consideration of the EPC's report, the Board decides to terminate tenured faculty, the Board shall specify the

of environmental chemistry." The investigating committee understands that Professor Walstrum was not informed by the administration that it had solicited a review of his credentials, and that he was not offered the opportunity to comment on the substance of the review. With regard to Professor McDonald, the university's response stated that "she had the right to apply for and be given any part-time teaching assignment in her field. She did not apply for any of those positions. She understandably chose to take a full-time, tenure-track position at another institution."

reasons for its decision in a written statement to the Council. In the event that the Board's tenured faculty reduction determination differs from the recommendation of the EPC, the Board shall consider the EPC's recommendation and shall return its decision to the Council within ten (10) working days.

The Association's 1966 *Statement on Government of Colleges and Universities* calls for the faculty to have primary responsibility for decisions affecting the institution's academic program and determining faculty status. Regulation 4 of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure* calls for meaningful involvement of the faculty in decisions preceding any termination of tenured appointments on grounds of financial exigency or discontinuance of a program. It provides for faculty participation in decisions concerning the elimination of specific academic programs and the status of individual faculty members whose positions may thereby be affected.

On March 19, 1999, President Bullock publicly announced that "[y]esterday, the Board of Trustees unanimously approved a series of resolutions that begin the process that will lead to an extensive transformation of the University of Dubuque. . . . These proposed changes, laid out in the University's *Plan for Transformation*, already rank among the most important in the long history of our University." He added, "This document sets forth a clear, carefully thought out blueprint for setting our financial house in order while furthering the University's mission and values."

The appropriate faculty bodies at the University of Dubuque—the EPC and the UPAFC—availed themselves of the opportunity to review the board's "blueprint." Their reviews, however, were limited by the information provided to them by the administration:

UPAFC [as recounted in its report of April 14, 1999] was provided with copies of the current operating budget for the current fund. According to the University, the current fund is the only fund for which budgets are prepared. UPAFC members were also provided with the audited financial statements for the past 5 years. We were, however, refused access to the budget for the next 5 years reflecting the Transformation Plan. As we are expected to report on the financial effect of the Transformation Plan, this restriction is unexplainable. It also raises questions of what is contained in the proposed budgets that [the] administration does not want the faculty to see, or if the Plan contains realistic projections for the next 5 years.

Further, the plan and documentation [were] made available to UPAFC members for viewing during regular office hours, but could not be removed from designated areas, nor were members allowed to keep their copies for

reference. President Bullock claimed that this is because the information is confidential and proprietary. This seems to indicate an attitude towards faculty that we are not to be trusted with information and that we must be supervised. This has made it very difficult for UPAFC members to write a comprehensive report. When the access to information is limited and you must rely on memory and notes, rather than copies of the document that could be reviewed during a more convenient time period, it is difficult to prepare an accurate and adequate response. The issue of access to documentation was raised by members of UPAFC numerous times with [the] administration, but the restrictions remained.

Even with these limitations, the two committees produced detailed critiques of the board's *Plan for Transformation*. The board, acting in the face of faculty objections, formally adopted its own plan, which did not differ from what President Bullock sent to the faculty on March 19. The board's response to the concerns over the adequacy of consultation with the faculty, insofar as the investigating committee understands the board's resolutions of April 28, 1999, was that the board and the administration had informed the faculty annually of the university's financial condition, that the faculty had the "opportunity and duty" to make recommendations about the institution's financial circumstances and its academic programs, and that it failed to do so.³ The board of trustees, however, unilaterally prepared the *Plan for Transformation*, defined its objectives, and specified the steps for attaining them. The faculty's role was limited to commenting on decisions that had already been made by the board and the administration and were publicly announced. The board and the administration determined that

3. The university's response stated that the "history of the University's past faculty's action, or more accurately inaction, in the face of plummeting institutional quality and expiring financial viability, is appalling. Every year for close to thirty years those whom AAUP represents and their colleagues were presented with full financial and enrollment data. They superintended the academic programs that were declining in quality to the point that continued enrollment of students in some majors was tantamount to fraud. They were implored on many occasions by the President and chief academic officer to generate proposals that would begin to alleviate this inexorable decline. In fact, the present Chair of the Board of Trustees, after serving in the office of president for two years, experienced first-hand the unwillingness on the part of past faculty leadership to initiate any effort to address the crushing problems of the University despite his repeated requests. It was the position of the faculty at that time, best exemplified in the candid words of one leading professor who is no longer a member of the faculty, 'It is my job to profess. It is the Board's job to provide me students,' that the faculty teaching at that time bore no responsibility for addressing the financial and enrollment problems of the University. Those whom AAUP represents and their colleagues resolutely refused to engage any initiative to address the problems of the University despite their clear authority and responsibility."

the university's financial condition was urgent, that academic departments needed to be reduced or discontinued, and that tenured faculty appointments needed to be terminated. They also decided where within the overall academic program terminations were to occur, which criteria they would employ in identifying faculty members to be released, and which individual appointments were to be terminated.

President Bullock, in his meeting with the investigating committee, was highly critical of the faculty. He told of how, in his view, the relationship between the faculty and the administration had become unremittingly adversarial. All of the faculty members who met with the investigating committee described the relationship in the same way, and several pointed to the litigation of the board of trustees against the faculty in the dispute over the legal status of the faculty handbook as symptomatic of the deep hostility. For the president, the situation had reached the point where he felt it necessary to have a security officer and a lawyer with him when he met with dismissed faculty members the day before he issued notices of termination to them. He emphasized to the investigating committee that the faculty's role in the decision to terminate appointments was entirely consistent with the faculty handbook, which, as noted earlier in this report, a 1999 court decision had declared to be "legally binding and enforceable on both parties." In short, the board of trustees and the administration were prepared to consult with the faculty only to the degree called for under the handbook, rather than from any determination to see that sound principles of tenure and academic governance were observed.

3. REMOVAL FROM TEACHING

Professors McDonald and Walstrum, along with three other tenured professors, were denied the opportunity to teach during their terminal year at the University of Dubuque. The administration's action did not relieve these faculty members of all their duties. For example, Professor McDonald continued to serve as chair of the Faculty Assembly until the faculty, in a special election, selected a new chair in October 1999. Nonetheless, it is clear to this investigating committee that removal from teaching is a suspension as commonly understood in the academic community, and that the University of Dubuque administration had suspended Professors McDonald and Walstrum from any further teaching.⁴

4. See "Academic Freedom and Tenure: University of Southern California," *Academe: Bulletin of the AAUP* (November–December 1995): 46–48. Regarding the suspensions, the university's response stated that the "Faculty Handbook at the University of Dubuque did not contain the attendant substantive and procedural trappings surrounding suspensions that the [investigating] committee finds in its cited authorities. The University's handbook gave power to the Board to suspend a faculty member where the faculty member's continued presence posed the risk of immediate harm to the educational processes of the University. There were no attendant procedural obligations as the committee found at the University of Southern

The administration took the action it did because, according to Provost Kessler, the university had no need for the services of Professors McDonald and Walstrum. When Professor McDonald asked the provost what criteria the administration used to reach its decision, he replied, the "needs of the university." Those needs did not include assigning Professors McDonald and Walstrum to courses in their respective academic fields that continued to be taught at the university. The 1970 *Interpretive Comments* on the 1940 *Statement of Principles on Academic Freedom and Tenure* caution that a "suspension which is not followed by either reinstatement or the opportunity for a hearing is in effect a summary dismissal in violation of due process." The AAUP's *Recommended Institutional Regulations* emphasize that "suspension which is intended to be final is a dismissal and will be treated as such." The University of Dubuque administration did not reinstate Professors McDonald and Walstrum after it had suspended them, and no hearing on its action took place. The investigating committee finds that the administration effectively dismissed Professors McDonald and Walstrum without providing them with the requisite safeguards of academic due process.

4. PROVISIONS FOR A HEARING

The Association's *Recommended Institutional Regulations* provide that a faculty member whose appointment stands to be terminated on grounds of financial exigency or program discontinuance should have the opportunity for an on-the-record adjudicative hearing before an elected faculty committee. In such a hearing, the administration has the burden, if it attributes its action to financial exigency, to demonstrate the existence and extent of the exigent condition. The validity of educational judgments, the criteria for termination, and the application of the criteria to individual cases are also subject to review at a hearing. If the action is based on discontinuance of a program, a faculty determination on discontinuance is to be considered presumptively valid, with the burden of proof resting with the administration on other issues.

The faculty regulations in effect at the University of Dubuque in spring 1999 provided that a faculty member issued notice of termination for financial or programmatic reasons could file a grievance. The last step in the grievance process was for the faculty member to request a hearing before a three-person panel, with the affected faculty member and the administration each to designate a representative and the third panel member to be selected by the respective designees. Strikingly, the regulations stated that, if a three-person panel were convened, its decision would be the "final administrative action in the matter."

California or in AAUP statements. The decision not to assign teaching responsibilities to these professors was well within the legal authority of the University and did not violate any 'rights' of these professors."

Professors McDonald and Walstrum received notice of termination in May 1999, and initiated the final step in the grievance process in October 1999. As noted previously, the respective designees of Professors McDonald and Walstrum and the administration have been unable to agree on the third member of the panel. In an effort to resolve this impasse, the two professors agreed to waive their rights under the 1999 faculty handbook, and the administration agreed to provide a hearing in accordance with procedures adapted from the AAUP's *Recommended Institutional Regulations*. As noted above, President Bullock sought an assurance from the Association's staff that the alternative procedure would meet the Association's concerns about the university's "providing academic due process to these two individuals." The staff described the alternative procedure as "overall" consistent with Association-supported standards, but reserved judgment until after a hearing was concluded as to whether and to what extent there had been adherence to sound procedure. President Bullock found the staff's position unacceptable, withdrew the offer of an alternative hearing procedure, and told the staff that the administration would try to resolve the hearing issue "under the procedures of the old faculty handbook process." No hearing of any sort has taken place, however.

Whatever the explanation for the failure of the representatives of Professors McDonald and Walstrum, on the one hand, and of the administration, on the other, to identify the third member of the grievance panels, the investigating committee believes that, under the Association's recommended standards, the responsibility properly rested with the administration to provide opportunity for an appropriate hearing in a timely manner.⁵ In the judgment of the investigating committee, the administration had an especially strong obligation to demonstrate in an on-the-record adjudicative hearing that its actions were necessary and unavoidable, when, as in this case, the faculty had no meaningful role in the decisions that led to the termination of appointments.

5. The university's response stated that the "University has provided all process to which [Professors McDonald and Walstrum] are due. It has proposed as the third member on the grievance panels individuals who have no apparent bias, have long and distinguished records of service in higher education as faculty members and administrators, and have demonstrated even-handedness in their dealings with faculty organizations. In response, the grievants, with the aid of AAUP, have proposed individuals who are clearly AAUP operatives, including one person who, *only months later*, turns up as a member and chair of the AAUP investigating committee. Given AAUP's assumed and legally mandated obligation to advocate the interests of its members, it is preposterous to suggest that these proposed panel members would be neutral and without apparent bias. Undaunted, the investigating committee condemns the board and administration for not providing sufficient academic due process in the face of a clear record that the board and administration provided in good faith precisely that academic due process that the faculty specified in the exercise of its role of primacy as the architects of the grievance procedure."

5. REVISED FACULTY HANDBOOK

In early spring 2000, the university's Amendment and Revision Committee, a seven-person body consisting of the president, a dean, and five faculty members, approved revisions to the faculty handbook proposed by the administration and the board of trustees. The faculty members who attended an April 13 meeting of the Faculty Assembly also voted to approve the changes to the handbook. At its meeting in May, the board of trustees formally adopted the revised handbook as the official policies of the university.

The new handbook provides that faculty appointments can be terminated because of a "financial emergency" or "program discontinuance." The former "exists when the financial resources available to the University for instructional services [are] determined by the Board of Trustees to be inadequate to maintain the level of faculty staffing then in place." The latter "means the elimination of a degree, program, area, department, major, minor, college or school through action initiated by the Board of Trustees."

This loosening of the standards for terminating faculty appointments is coupled with a narrowing of the faculty's role in termination decisions. The revised handbook states that the president "shall prepare and promulgate to the faculty a plan for the implementation of the reduction in force," that the president "shall meet and discuss the plan with the faculty and hold at least one open forum to receive faculty input," and that the president shall establish the "schedule of the meeting and the open forum." A faculty member who faces termination of appointment because of "reduction of force" can file a grievance, "which shall be heard by a hearing officer . . . selected by the President." The decision of the hearing officer will be reported to the board of trustees, and its decision "shall be final."

These provisions are manifestly and seriously inadequate when measured against generally accepted standards of tenure, academic due process, and academic governance.⁶ In addition, the revised handbook requires that each faculty contract include the following provision:

The Employee agrees that he/she shall not knowingly release, or authorize or cause the release of any disparaging, denigrating, or otherwise critical statements by the Employee to any public media source concerning the educational programs or services offered by the University, nor shall any Employee interfere, or attempt to interfere with the relationship between the University and any of its alumni, students, or prospective students. Violation of any of

6. Also unacceptable is the deletion in the current handbook of the standard of "immediate harm" in cases of suspension pending a hearing that was in the previous handbook. Under this standard, identical to the Association-supported standard, a faculty member could be suspended only if immediate harm to the individual or to others was threatened by continuance.

the provisions of this paragraph shall entitle the University to recover the full amount of all sums paid from the University to the Employee under this Contract as liquidated damages as well as any or further damages that may be recoverable by the University as a result of any such violation at law or equity.

This provision is plainly inimical to academic freedom. A primary purpose of tenure is to protect the faculty's right to dissent, including the right to oppose the administration on issues important to the faculty.⁷ Under the faculty handbook now in force at the University of Dubuque, no faculty member can be sure of his or her position, for it is possible for the administration to terminate an appointment for financial or programmatic reasons that it alone decides are valid and to dismiss a faculty member who publicly criticizes it for doing so. In circumstances where principles of tenure have not been respected, where faculty participation has been curtailed or thwarted, and where dissent can result in dismissal, few are likely to disagree openly with the administration's decisions.

IV. Conclusions

1. The board of trustees and the administration of the University of Dubuque violated the 1940 *Statement of Principles on Academic Freedom and Tenure* in terminating the tenured appointments of Professors Julia McDonald and Steven Walstrum in the absence of a demonstrated condition of financial exigency. The board of trustees and the administration did not demonstrate that the university's financial condition mandated the action that was taken against Professors McDonald and Walstrum. The administration did not arrange suitable continuing appointments for Professors McDonald and Walstrum, although such assignments appear to have been possible.

2. The administration suspended Professors McDonald and Walstrum from further teaching responsibilities without having

7. Elsewhere in the revised faculty handbook is the following statement on the "right of dissent": "The Board of Trustees supports the academic freedom of all members of the University community. The Board does not seek conformity, but it insists that persons who choose to associate with the University actively support its mission and business purposes and that any expression of dissent be made by legitimate means in accord with established governance processes of the University. The exercise of the freedom to dissent does not include the right to interfere with the rights of others or with the educational process of the University and will not be tolerated." The university's response stated that the investigating committee "disparages a provision of the handbook requiring faculty members to agree not to publicly disparage the educational programs or services of the University or to interfere with the University's relationship with students or alumni. It claims that it is 'plainly inimical to academic freedom.' Again, the committee offers no citation of authority for this alleged breadth of academic freedom. This policy of the University seems to be wholly consistent with the AAUP *Statement on Extramural Utterances* and the principles governing the duties of employees to their employer."

afforded them the safeguards of academic due process set forth in the 1940 *Statement of Principles*.

3. The board of trustees and the administration did not allow for a meaningful faculty role in the decisions to terminate faculty appointments and to release Professors McDonald and Walstrum, thus disregarding the applicable principles of shared responsibility for academic governance that are enunciated in the Association's *Statement on Government of Colleges and Universities* and its *Recommended Institutional Regulations on Academic Freedom and Tenure*.

4. Faculty members were involved in the formulation, and indeed approved, the current handbook that the board of trustees adopted in spring 2000. Nonetheless, the provisions in the handbook concerning termination of appointments for financial or programmatic reasons, the role of the faculty in decisions to terminate appointments, the opportunity for appeal, and academic freedom are to be condemned as inimical to generally accepted academic standards.⁸

In a letter of July 25, 2001, President Bullock stated that the university's response of May 17 to the draft text of this report was "the only accurate statement of the facts" and asked the Association to publish the entire response. The draft text was revised to take into account the May 17 response, and several of the matters covered in that response are also conveyed in footnotes to the report. As indicated previously in this report, the complete text of the university's May 17 response has been made available on the AAUP's Web site <www.aaup.org/a01dub.htm>.

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State University of New York at Albany, *chair*

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Investigating Committee

8. The university's response concluded as follows: "The University of Dubuque calls for the AAUP to stand down from its role as judge, jury, and prosecutor. Step away from its actions as provocateur of disputes between faculty and governing boards. Work to educate faculties to assume responsibly their AAUP-proclaimed role of collaborative partners in the academic enterprise, bearing with equal ardor the exultation of authority and weight of responsibility. Hold faculty accountable for the performance of their duties and responsibilities with the same tenacity that is presently reserved only for administrators and trustees. Restore integrity to the office of guardian of the standards of our noble academic enterprise."

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

JOAN WALLACH SCOTT (History), Institute for Advanced Study, *chair*

Members: JEFFREY HALPERN (Anthropology), Rider University; LAURA KALMAN (History), University of California, Santa Barbara; CANDACE C. KANT (Social Sciences), Community College of Southern Nevada; STEPHEN LEBERSTEIN (History), City College, City University of New York; ROBERT C. POST (Law), University of California, Berkeley; LINDA RAY PRATT (English), University of Nebraska–Lincoln; DONALD R. WAGNER (Political

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