REPORT OF THE SPECIAL COMMITTEE
ON HURRICANE KATRINA
AND
NEW ORLEANS UNIVERSITIES
Special Committee on Hurricane Katrina and New Orleans Universities

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I. Introduction

The devastation that Hurricane Katrina inflicted on the universities of New Orleans in late August 2005 is undoubtedly the most serious disruption of American higher education in the nation's history. This was hardly the first time that collegiate facilities had been destroyed and academic programs halted; one need only recall the savage tornadoes that leveled buildings at Central State University (Ohio) and Gustavus Adolphus College, or the earthquake that destroyed much of California State University-Northridge, or the effect of the September 11, 2001, attacks on lower Manhattan campuses such as Pace University and Borough of Manhattan Community College.

Yet Hurricane Katrina was different in far more than sheer magnitude of damage, although that measure alone would distinguish it from any previous calamities. No earlier disaster destroyed virtually an entire community, not only depriving affected institutions of usable facilities, but also depleting severely the student population, leaving faculty and staff without homes, teaching hospitals without patients, and so on through an unprecedented litany of woes. One could not in good conscience undertake such an inquiry as this one without acknowledging the uniqueness of the experience from which New Orleans's universities are only now beginning to recover.

Part of what made Katrina so disruptive to higher education was the impossibility of anticipating its force and effect. Since intense storms are all too familiar along the Gulf Coast, the community was theoretically prepared even for a category-five hurricane, including water that might breach the levees — but not for the complete destruction of critical sections of those levees. Although most New Orleans universities had adopted and disseminated plans for closure by the eve of the storm's landfall, and some had even begun to evacuate students to higher ground, the worst that seemed likely would be a brief period of disruption. Tulane University, for example, announced over the weekend that it would be closed through the following Thursday, apparently planning a return to normal operations within the week. Even the day after the storm had hit and severe initial damage was manifest, Tulane continued to express publicly the hope that classes could resume by September 7.

What actually befell New Orleans higher education on August 29 far exceeded even the worst fears. While facilities at the two "uptown" private institutions (Tulane
University and Loyola University New Orleans) suffered less physical damage than did the inundated buildings at Southern University at New Orleans, Louisiana State University Health Sciences Center, the University of New Orleans, Xavier University, and Dillard University, electricity and communications were down throughout the city. Although most of the universities had made some provision for remote backup of electronic data systems, gaining access to those records and files proved a daunting task well after the water had subsided.

Gradually it became clear that the affected campuses would have great difficulty reopening in the near future. By the end of the first week of September, both Tulane and Loyola (the two most nearly intact campuses) announced that they would not reopen for any part of the fall semester. Students were encouraged to enroll elsewhere, if possible; dozens of campuses in adjacent states and much farther afield did find places for New Orleans students – though usually on the understanding that when their home institutions reopened they would return. Roughly a month after Katrina, the Gulf Coast prepared for another disaster as Hurricane Rita neared shore, but this time the New Orleans area was mercifully spared; major damage was confined to the coastal region of western Louisiana and east Texas, notably the several campuses of Lamar University.

The impact and cost of Katrina can be quantified, although numbers fail to capture the many other dimensions of devastation. Louisiana’s Commissioner of Higher Education, Dr. E. Joseph Savoie, reports that 84,000 students and 15,000 faculty members were initially displaced by the hurricane. The state’s public institutions of higher learning suffered between $500 and $600 million in damage, lost more than $150 million in revenue and tuition, and suffered $75 million in immediate budget cuts. Another assessment reported a total direct revenue loss of $229 million by Louisiana’s public colleges and universities, virtually all of it in the immediate New Orleans area. Although the monetary losses of the private institutions are harder to quantify, comparable estimates emerged in the ensuing months.

The far deeper harm defies quantification or physical description. For faculty and staff who lacked not only telephone and Internet access but also places to live after their homes had been destroyed, the measure of loss seems incalculable. For scientists who eventually returned to their flooded laboratories only to find that years – even decades –
of research had been destroyed, the impact of the storm is well beyond even the most
sympathetic conjecture. Throughout the first year following the hurricane, a brave hope
that as many as 60 percent of former residents of the city had remained or returned
eventually yielded to the grim reality that only two-fifths were present. And for those
who had remained or returned, much of the city still lacked electricity and even water,
making survival a challenge and postponing indefinitely any prospect of a return to
normal, pre-storm conditions.

Nothing approaching the magnitude of Hurricane Katrina may ever have affected
American higher education, and the Special Committee fervently hopes there will never
again be a comparable challenge. Still, disaster and devastation can hardly be dismissed
from the planning process. Whether it is tornadoes in Ohio and Minnesota, earthquakes
and fires in California, hijacked aircraft destroying buildings in New York, or floods
along the Gulf Coast and in Florida, the threat is inexorable. Many institutions of higher
learning have taken note of these disasters, and have undertaken some form of emergency
planning. Typically such plans focus chiefly on the physical and financial effects of
natural or man-made catastrophes. The Special Committee’s concern, however, is more
with the academic and personnel consequences to which substantially less attention
seems to have been devoted. In that spirit, and with the benefit of what the committee
has learned about the experiences of the New Orleans institutions, at the outset it offers a
few suggestions that may be helpful to other colleges and universities as they prepare for
contingencies one hopes they will never face.

First, each institution of higher learning – whether or not it could be termed
“disaster prone” – should develop and periodically review an emergency plan. Such a
plan should presuppose the total breakdown of all traditional communications and
information systems, as well as mandatory evacuation of campus facilities. Copies of the
plan should be retained by members of the governing board, senior administrators, and
faculty and student leaders.

Second, the development of such plans should provide an occasion for renewal of
the institution’s, the board’s, and the administration’s commitment to academic freedom
and due process, including a recognition of the stresses and pressures upon those abiding
values that may result from a major disaster or emergency. Thus the reaffirmation should include a "notwithstanding" or "no matter what" corollary.

Third, the disaster plan should specify the steps that might become prudent or unavoidable in the event of a prolonged inability of the institution to function. The circumstances that might occasion major changes in programs or personnel should be anticipated and potential changes should be examined in the context of existing university policies – thus reducing the need which, as will be seen, some of the New Orleans administrations apparently felt to abandon pre-existing policies without indicating their objection to adherence to emergency procedures that were already on the books. Wherever the existing policy fails to provide adequate guidance to address a major crisis, revision should be undertaken in more tranquil times.

Fourth, simulated previews of emergency conditions might be undertaken, perhaps on an annual basis. The governing board should participating in reviewing and responding to plausible case studies of such eventualities, thus preparing for the real challenge they would very much hope to avoid. The administration and the essential faculty consultative bodies should preview their respective roles in coping with such a challenge, anticipating how they would interact in the event that such consultation might be needed under the worst imaginable conditions. While one cannot doubt the need for prompt and decisive action by the New Orleans universities in the days after Katrina, the course actually followed in each case will be seen as having had a regrettable hit-or-miss quality that might have been avoided by such simulation.

Fifth, emergency communications and information systems should be in place ahead of any critical need for their use. The Special Committee was favorably impressed with Loyola's electronic database backup in Chicago, while noting the unexpected difficulty of accessing that resource with telephone lines and other communication systems so gravely disrupted by Katrina. Whether the solution is satellite-based communications or generator-driven support systems, each institution should have an emergency alternative in readiness.

Sixth, the Special Committee would urge colleagues across the country to study carefully the experiences of the New Orleans universities as they will be recounted here, and consider how each of our own institutions would respond, could respond, and should
respond, to a comparable challenge. Faculty consultative committees, for example, should review their assigned roles in exigent times, including emergency communication channels through which to reach the chief academic officer and other university officials with whom contact would be vital.

The foregoing suggestions look to the future and steps that colleges and universities could take in advance of a calamitous event. The central concerns of this report, however, relate to the actions taken by the governing authorities of New Orleans universities in response to the Hurricane Katrina. The Special Committee recognizes and acknowledges that the unique and catastrophic circumstances brought about by the hurricane required immediate, drastic, and far-reaching actions. At the same time, there were choices to be made and alternative ways to proceed. The choices actually made are not immune from examination, evaluation, and criticism. The Special Committee does not accept the view stated or implied by various administrators that, given the crisis, they were justified in everything they did, and that to question any of their actions is to fail to observe the best interest of the institutions and higher education in New Orleans. As will be seen in each of the individual reports that follow, there is much to examine, question, and criticize.

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Faculty members at New Orleans institutions initiated contact with the Association very soon after the hurricane. General Secretary Roger Bowen made two trips to the area, and met during the fall and winter with groups of affected professors. In March 2006, Committee A chair David Hollinger authorized appointment of this Special Committee to address both the particular responses of each of the affected universities (most especially the impact of those responses on faculty rights and interests) and broader issues that had arisen in the storm’s aftermath. The goal of such an inquiry would include gaining a better understanding of what had been a traumatic experience for the New Orleans academic community, recommending potentially ameliorative and preventive measures, and assessing the extent to which the responses of the universities adhered to the values and standards of the academic profession. A broader hope was to offer to the American academic community useful guidelines for preserving academic freedom and due process under the most adverse conditions.
The Special Committee first met in Washington on May 24, 2006, to review the scope of its daunting task and to assign responsibility for specific activities. In the ensuing weeks, a large and growing quantity of information was analyzed. Arrangements were made for committee members to go to New Orleans in mid-August, two or three at a time and accompanied by staff, to hold more than fifty interviews with faculty members from the various universities. Information gleaned from the interviews, added to previously available documentation, correspondence with administrative officers, and other written accounts, presented concerns relating to academic freedom and tenure of sufficient magnitude to warrant authorization by the Association’s general secretary of formal investigations. He did so, with members of the Special Committee serving as the investigators, in the cases of the Louisiana State University Health Sciences Center, the University of New Orleans, Southern University at New Orleans, Loyola University New Orleans, and Tulane University. Specific investigations were not undertaken either at Xavier University or at Dillard University, although at both institutions catastrophic damage occurred and a significant portion of faculty and staff lost their positions. At Xavier, where the Special Committee became aware of deficiencies in appeal procedures and in shared governance that preceded Katrina and have been allowed to continue, no specific case emerged that could be pursued to investigation, and no one at Dillard sought the Association’s assistance.

The full Special Committee met in New Orleans during the final week in August, as that community marked the first anniversary of Katrina. It began its stay with a lengthy tour of the most severely devastated areas of the region, arranged by Commissioner Savoie and conducted by the Louisiana National Guard. The experience was deeply sobering for those of us who were able to participate. Over the course of two days, the committee assessed the results provided by its individual members and staff of their interviews with faculty members from the city’s universities, and the committee spent a most productive evening hearing from the leaders of the Louisiana AAUP state

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1 A parallel investigation, of issues raised in the dismissal of a single faculty member at Our Lady of Holy Cross College, proceeded separately from the Special Committee’s undertaking because this New Orleans institution, across the Mississippi River from the others, suffered no flooding and the dismissal was not a direct consequence of the hurricane.
conference and of the AAUP chapters in New Orleans and nearby about what the region’s universities and their faculties had endured. Through the good offices of Commissioner Savoie, the Special Committee on its final day met with the chancellors of the University of New Orleans, Southern University at New Orleans, and the LSU Health Sciences Center, along with attorneys and several other officials of the statewide Board of Regents, of the LSU System, and of the Southern University System, as well as one community college representative. The presidents of the two private universities authorized for investigation, Loyola New Orleans and Tulane, declined proposed meetings with the Special Committee before receiving the committee’s report.

* * * * *

Following the Special Committee’s New Orleans meetings, subgroups prepared separate reports on issues and findings at the five universities where investigations had been authorized. The five included the city’s three public universities: the Louisiana State University Health Sciences Center (LSUHSC); the University of New Orleans (UNO), and Southern University at New Orleans (SUNO).

The statewide coordinating body for public higher education is the Louisiana Board of Regents, with Commissioner of Higher Education Savoie as its chief executive officer. The Board of Regents oversees four systems, each governed by its own Board of Supervisors: Louisiana State University (which includes its flagship component in Baton Rouge and its two New Orleans components, LSUHSC and UNO); Southern University (the historically black system, which includes its flagship component, also in Baton Rouge, and its New Orleans component, SUNO); the University of Louisiana (consisting of eight institutions at various Louisiana locations); and the Louisiana Community and Technical College System. The current president of the Louisiana State University System is William L. Jenkins, and Ralph Slaughter currently serves as the Southern University System’s president.

The chief administrative officer at LSUHSC at the time of Hurricane Katrina was Chancellor John Rock. Shortly thereafter he was succeeded in that office by Chancellor Larry H. Hollier, who had been dean of the School of Medicine. Chancellor Timothy P. Ryan, who previously had been dean of the School of Business, has headed the UNO administration for many years. The SUNO administration when Katrina struck was
headed by Interim Chancellor Robert B. Gex. He was followed in January 2006 by
Chancellor Victor Ukpolo, who had been the Southern University System’s vice
president for academic and student affairs.

As will be seen in the chapters that follow, LSUHSC, UNO, and SUNO all had
institutional regulations governing financial exigency and the resulting termination or
interruption of faculty appointments that provided many, though by no means all, of the
procedural safeguards called for in applicable AAUP-recommended standards. Common
to all three was the abandonment following Katrina of the existing financial exigency
regulations in favor of new regulations under which procedural protections were sharply
reduced. In the cases of LSUHSC and SUNO, this was done through adoption by their
respective boards of supervisors on the same day (November 18, 2005) of virtually
identical declarations of “force majeure” (to be discussed in detail in the chapter on
LSUHSC that immediately follows), with implementing regulations superseding what
were in existing board bylaws and faculty handbooks. In the case of UNO, the
regulations were changed five months later, when on April 21, 2006, the LSU System’s
Board of Supervisors, rather than declare “force majeure” for that institution, adopted a
“Declaration of Financial Exigency” with implementing procedures that superseded the
existing financial exigency provisions. Whether under the rubric of “force majeure” or
financial exigency, a faculty appointment could be disrupted through “termination”
(permanent separation), “layoff” (termination pending potential recall), or “furlough”
(temporary unpaid leave which, however, as with “layoff,” could become permanent). At
all three of these public universities, the involuntary separations were implemented
through placement on “furlough,” which at least at SUNO are apparently destined in the
large majority to be permanent. A more detailed treatment of these general terms will be
found below in Chapter III, "University of New Orleans."

The two private New Orleans institutions where investigations were authorized
are the Jesuit Roman Catholic Loyola University New Orleans with the Reverend Kevin
W. Wildes serving as its president and the nonsectarian Tulane University under the
presidency of Scott S. Cowen. A prominent feature first at Tulane and then at Loyola
(and also at UNO in the public sector) was an administration-sponsored master plan for
renewal and long-range development. Common to Loyola and Tulane was the retention
of existing faculty regulations rather than their replacement as was done at the three public-sector institutions. As will be seen in the following reports, the Tulane regulations largely but not entirely track AAUP-recommended standards in key respects, and the Loyola regulations adhere fully to these standards. The differences between the Tulane and the Loyola situations are considerable, however. At Loyola, unlike Tulane, financial exigency was not declared or seriously argued, and appointments were subjected to termination on grounds of discontinuance of programs because of educational considerations. How closely the Tulane administration has adhered to the institution's own regulations is an issue occasioning debate, while the Loyola administration has provided scant evidence or argument in support of its assertions that it has abided by the applicable university regulations. Another noticeable difference is in the faculty's attitude toward the administration. While the Special Committee did not discern much faculty support for the actions of the Cowen administration at Tulane, it was struck by the massive faculty opposition at Loyola, punctuated by successive "no confidence" votes, regarding the administration of President Wildes.

Each of the report's chapters on the individual institutions includes available information on the numbers of full-time faculty subjected to layoff or furlough. With isolated exceptions, information on the numbers of adversely affected part-time faculty has been elusive to obtain, and the Association has not been advised of any specific New Orleans cases involving a part-time appointment and potential AAUP concern. The Special Committee is well aware, however, that the damage to academic careers resulting from Katrina extended in no small measure to part-time faculty members and indeed to academic staff members in positions not carrying faculty status.

The five chapters, which now follow, begin with the three public universities (LSUHSC, UNO, and SUNO) and end with the two in the private sector (Loyola and Tulane). They have been reviewed and approved for publication by the Special Committee and by Committee A, which under its regular procedures will in turn report on them to the Association's next Annual Meeting. They form the core of this general report.
II. Louisiana State University Health Sciences Center

A. Background

The Louisiana State University Health Sciences Center in New Orleans houses the medical school and other health-related programs of the state’s flagship public university. Its oldest and by far its largest component, the School of Medicine, was founded in 1931. The present organizational structure of the Health Sciences Center (LSUHSC), which dates to 1965, consists of five additional schools—Dentistry, Nursing, Allied Health Professions, Graduate Studies, and Public Health—and nine Centers of Excellence, including centers for neuroscience, aging, and molecular and human genetics.

According to the institution’s mission statement, the LSUHSC’s purpose is “to provide education, research, and public service through direct patient care and community outreach,” which includes the provision of medical services to “the indigent and uninsured,” particularly through the operation of several public hospitals throughout Louisiana. Prior to the late August 2005 onslaught of Hurricane Katrina, LSUHSC student enrollment was approximately 2,800. Data provided the Special Committee by the administration indicate that at that time the full-time LSUHSC faculty numbered approximately 1,000, of whom 678 held appointments in the School of Medicine. The full-time medical school faculty, which will be the focus of this chapter, consists of both scientific personnel and those with primarily clinical responsibilities, with categories of appointment including non-tenure-track, tenure-eligible, and tenured positions.

Funding for LSUHSC has come from multiple sources. State of Louisiana appropriations have accounted for approximately 40 percent of income, while a significant portion has come from patient fees generated by the faculty for the university through work in New Orleans hospitals. Other funds have come from tuition, from research contracts, and from gifts and grants.

B. The Impact of the Hurricane

Along with virtually everything else in New Orleans, LSUHSC was forced to suspend its operations in the aftermath of Hurricane Katrina. The storm forced students and faculty to abandon their homes and offices. The basements of all LSUHSC buildings and some first floors were flooded following the storm, causing severe damage to
electrical, mechanical, and communications equipment, and the lack of air conditioning
and refrigeration that resulted from this damage ruined perishable and other sensitive
items. Of New Orleans’s nine hospitals, Charity and University Hospitals, which served
as the main training grounds for medical school residents, closed as a result of the
hurricane’s effects. Three others closed temporarily, and two more operated on a reduced
schedule. The massive exodus of the city’s population following the storm dispersed
students, staff, and faculty over a large area and led to a sharp decline in the patient pool
that required LSUHSC’s services, with an attendant, immediate, and sharp loss of
revenue. Despite these obstacles and harsh realities, the Commission on Colleges of the
Southern Association of Colleges and Schools, the regional accrediting body, paid a site
visit to the campus in early November 2005 and a month later renewed LSUHSC’s
accredited status for the ensuing ten years.

Within four weeks of Katrina, many of the instructional activities of LSUHSC
were back in operation in Baton Rouge and in hospitals elsewhere in Louisiana. Faculty
were instructed to return to New Orleans to be available for work and, when necessary, to
be prepared to commute to Baton Rouge. Faculty who did not return when ordered to do
so were warned that they faced the prospect of being discharged, but those who did return
were not assured of being retained. (As was the case at other New Orleans universities,
communication with the dispersed faculty took place through e-mail announcements and
the cooperation of outside organizations.) The majority of LSUHSC’s schools resumed
classes in New Orleans within six months, and after one year, all but the School of
Dentistry, which suffered the most severe damage from the storm, were operating again,
though at lower levels than before the hurricane. With the continuing closure of Charity
and University Hospitals, medical school residents had been training at West Jefferson
Medical Center in Marrero, across the Mississippi River, but the partial reopening of
University Hospital at the end of November 2006 promised, according to media reports,
the return of medical residents to New Orleans. The administration estimated that at least
90 percent of the students returned or were expected to return to LSUHSC.

C. Declaring “Force Majeure” and Placing Faculty on Furlough

Salaries and benefits continued to be paid to all faculty in the wake of the
hurricane while the university was closed and when it was only partially reopened in
September, October, and into November 2005. On November 22, however, three months
after Katrina and just weeks after the accrediting commission visited the institution, the
LSU Board of Supervisors approved a “force-majeure exigency plan” for LSUHSC to
address “circumstances arising directly or indirectly as a result of those hurricanes
[Katrina and Rita].” Citing the disruption of “revenue streams which no longer exist
because they were generated by hospitals and clinical practices in New Orleans which
have been destroyed, closed, or are non-operational,” the plan declared the
administration’s right in an emergency situation to abrogate the protections associated
with tenure and the institution’s own regulations regarding standards for notice of
termination of appointment and of nonreappointment.

According to the board’s “findings”:

The Regulations previously adopted by the Board and upon which all related
employment contracts are predicated recognize that the time periods for notice of
termination or non-re-appointment are predicated upon ordinary circumstances
(“ordinarily”) and are not controlling during a circumstance such as that in which
LSUHSC finds itself as a result of the effects of Hurricanes Katrina and Rita.
(emphasis added)

The plan described the “procedure for program modification”: “The Chancellor shall
determine how many and what type of positions are currently needed, can be funded, and
have work to be done”; in making these decisions, he “shall consult with the deans,
department heads and, as reasonable under the circumstances in his determination,
faculty members.” In large part, these determinations meant deciding which faculty
members would be placed on “furlough” status, defined as “temporary leave without
pay” that “may lead to eventual termination.”

The administration proceeded to place on furlough status members of the
LSUHSC School of Medicine faculty, some tenured and some nontenured but all prior to
the expiration of their existing appointments, removing them from the payroll as of
December 1, 2005. The placements on furlough were confined to the School of
Medicine. The numbers the Special Committee has received from the administration

\[\text{The "force-majeure" plan offered an additional justification for not paying salaries to furloughed faculty
members: such payment would contravene Article VII, Section 14 of the Louisiana constitution, which
prohibits "the donation of public funds." The plan interprets the provision as prohibiting payment of salary
to employees for whom no work is available. This is a legal assertion on which the Special Committee
takes no position.\]
reveal that 51 full-time medical faculty (and another 34 part-time) were furloughed as of
December 1, 2005, and an additional ten (plus two part-time) were furloughed
subsequently.

Faculty members report having received written notification of their furloughs
only days before, and sometimes on or after, the effective date of December 1, providing
them with virtually no notice of the impending termination of their positions, salaries,
and health benefit payments by the university. The letters notifying faculty members that
they were to be furloughed were worded alike:

Dear ________,

As you well know, these are challenging times for the School of Medicine. Hurricane Katrina has had a devastating effect on our New Orleans campus and
operations. Moreover, the financial impact of the storm and lost revenues with the
closure of many school and clinical facilities and programs in the metropolitan
area and with the economic downturn in the entire state of Louisiana is
unparalleled in the history of the school. As a consequence, each department has
worked with the school leadership to develop a plan for financial remediation.

You will be placed in a furlough status effective December 1, 2005; it is not clear
at this time how long you might remain in this status or if you will eventually be
terminated. We made the decision to place you in furlough after careful
deliberation. The reason that you will be furloughed is due to the absence of the
existence of a revenue stream dedicated to or based on your work, and also from
the loss of revenue from both clinical and residency supervision funding.

You do have the right to have this decision reviewed. The review process is
outlined in detail in the Force Majeure Exigency Plan approved by the LSU Board
of Supervisors on November 18, 2005 and is posted on the LSUHSC Emergency
Website. There are deadlines to observe for both levels of potential review, so
please note the date that you received this communication. You will also need to
make your request for review in writing to the Vice-Chancellor for Academic
Affairs, Joseph M. Moerschbaecher, PhD. Mail your request to his attention at
LSUHSC, 2323 Kenilworth Parkway, Baton Rouge, LA 70808.

Additionally, as furlough status will likely affect your benefits, you should
contact Human Resource Management at 225-334-1614 or 225-334-1622; in
particular, you should pay attention to the circumstances that may arise relative to
your health insurance coverage. You will receive an individualized benefits
summary from HRM under separate cover.

As these letters implied, the “force-majeure” plan allowed for brief windows of
appeal to the chancellor and then to the system president, whose decision would be final.
A faculty member put on furlough status who wished to contest the decision had only five working days from the receipt of notice to request a review of the decision by the vice chancellor for academic affairs and the appropriate dean. The vice chancellor would review the appeal and make a recommendation to the chancellor, who would decide either to uphold the furlough or rescind it. If the faculty member wished to appeal the written decision of the chancellor, he or she had three working days to apply for a review by the LSU system president. Even under the limited appeals procedure provided by the administration’s plan, faculty members report what appeared to them to have been perfunctory action in upholding of furlough decisions by Chancellor Hollier (who was also, previously, the dean who had issued many of the furlough notices). While LSU System General Counsel P. Raymond Lamonica, in the August 30 meeting of Louisiana public higher education officers with the Special Committee, stated that only two furloughed professors had appealed their cases beyond Chancellor Hollier to President Jenkins, the Special Committee has seen copies of more than two appeals addressed to the president.

In addition to the short or nonexistent notice and the absence of severance pay in lieu of notice, furloughed faculty were told, effective immediately, to give up their offices, their access to e-mail accounts, their parking permits, and indeed the right to unescorted access to their previous office space. The administration has stated that the advantage to faculty members of furlough was that they could continue health benefits, by paying both the employee’s and the university’s shares of premiums due. The apparent advantage to the employer was the relief from the obligation to pay its share of the benefits.

Faculty members had been called upon to defend their programs to an accrediting team from the Accreditation Council for Graduate Medical Education visiting the university in mid-November. They did so successfully, and were nonetheless given furlough notices within days thereafter, effectively eliminating the programs they had defended. Affected faculty members called on only shortly beforehand to speak in behalf of their programs state that they had no reason to believe that either they or their programs were in jeopardy.
The furloughed medical school professors who communicated with the AAUP, some through the Association’s statewide Louisiana Conference and others by calling on the national staff directly, provided the staff with accounts of their own cases and a good deal of written material about the events at LSUHSC and the administration’s actions. Subsequently the staff engaged in extensive correspondence with the administration.

The Special Committee has had access to all of these communications. Members of the committee met in New Orleans with approximately a dozen members of the LSUHSC faculty, including officers of the local AAUP chapter and both furloughed and retained individuals, and a fortnight later the committee met with Chancellor Hollier.

D. A Benchmark for Evaluating the Placements on Furlough

Prior to the devastating events of August 2005, LSUHSC had rules and procedures concerning faculty obligations and rights that were set forth in detail in the faculty handbook. Key provisions for the present discussion are those concerning termination or reduction of the appointment rights of faculty members in the face of financial exigency and program modification or discontinuance. These are the provisions rendered inoperative by the invocation of “force majeure,” and they merit close reading:

CRITERIA

LSUHSC-NO may terminate or reduce the contractual rights of faculty members when the Chancellor, upon authority of the President and Board of Supervisors, determines that it is necessary (1) to alleviate a financial exigency within the Health Sciences Center or subunit thereof, or (2) to effect a reorganization or elimination of an academic program of the institution. Financial exigency is defined as the critical, pressing, or urgent need on the part of the University to reorder its monetary expenditures in such a way as to remedy and relieve the state of urgency within the University. (emphasis added)

RETRENCHMENT PLAN

In the event of financial exigency or the need to reorganize or eliminate an academic program, the Chancellor of LSUHSC NO will appoint an ad hoc committee of faculty and administrators to institute an orderly and consistent plan of retrenchment. Dismissal of faculty will only be initiated after all alternative means of alleviating the financial crisis have been exhausted or deemed inadequate. This retrenchment plan may be administered on a school-wide, departmental or program basis.

Termination of faculty members in order to alleviate a financial exigency shall be in the following order:
.. Faculty on term appointments, starting with the most recently appointed and
then proceeding in reverse order of seniority.
.. Tenured faculty on continuous appointments, starting with the most recently
appointed, and then proceeding in reverse order of seniority.

For the purposes of this retrenchment plan, seniority shall mean total years of
service at LSUHSC-NO as determined by the retirement system.

EXCEPTIONS TO THE RETRENCHMENT PLAN

Department Heads or other administrators who wish to make specific exceptions
to the Retrenchment Plan can appeal to the Dean of the appropriate school, who
will act upon a recommendation made by an ad hoc committee of faculty
members appointed by the Dean of the School.

NOTICE

LSUHSC-NO shall provide written notice no fewer than thirty (30) calendar days
prior to the intended date of termination. This written notice shall specify the
cause of the termination, or reduction of time, provide a summary description of
the facts relied on by the Health Sciences Center to make the decision, and a
reference to the faculty member's rights to file an appeal pursuant to Handbook
Section 10.10. Written notice shall be sent by certified U.S. mail, return receipt
requested.

ALTERNATIVE POSITIONS

Faculty members whose employment time is terminated or reduced due to
retrenchment will be eligible to transfer to any vacant LSUHSC-NO faculty
position for which he is qualified, subject to the terms and conditions of
employment attendant to that position. A faculty member's qualification for a
vacant position shall be determined by the Dean of the appropriate school, after
consultation with the Department Head involved, and approved by the Chancellor.
A faculty member who exercises the rights accorded under this section and who is
determined by the Dean of the school to be qualified for a vacant position will
have a preemptive right to the position consistent with the retrenchment plan.

RECALL

If vacancies become available, faculty terminated under the retrenchment plan
will be recalled in the reverse order of dismissal. Faculty will be eligible for recall
up to one year after dismissal. Exceptions to this order can be appealed by the
Department Head to the Dean of the appropriate school, who will act upon a
recommendation made by an ad hoc committee of faculty members appointed by
the Dean of the school.
The “force-majeure” plan, as noted above, declared that the university’s financial exigency regulations “are predicated upon ordinary circumstances,” but the clear language of those regulations belies that declaration. They state that a “financial exigency is defined as the critical, pressing, or urgent need on the part of the university to reorder its monetary expenditures in such a way as to remedy and relieve the state of urgency within the university.” Plainly this text does not describe “ordinary circumstances,” and just as plainly the effects and impact of the hurricanes fit within these “criteria,” placing the university as they did in a “state of urgency.”

The Special Committee notes that the university’s existing financial exigency policy already limited the rights of faculty when compared to applicable AAUP-supported standards. Regulation 4(c) of the Association’s Recommended Institutional Regulations on Academic Freedom and Tenure provides procedures supplementing the provision in the 1940 Statement of Principles on Academic Freedom and Tenure that termination of an appointment because of financial exigency should be demonstrably bona fide. Regulation 4(c) calls for the meaningful participation of faculty in the declaration of a financial emergency, for the right of a faculty member notified of termination to a full hearing before a faculty committee, for the right of first refusal of a suitable new position for a period of three years, and for severance pay or notice based on length of service, from a minimum of three months for a first-year faculty member to at least one year following eighteen months of service. But why even the procedures and protections already provided in the institution’s regulations for alleviating a financial crisis were completely bypassed in favor of a declaration of “force majeure” has not been explained by the administration and is not apparent to the Special Committee.

**E. The “Force-Majeure” Policy**

A first major consequence of the “force-majeure” provisions put in place in November 2005 was the replacement of the long-established and mandated role of faculty in decisions regarding educational policy and faculty competence with the virtually total discretion of deans and the chancellor to decide which members of the faculty and what academic programs to retain in the reemergent HSC.

These new procedures gave no heed to key aspects of the institution’s own regulations in the following respects:
1. **Essentially** no consultation with the faculty about the nature and extent of the financial crisis;

2. **Furlough** decisions, potentially leading in some instances to *de facto* termination, made without faculty consultation and apparently without deference to length of service and tenure;

3. Decisions made without acknowledgment of eligibility of potentially furloughed faculty to a preemptive right to transfer to other positions for which they were qualified;

4. Decisions made without acknowledgment of rights of furloughed faculty to be recalled as positions became available in the next year.

Under the “force-majeure” provisions, assuming that termination of faculty appointments was required, how should the deans and chancellor have decided who was to be furloughed and who retained? The “force-majeure” document specifies two unassailable general criteria: the needs and requirements of the institution and the value an individual provides toward meeting these. Presumably these have traditionally been the bases for recruiting, promoting, and, where appropriate, granting tenure to individuals, as well as for identifying and developing programs and curricula. Not relying on these, the force-majeure document added seven other criteria (here stated in somewhat abbreviated form):

1. The existence of a revenue stream dedicated to or based on the work of the particular individual;

2. The individual’s specific clinical, research, or teaching skills;

3. The individual’s recent performance and productivity;

4. The individual’s history of productivity;

5. The individual’s longstanding commitment and contributions to the institution;

6. Evidence of the individual’s “outstanding” service in the immediate aftermath of the hurricane;

7. Other relevant and compelling considerations.
Here the devil is in the details. Because no weights are assigned to the criteria, which replaced the presumptions based on tenure and seniority, the discretion of the administrator is, in fact, unlimited: anyone with less than perfect performance on any one of these criteria could be furloughed or, alternatively, have that deficiency overlooked in favor of other criteria.

The criteria themselves are suspect. Some introduce considerations, such as past and recent performance and productivity, that call for judgment about the relative merit of faculty members, thereby raising the prospect of furloughing professors on the grounds of fitness of performance and thus their release for cause. Others seem to allude to considerations that defy specification (for example, one’s “longstanding commitment to the institution”), while one criterion—evidence of “outstanding” service after the hurricane struck—seems to be wholly impressionistic.

It is perhaps not surprising that Dr. Hollier, who seems to have had major responsibility for most of the furlough decisions in his roles as dean of the School of Medicine and then as acting chancellor, referred to a different formulation. He told the Special Committee that his decisions about who was to be furloughed were based on three considerations:

1. If a faculty member did not want to come back to work (this apparently was inferred if the faculty member did not show up when instructed to be available for assignment);

2. If there was no longer work for the faculty member to do, owing to the decreased demand caused by the closing of hospitals;

3. If there was work, but no funding.

While here nominally relying on financial considerations, the dean still had considerable discretion regarding who could be designated for furlough. For example, if the HSC had the need and sufficient funds to support six faculty members with given skills, and ten fully qualified individuals were available, any four of the ten could be designated as redundant.

The Special Committee is unable to determine the actual bases for the furlough decisions that were made because it does not have a full list of those furloughed and because no specific reasons were given to the individuals furloughed at the time of their
notice. This failure seriously complicated the task of anyone contesting the decision in his or her case.

Chancellor Hollier told the Special Committee he believed that the HSC was overstuffed before the hurricane and that the declaration of "force majeure" allowed him an opportunity to address previously perceived needs as well as the immediate situation. The individual professors who met with committee members offered a variety of speculations about the reasons for the decisions, including the likelihood that some administrators saw the opportunity for the elimination of perceived "deadwood" or of persons who did not see eye-to-eye with their supervisors and, more generally, that older professors and those nearing eligibility for retirement were perceived as likely candidates for furlough. In the limited number of cases about which the Special Committee has specific information, no single consistent pattern is discernible. Faculty speculations, untested in any hearing procedure, do little more than testify to the overall unsatisfactory nature of the process employed. The unfettered discretion of a few administrators in a matter of days replaced the years of considered decision-making in shaping the nature of the university's faculty and curriculum.

F. The Necessity and Propriety of Invoking "Force Majeure"

Beyond the issue of the effect of the "force-majeure" policy on faculty appointments is the issue of whether invoking the policy was at all necessary, an issue to which the Special Committee now turns.

The "force-majeure" policy, emanating from the office of the LSU system's general counsel, employs a legal term derived from French contract law but which has close counterparts in the United States and in other developed legal systems. In brief, "force majeure" refers to a doctrine that allocates the risk of an unforeseen event rendering a contract impossible to perform. As one commentator explains,

little, if anything, is abstractly unforeseeable...[a fire, a hurricane, a strike, legislation]...The test which is applied is that the event must have been unforeseeable by a reasonable person at the time of the contract and in the circumstances in which it was made.7

As a result, contracts often contain "force-majeure" clauses to deal with such contingencies.

The LSUHSC's "force-majeure" policy rested upon the principle that employment contracts, including contracts of tenure, are "predicated upon ordinary circumstances." Even though hurricanes and floods are a foreseeable occurrence in New Orleans—witness the several institutions that had purchased insurance against those contingencies—the impact of Katrina was physically to disable the university's medical facilities and significantly to depopulate the city. Consequently, instruction in neither the basic sciences nor in clinical practice could proceed in those facilities nor, to the extent that the medical faculty were compensated out of patient fees, were adequate funds being generated. The performance of many of the faculty's contractual obligations had been rendered largely impossible by this event.

The LSU system, as has been noted, did have in place policy designed to deal with a financial exigency. Its provisions, like the "force-majeure" policy, allowed for furloughs and layoffs as well as termination and, also like the "force-majeure" policy, gave the administration considerable discretion in deciding whom to separate. Moreover, adopting a concept deeply rooted in the 1940 Statement of Principles, the invocation of financial exigency would have brought in its train such common understandings as a requirement that there be no less drastic alternative to separation, a significant role for the faculty in adopting and applying criteria governing separation, a strong presumption in favor of the tenured faculty in deciding whom to retain, full due process to ensure the fairness of the decisions, and significant post-termination economic protections. The effect of the "force-majeure" policy was to obviate the applicability of these common understandings and of parallel university policies. Thus the question is not whether Katrina rendered some contracts for professorial service impossible to perform, but whether it rendered impossible the observation of existing rules that would seem to apply to just such a situation.

The legality of reliance on a "force-majeure" declaration is of course a matter for judicial determination. Whatever the outcome of any litigation, however, it is unlikely to undo the damage to the status and the careers of many of those faculty members most directly affected. Necessarily, the Special Committee is called upon to address this
question not as a matter of law but from the perspective of academic policy and sound practice.

Under the 1940 Statement, a *bona fide* financial exigency allows for the termination of faculty appointments during their term under “extraordinary circumstances” where no less drastic action will suffice. Similarly, under the LSU financial exigency policy, “furlough, layoff, or termination of tenured faculty, non-tenured faculty . . . before the end of their contract term will be handled in accordance” with it. (Emphasis added.) The text would seem rather plainly to apply to post-Katrina action.

Further, financial exigency is defined by LSU’s policy as the lack of the resources necessary to support the “existing programs and personnel . . . without substantial impairment” of the campus’s ability to maintain the quality of its programs. This may be the consequence of lack of funds or “the substantial threat of deterioration of faculties due to a lack of resources,” among other things. The list of conditions that might result in the inadequacy of facilities and the lack of funds does not mention natural disaster; but, obviously, the list of the reasons for a financial exigency is not exhaustive, nor could it be. The policy merely supplies some possible reasons why there might be such lack of work or lack of funds as to allow terminations without being preclusive of others. It is the critical lack of work or funds that the financial exigency policy addresses. In essence, the university’s provision for financial exigency is a “force-majeure” policy. The Special Committee is unaware of any showing, or any effort to show, why the extant provisions were inadequate to deal with the consequences of Katrina.

At the time the “force-majeure” announcement was circulated for consideration and approval, Chancellor Rock, in a November 14, 2005, memorandum to Vice Chancellor for Academic Affairs Moerschbaecher, expressed his strong disapproval of the furlough of tenured faculty without pay. He recognized that furloughs would likely lead to ultimate separation, and he suggested the availability of alternative ways to compensate for the losses in revenue. He further emphasized the need for transparency and due process in an effort to maintain a scholarly environment.

The Special Committee does not find that the former chancellor’s views have been persuasively refuted, or that the wholesale bypassing of the existing rules has been
justified. The crisis, to the university and to New Orleans and its population, was indeed
devastating, and it required an orderly and adequate response. But there were available
alternatives, and the administration seems to have chosen one that was antithetical to the
institution’s own rules and the traditions of faculty involvement in university governance
and decision-making. Indeed, this committee cannot discount the view, expressed by a
number of LSUHSC faculty, that the “force-majeure” plan seems to have provided the
opportunity to use the genuine need for prompt action as an excuse to restructure and
reconfigure the university and its faculty in ways that were desired by the small number
of administrators with the newly conferred authority to do so.

G. Steps Toward Recovery

As hospitals reopen, as students return, and as outside groups respond to the disasters of
the hurricane with gifts, grants, and other assistance, a situation that once, perhaps,
threatened the continuing viability of LSUHSC now seems much more hopeful. This is
reflected in news stories about the university, in the statements made by the
administration in its internal publications and announcements, and in formal actions. LSU
General Counsel Lamonica has informed the Association of an announcement at the final
Board of Supervisors meeting for 2006 that, while the “force-majeure” exigency plan
remains in effect, no more furloughs under the plan will be imposed. The LSUHSC
administration has informed the Association that, despite a faculty sharply reduced from
its pre-Katrina size (as of early January 2007, a total of 752 full-time LSUHSC faculty
and 218 part-time), nine furloughed School of Medicine professors have been reinstated
to active faculty service, a tenth has been brought back to a nonfaculty position, and
discussions on reinstating seven to ten additional furloughed professors are proceeding or
planned. Others who were furloughed have retired or resigned. Remaining on
involuntary furlough as of early January 2007, however, were 22 full-time (and 24 part-
time) members of the faculty.

H. Conclusions

1. The administration of the Louisiana State University Health Sciences Center
discarded the institution’s existing financial exigency procedures, without
stating why it deemed them inadequate, in favor of a new “force-majeure” plan.
It thereby set aside standards in closer conformity with those set forth in the
1940 Statement of Principles on Academic Freedom and Tenure. It did so without having consulted with the faculty, thus depriving the faculty of its appropriate role as called for in the Association’s Statement on Government of Colleges and Universities and in Regulation 4(c) of its Recommended Institutional Regulations on Academic Freedom and Tenure.

2. The administration proceeded under the “force-majeure” plan to place a large number of professors on furlough with virtually no notice. In selecting those to be furloughed and in implementing the furloughs, the administration acted at odds not only with applicable Association-supported standards but also with the existing Louisiana State University procedures on financial exigency: it unilaterally decided whom to furlough; it paid scant if any deference to tenure rights and length of service; and it paid no heed to rights to relocation in an alternative suitable position.

3. Some amelioration of the damage inflicted by the furloughs has been achieved through instances of reinstatement. In those cases where the actions are likely to be permanent, however, the administration has effectively terminated the appointments of the furloughed professors without having respected tenure rights and afforded academic due process as called for in the 1940 Statement of Principles on Academic Freedom and Tenure and the Association’s derivative Regulation 4(c).
III. University of New Orleans

A. Background

Founded by the Louisiana legislature as a branch of Louisiana State University (LSU) with a liberal arts program for commuting undergraduates, the institution that rapidly became the University of New Orleans (UNO) opened its doors in 1958 on an abandoned U.S. Navy air station on the shore of Lake Pontchartrain. By the eve of the events to be discussed, UNO had grown into a comprehensive metropolitan university, the largest campus after Baton Rouge in the LSU System. It enrolled 17,250 students and had a full-time faculty numbering 560 members.

Hurricane Katrina's damage to campus buildings was substantial, estimated at more than $100 million, but not nearly as severe as the devastation in the immediately adjacent areas where students, faculty, and staff resided. The Federal Emergency Management Agency had promised to have 489 trailers available for housing by late January 2006, when the main campus reopened, but it took until the end of the spring before most of them were in place and functioning. Despite these adverse conditions, UNO managed to organize and operate some classes during that fall 2005 term, using facilities just outside the city together with space on the Baton Rouge campus, continuing the education of approximately 7,000 students. In contrast to the payless furloughs imposed that fall at the other public New Orleans universities, all full-time UNO faculty members continued to be paid, regardless of the closing down of classrooms and laboratories.

The administration's ability and willingness to keep salary commitments was apparently not an indication of financial health, however. UNO's income from state funding was considerably less than that received by other Louisiana public universities. In dollar terms, according to one estimate, UNO was slated for 2006 to receive $21.5 million less than the average amount for a university under the statewide formula funding level. UNO had barely reopened on its main campus in January, with a student enrollment of 11,600 rather than the 16,000 who would normally have enrolled for the spring semester, when its administrative officers, while anticipating a balanced budget for the 2005-06 academic year, warned of the need for drastic reductions for 2006-07.
Long-range planning for UNO, dating back to 2004, gave way to the administration’s *University of New Orleans Restructuring Plan 2006-07*. A draft text dated February 27, 2006, gained wide circulation among the faculty. It called for specific cuts in programs and particular sums to be saved through resulting personnel cuts. Many professors could see from the draft that they were destined for release, and indeed administrative superiors told them so. Accompanying the Restructuring Plan was another document, *UNO Exigency Guidelines for Hurricane Katrina Disaster*. The LSU Board of Supervisors would have to declare a state of financial exigency and approve recommended changes in academic programs before the documents would become operative.

Several UNO faculty members sent copies of the documents to the Association, seeking advice and assistance. After discussing aspects of the documents with those who provided them, the staff on March 31 wrote at length to Chancellor Ryan to convey a number of concerns. The concerns included a criterion, for deciding who was to be released, of “meritorious performance, of which tenure may be an indicator,” thus allowing release to be determined through a perception of relative merit and assigning to tenure the weight of only one among a number of factors to be considered. Other concerns were silence in the documents regarding notice or severance salary in terminating appointments and a review procedure with no provision for a hearing before a faculty committee but only for a meeting with the administrators who contributed to the decision and with the burden resting on the notified faculty member to convince those administrators that their decision was inappropriate.

The administration invited comments from the faculty and others on the documents, and a somewhat revised draft of the Restructuring Plan was issued on April 25. The review panel in a contested case of release would no longer be confined to administrators but would now consist of two faculty members together with the provost, the dean, and the department chair.

**B. Declaring Financial Exigency and Imposing Furloughs**

On April 21, on the recommendation of Chancellor Ryan, the LSU Board of Supervisors approved a “Declaration of Financial Exigency” at the University of New Orleans, stating that “the financial resources of the UNO campus are not sufficient to
support the existing programs and personnel of the campus without substantial
impairment of the ability of the campus to maintain the quality of its programs and
services.” The declaration projected that UNO would lose about $10 million in tuition
revenue from reduced enrollment (estimated at under 15,000) for the fall 2006 semester,
and it noted that the state of Louisiana in December 2005 had permanently reduced its
annual operating budget for UNO by $6.47 million. The combined losses, according to
the declaration, meant a total reduction of approximately $16.5 million in the university’s
financial resources, representing a loss of 12.8 percent of pre-Katrina revenues.

Chancellor Ryan provided the Board of Supervisors with the Restructuring Plan
on May 3, and on or about May 16 the administration issued notifications of placement
on furlough to selected members of the faculty, the large majority of them with tenured
appointments, who served in programs “slated for elimination or modification.”

As to defining the actions as a “furlough,” the April 21 Declaration of Financial
Exigency provided that faculty and staff members in a program being modified or
discontinued could be “furloughed, laid off, or terminated.” As stated in the declaration,
(1) “Furloughed” means the employee is placed on temporary leave
without pay status before the end of the employee’s contract term;
(2) “Layoff” means the employee is temporarily dismissed before the
end of the employee’s contract term;
(3) “Termination” means the employee is permanently separated from
the institution. Both furloughs and layoffs may lead to eventual
termination.

“Termination” differs from the first two categories in requiring action by the LSU Board
of Supervisors under established procedures before it can be implemented, while the final
authority in implementing a furlough or layoff rests with the LSU System president.

Under the Declaration of Financial Exigency at UNO, furloughs and layoffs both
required three months of notice before going into effect (the mid-May notifications of
placement on furlough led to removal from the payroll in mid-August), and the
procedures for appeal were identical. Any practical difference between furlough
("temporary leave without pay") and layoff ("temporarily dismissed"), at least at UNO, is not apparent to the Special Committee.\textsuperscript{4}

As to the number notified of placement on furlough, an initial estimate attributed to the administration, based on the cuts specified in the draft Reconstruction Plan dated February 27, had been 83. That number, however, was meant as a reduction from the 560 full-time pre-Katrina faculty positions. Of the pre-Katrina faculty, 41 did not return in January and another 26 positions were vacant, reducing to 16 the number of individuals whose positions needed to be eliminated in order to meet the restructuring goal. An unexpectedly large number of faculty resignations and retirements occurred that spring and into the summer, leading to advertising in several instances for new faculty appointments. The Special Committee appreciates that the random nature of those voluntary departures could have decimated some academic areas and thus necessitated new appointments. Still, one would have thought the unexpected departures would be grounds for reconsideration in most instances of intended notifications of placement on furlough. The administration submitted recommendations for the authorization of specific furloughs to the Board of Supervisors on May 3, followed by supplementary recommendations on May 24. The mid-May notifications were widely reported as having been issued to 35 to 40 members of the faculty, but it is known that several of the recipients had already arranged to resign or retire. On the eve of final action by the Board of Supervisors on June 1 and 2 to approve the furloughs, Provost Fredrick Barton reported the number as 16, but he called it a "flexible" number because yet more faculty members might still decide to leave UNO on their own.

The letters of notification, identical in all cases so far as the Special Committee can determine, stated that the furloughs were the result of downsizing and restructuring through "the elimination and/or modification of academic programs" that were identified

\textsuperscript{4}For discussion of furloughing as a means of reducing faculty positions at the other New Orleans public universities, see Chapter II of this report, on the Louisiana State University Health Sciences Center, and Chapter IV, on Southern University at New Orleans.

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in an enclosed copy of the board’s Declaration of Financial Exigency. The notifications identified seven criteria used in evaluating the academic programs. Five criteria were then listed for identifying faculty members not in programs slated for elimination as subject to furlough. These, which in broad intent resemble the seven criteria invoked at LSUHSC, were:

1. being the source of “a revenue stream”;
2. having skills that “would be difficult to replace”;
3. having a record of “past performance and productivity”;
4. fitness for retention in an alternative UNO position; and
5. “other relevant and compelling institutional considerations.”

The notifications, however, did not include the identification of specific shortcomings that led to the recipient’s having been selected for furlough while other faculty members within their programs were being retained. Individuals who wished to contest being furloughed complained that they were handicapped in preparing an appeal if the reasons for their having been singled out were withheld from them. The presidents of the AAUP chapter and of the UNO Federation of Teachers sent a joint letter to Chancellor Ryan urging that the affected professors be provided, prior to an appeals hearing, with written specific reasons for having been selected for furlough. Those notified received no further explanation, however, before hearings were held.

Responding to a letter informing him of the composition of the AAUP Special Committee and its plans for meetings, Chancellor Ryan wrote to the Association’s staff on May 29. He reviewed the devastation wrought by Hurricane Katrina on New Orleans in general and the physical, financial, and academic damage suffered by UNO in particular. Discussing the restructuring that was in process, he asserted that the faculty had been involved “in every stage” of the decision making, that evidence of a bona fide

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5The downsizing included the elimination of various degree programs in Economics, in Human Performance and Health Promotion, in Communications, in Film, Theater, and Communications Arts, in Mathematics, in Music, and in English. Additionally, “reduced instruction” was to occur in Education, Engineering Management, Anthropology, English Composition and Literature, Fine Arts, Foreign Languages, Philosophy, Sociology, Biology, Computer Science, Earth and Environmental Sciences, Physics, Psychology, Mathematics, and Public Administration.
financial exigency requiring the furloughs could be demonstrated, that “eliminating weaker programs in order to sustain and eventually enhance stronger programs” was necessary for “UNO’s financial and academic viability,” and that UNO’s focus must be on its programs that are most vital to the task of rebuilding New Orleans, which “has become a critical part of the university’s mission.” As to the adversely affected faculty members, the chancellor wrote, they are receiving “adequate notice and an opportunity to respond,” but “protracted appeal procedures” would have a negative impact on the university. Quoting the 1940 Statement’s precept that “institutions of higher education are conducted for the common good,” Chancellor Ryan concluded with the hope that the Special Committee would see its charge as an opportunity to assist UNO and the other universities affected by Katrina, because “it would be truly unfortunate if AAUP chose this difficult time to advance the cause of a few over the common good of our community as a whole.”

Responding to the chancellor on June 12, the staff questioned whether “the common good” (which the AAUP certainly joins in supporting) is truly affected adversely by upholding the rights of the “few.” With those facing furlough having become fewer and fewer, the staff expressed hope that the administration might succeed over the ensuing weeks in reducing the relative handful of prospective involuntary terminations still further, or indeed in eliminating the category altogether.

C. Appealing the Furloughs

The chancellor’s office has not stated how many of those notified of placement on furlough submitted an appeal, but faculty sources have indicated that at least ten did so. Hearings were held during the course of June by a panel of three administrators (the provost, the cognizant dean, and the cognizant chair, or their designees) and two members of the faculty’s elected Policy Committee. The minutes of a June 27 meeting of the Policy Committee summarize reports from those attending the hearings that the environment was cordial or civil, that deans were supposed to have told those notified specifically why they had been selected for furlough and that some deans had done so but others had not, and that members of the hearing panel had been informed about how the hearings would be conducted but that this information had not been shared with the appealing faculty members. Hearing panels were reported as having discussed statements
made by the appellant after he or she had left the room and could no longer refute what a
dean or chair had said. Appellants complained about faculty peers being a minority on
the panels, but there was no record of dissenting votes which would suggest that a
different composition of the panel might have led to a different outcome. Despite these
serious concerns, the chair of the Policy Committee stated in conclusion that “the process
was less unpleasant than expected and as good a process as we could have.”

By letters of July 7, 2006, Chancellor Ryan informed each of those who had
appealed that he was adopting a recommendation by the hearing panel and thereby
sustaining the decision to place the faculty member on furlough. He recounted the
appellant’s objections to the decision and provided a brief reason for disregarding them,
and he stated that transfer to an alternative UNO position had been considered but that a
suitable position could not be identified. He concluded by reminding the recipient of
opportunity within the next 20 days to submit a request for review of the decision to the
LSU System president and by offering assurance that every possibility short of reducing
faculty and staff had been thoroughly considered but that unfortunately the financial
situation did not allow another choice.

As confirmed by LSU System General Counsel Lamonica, seven of the UNO
professors notified of placement on furlough pursued their appeal to the next level by
writing to the system office to request a review. Acknowledgments of receipt of the
request were sent upon their arrival, followed by almost identical letters signed by LSU
System President Jenkins and dated September 20, notifying them (without a specific
explanation) that he had found no basis for reversing the chancellor’s decision and that
their furloughs would commence on September 22. An exception was made in the letter
to one of the professors, who in her appeal had expressed fear of being placed on
furlough just a little before her sixtieth birthday on October 8, when she would become
eligible for retirement and thereby for continued participation in UNO’s joint health
benefits plan with a large potential savings in costs for her over the years ahead.
President Jenkins accommodated her situation by commencing her furlough on October
9.

The system president concluded his September 20 letters by pointing out that
under the existing declaration of financial exigency the authorized furloughs would
expire, if no further actions are taken, not later than July 1, 2007, and that any steps to
terminate a tenured faculty member’s appointment, which would require approval by the
Board of Supervisors, would have to comport with the stated procedures for termination.

D. The Special Committee’s Interviews

Between August 7 and 17, Special Committee members conducted face-to-face
individual interviews with five of the UNO professors who were appealing notification of
placement on furlough, and they interviewed by telephone three additional professors
being furloughed. Others from UNO who were interviewed included officers of the
faculty senate, of the AAUP chapter, and of the UNO Federation of Teachers, various
faculty members who were resigning, retiring, or remaining, and a graduate student who
had urged the Special Committee to give him an opportunity to argue in behalf of his
furloughed adviser.

The Special Committee was mindful of the strong likelihood that it would be
meeting preponderantly with faculty members who were displeased with the UNO
administration in the aftermath of Katrina. What the committee heard was not entirely
negative: some good things were said about the chancellor’s efforts, and comments about
the actions and attitudes of various deans and chairs were not uniformly unfavorable.
Still, the Special Committee was struck by the virtual unanimity of opinion, and the
intensity with which it was conveyed, that at bottom the involuntary furloughs brought
unnecessary harm to members of UNO’s academic community whose performance had
been judged positively, who had been granted continuous tenure, and whom the
administration had not now demonstrated to be unfit to continue. The furloughs were
imposed, so the argument of those interviewed went, despite the voluntary exodus of
UNO faculty in unexpectedly large numbers through resignations and retirements,
achieving all the downsizing in faculty positions and personnel costs that the
administration had sought and leading to the recruitment of new faculty members for
tenure-eligible positions and the engagement of part-time instructors to teach courses that
had to be offered while tenured faculty members were kept from their classrooms and
laboratories and removed from the payroll.

Accounts of individual instances of alleged unfairness and abuse heard by the
Special Committee, many of whose members have had significant experience as
administrative officers during their careers, left the committee with the impression that these were not occasional lapses, perhaps inevitable when large-scale restructuring is effected. Rather, a disturbing abundance of cases suggested a propensity to take advantage of the downsizing by removing someone who was simply no longer wanted, whatever the personal reason and no matter the academic merits and needs. A few examples follow.

A tenured professor, the only Ph.D. in her department, was informed of the particular reason for furloughing her only after her appeal against the decision had been rejected by the hearing panel. The reason then conveyed to her was a mistaken (perhaps purposeful, perhaps accidental) belief that too few students were completing her program. The number came from a count taken early in the semester, however, and the professor (had she known) could have shown to the hearing panel that it was a serious undercount because her students typically did not formally register for the program until later in the semester when they were near to completing it.

Another professor was eventually informed that his having been selected for furlough was based on a low rating in a March post-tenure review process. The initial Restructuring Plan that was circulated in February already had this professor slated for release, however, a fact that cast doubt on the stated reason for furloughing him.

A third professor, who had received positive evaluations of her academic performance year after year, was informed when her appeal was rejected that the decision was based on evidence presented by her department chair "of a persistent and longstanding performance deficiency with respect to scholarly research." The professor stated to the Special Committee that now having "performance deficiency with respect to scholarly research" on her official record implies incompetence or even something unethical, when in fact in a department with a focus on teaching she has authored seven publications, none previously criticized for absence of quality.

Finally, the professor in the just-outlined case is African American, and her placement on furlough deprived the College of Urban and Public Affairs of its only black faculty member. Another furloughed African-American woman also spoke to the Special Committee. A native of New Orleans, she began at UNO as an undergraduate in 1968, the early days of integration when blacks could enter the classroom but were still refused
entrance to the dining area. After graduation, she returned to UNO for advanced study
and earned the master's and then the Ph.D. degree in psychology. She became a member
of the Psychology Department faculty in 1989 and was granted tenure after successfully
completing the probationary period. Her placement on furlough left the College of
Sciences, like the College of Urban and Public Affairs, with no black faculty members.
The two furloughs were approved by the administration of the public university in a city
that has had a predominantly black population and a public school system even more
predominantly black, an administration that has talked of leading New Orleans through
rebuilding and toward a brighter future. These furloughs were cited by several UNO
professors as reason to question the administration's commitment to diversity.

President Jenkins and Chancellor Ryan had assured the Special Committee that
they would cooperate with its inquiries. When the committee met in New Orleans on
August 30 with the public-sector administrative officers, Chancellor Ryan was asked
why, with the small number of tenured people being furloughed and the still smaller
number pursuing appeals, efforts were not being made to work out a mutually acceptable
part of the ways with those whom the administration truly could not or would not
retain. General Counsel Lamonica, with the submissions from the seven who were
pursuing their appeals to the system office presumably then on his desk, immediately
responded to the effect that something extra cannot be provided to one without providing
it to all. Asked if he were averse to exploring possibilities of settling the cases, Mr.
Lamonica replied that some of the appellants have engaged lawyers and that he objected
to any discussion with the AAUP about ongoing cases.

E. Issues

1. Criteria and Procedures Regarding Placement on Furlough

Clearly the criteria and procedures called for in UNO's Declaration of Financial
Exigency, Restructuring Plan, and supplementary documents, and those that have been
employed in the furloughing, depart sharply from applicable AAUP-supported standards
as provided in Regulation 4(c) of the Association's *Recommended Institutional
Regulations on Academic Freedom and Tenure*. Regulation 4(c) calls for faculty
participation in the various steps leading to the temporary or permanent termination of
faculty appointments: determination of the existence of a state of financial exigency
requiring termination, of the needed number of terminations, of the guidelines for
selecting those to be released, of where within the university the releases were to occur,
and of who specifically would be selected for release. Assessments of the degree of
faculty participation in these matters differ widely. Chancellor Ryan has asserted that the
faculty was kept abreast and consulted throughout, saying so on numerous occasions on
campus, in correspondence with the Association's staff, and orally at the meeting with
the Special Committee on August 30. Some faculty members acknowledged a modest
degree of involvement, while others characterized it as scant and meaningless. Members
of the elected Faculty Planning Committee are reported as having been shown a draft of
the Restructuring Plan at a stage before it was circulated but having said nothing about it
then because they assumed it was confidential. The parlous financial situation of UNO
was certainly not kept secret and was not seriously disputed, and it was known that a
declaration of financial exigency was forthcoming long before the Board of Supervisors
acted on it. The drafts of the Restructuring Plan pretty well laid out where cuts were to
occur, and there apparently was no serious faculty challenge beyond those who stood to
be adversely affected. Decisions on who specifically was to be released were made
largely in the particular colleges and departments, with faculty involvement varying from
unit to unit but with the actual decisions left largely to the deans and the department
chairs.

The Special Committee believes a fair summary of the degree of faculty
involvement would be that the administration did not resist it but did not seek it. At the
same time, the faculty through its elected bodies, whether because it believed challenging
what was in process would be futile or whether it viewed the decisions as the
administration's responsibility and prerogative, was not as aggressive as it might have
been in insisting on exercising its own prerogatives under principles of shared academic
governance.

On matters of academic due process for those notified of placement on furlough,
contrary to the requirements of Regulation 4(c) they were not provided upon notification
with a written (or in some cases even an oral) explanation of why they in particular were
selected: the burden in contesting the notification fell upon them rather than on the
administration; their appeals were heard not by a committee of faculty peers but by a
panel with the majority of its members the administrators who were responsible for the
notification; and they received three months of notification of removal from the payroll
rather than the twelve months that are required under Association-supported standards.
The investigating committee accordingly finds that the UNO administration, in
furloughing members of the faculty pursuant to a declaration of financial exigency,
denied them safeguards of academic due process as called for under Association-
recommended standards.

Were there factors that prevented the administration from acting in closer
conformity with these standards? When the Association’s staff conveyed concerns about
shortcomings in due process, Chancellor Ryan stated in his response that “protracted
appeal procedures” would have a negative effect on the university and the community.
The Special Committee might see some justification for this response if a massive
number of furloughs had been in prospect, but only a small fraction of the initially
contemplated 80 or more received notice of placement on furlough and only a fraction of
these contested the notification. The committee rejects the implication that affordance of
adequate safeguards of academic due process would have been excessively burdensome.

2. Faculty Tenure at the University of New Orleans

Tenure has existed at UNO from the institution’s outset. The criteria that were
adopted for furloughing faculty, however, refer to having tenure as one of many factors
that can be considered because it might be evidence of a faculty member’s competence.
From the available information on the notifications of furlough, the Special Committee is
aware of cases of furloughing tenured faculty members while retaining junior members of
the faculty or engaging part-timers to do similar work and indeed recruiting for someone
new as a replacement. It is apparent that a disproportionate number of tenured faculty
have left UNO, voluntarily or involuntarily. Chancellor Ryan is reported as having been
hard pressed, when questioned at faculty meetings, to say anything positive about a need
to respect tenure commitments. He is also reported as having more than once referred to
restructuring as an opportunity to rid the faculty of weaker members. The procedures
governing release of faculty that were adopted at UNO in connection with the financial
exigency declaration and the restructuring plan do indeed allow opportunity for releasing
tenured faculty that did not exist while the previous policies with their safeguards for
tenure were in place.

The Special Committee finds that the UNO administration, in several cases
placing tenured faculty members on furlough while retaining nontenured faculty for
similar work, disregarded the protections for tenure set forth in the joint 1940 Statement
of Principles on Academic Freedom and Tenure and the Association's derivative
Recommended Institutional Regulations. The committee finds further that tenure at the
University of New Orleans is currently insecure and will remain so as long as the current
Declaration of Financial Exigency with its procedures for releasing faculty members
remains in effect.

3. The Necessity of Involuntary Furloughs

As discussed earlier in this report, at most 16 professors who had not already
agreed to resign or retire were notified of placement on furlough. The saving of costs
through the reduction of faculty positions that was a target of the Restructuring Plan had
been essentially met by the voluntary (or semi-voluntary) departures from the faculty that
had occurred or were still expected. Several departments were advertising for multiple
regular faculty positions to fill newly created vacancies. Based on this evidence and
absent any contrary evidence from the administration, the Special Committee strongly
doubts that any involuntary furloughs were necessary. The committee strongly suspects,
if there were a small handful of remaining cases in which retention was not feasible, that
these cases could likely have been resolved on mutually acceptable terms had the
administration been willing to try.

4. Using a Crisis as an Opportunity for Restructuring

As have other chief officers of New Orleans universities, Chancellor Ryan has
acknowledged that the post-Katrina crisis, with its immediate need to repair damage and
the need in the broader sense to construct a new and changed city with a university
restructured to serve and to lead the future New Orleans with maximum effectiveness,
brought about a sense of urgency and a receptiveness to change that are lacking in more
tranquil times. The Special Committee cannot fault the chancellor for seeing this
opportunity and endeavoring to use it. Whether these endeavors required the
abandonment of existing faculty policies, and particularly the safeguards of faculty
tenure, is quite another question. The Special Committee finds that these policies did not need to be disregarded in order to achieve the envisioned restructuring. Making changes without having to adhere to certain policies may be more convenient, but the inconvenience is a small price to pay for the maintenance of policies that ensure principles of academic freedom and tenure at an institution of higher learning.

F. Conclusions

1. The administration of the University of New Orleans, in placing members of the faculty on furlough pursuant to a declaration of financial exigency, denied those faculty members safeguards of academic due process as set forth in the Association’s *Recommended Institutional Regulations on Academic Freedom and Tenure*.

2. The administration in selecting faculty members for furlough disregarded the protections of tenure as enunciated in the 1940 *Statement of Principles on Academic Freedom and Tenure* and derivative Association policy documents.

3. Tenure at the University of New Orleans is currently insecure and is likely to remain so as long as the current Declaration of Financial Exigency with its procedures for releasing faculty remains in effect.

4. The administration has not demonstrated need for the current retention on furlough of any members of the University of New Orleans faculty.
IV. Southern University at New Orleans

A. Introduction

The flooding caused by Hurricane Katrina took a heavy toll on Southern University at New Orleans (SUNO). All eleven buildings on SUNO's main campus, located in eastern New Orleans just south of Lake Pontchartrain, were extensively damaged by flood waters that rose more than ten feet. During fall 2005, when the university was closed, the university administration was headquartered in Baton Rouge in the offices of the Louisiana Board of Regents. While the university reopened in January 2006, it was forced to operate out of trailers throughout the spring semester and into the 2006-07 academic year for most academic and administrative functions as well as for student and some faculty and staff residences. Before the hurricane struck New Orleans in late August 2005, the university enrolled approximately 3,600 students taught by some 160 full-time faculty members. Enrollments for the spring 2006 semester fell to approximately 2,100 students, but rebounded to nearly 3,000 students for the fall 2006 semester. At the beginning of the spring 2006 semester, 91 faculty members returned to the university. Of the 70 or so faculty members no longer at the institution, the administration had notified at least 45 of them near the end of the fall 2005 semester that they had been placed on furlough. These furloughs are the central focus of this report.

B. Background

In a memorandum dated November 21, 2005, SUNO's Interim Chancellor Gex notified some university faculty and staff members that they had been placed on furlough. The chancellor said the furloughs were a "lay-off avoidance measure," that "we hope by adopting this measure we will avert the need for layoffs," and that the university "will develop and implement a recall procedure." Shortly thereafter, in a December 12 memorandum, the chancellor informed all other faculty and staff that additional notifications of furlough would be issued "to further trim the University's budget and workforce in the aftermath of Hurricane Katrina and because the services of all SUNO employees may not be needed in the Spring of 2006." "Some" classified and unclassified employees had already been furloughed, the chancellor stated, and the administration "will determine which employees will be needed in the short- and long-term to provide
academic and support services at SUNO for spring 2006 and thereafter.” Faculty and staff were told to expect to be notified about their status by the university’s Office of Human Resources “as soon as we complete the assessment of the University’s academic and service needs.”

The assessment referred to by Dr. Gex was apparently completed in the next day or two, for letters dated December 16 signed by the director of human resources were sent to some 45 faculty members, thirteen with tenure, informing them that they were being furloughed without pay effective December 31. The reason given for the furlough in each case was much the same as described in Dr. Gex’s December 12 memorandum, though stated with greater emphasis: this action “is necessary to further reduce the university’s budget and workforce . . . and based on projected student enrollment for the spring 2006 semester.” The letters did not say how long the furloughs would last, but held out an expectation of eventual return to the university:

If it is determined that your services are needed, you will receive written notification of your recall for work from me; in which case, you must respond promptly. It is requested that you keep the Office of Human Resources informed of your continued availability for work, your current address and telephone number and provide other contact information so that written notices affecting your employment at SUNO can be timely delivered. The SUNO website will post important notices and information for the benefit of furloughed employees.

The Special Committee was informed that as of fall 2006 six furloughed tenured professors and three nontenured had been recalled to active status, with the continuing tenure of one of the five thus far unrecognized by the administration. For the rest of the 45 or so who had been placed on furlough, the prospect of their being recalled seems increasingly unlikely.

The December 12 letters concluded by informing the furloughed faculty members of their eligibility for medical benefits: “Please be advised that if you participate in the group insurance program through State Group benefits, your insurance will expire on December 31, 2005, unless you pay your portion of the January 2006 premium that is due on or before December 23, 2005.”

On the same day, December 12, that Chancellor Gex distributed his “notice of pending furlough,” he wrote to Mr. Johnny G. Anderson, chair of the Southern University System’s Board of Supervisors, resigning his position effective December 31. Dr. Gex
had served as SUNO's chancellor from 1989 to 1997, and he had agreed to return to the
university in June 2005 for no more than one year while the Board of Supervisors
conducted a search to replace retiring chancellor Press Robinson, Jr. The reasons for Dr.
Gex's resignation are discussed later in this report, but here the Special Committee notes
that the resignation was triggered by the board's decision to appoint Dr. Victor Ukpole,
the Southern system's vice president for academic and student affairs, as SUNO's

Along with the decision to furlough numerous faculty members, the SUNO
administration announced far-reaching changes in the university's academic programs
that had been approved by the system's Board of Supervisors at its meeting on December
8, 2005. The new academic plan eliminated nineteen degree programs, including
undergraduate programs in English, mathematics, biology education, physics, political
science, and history, and it added seven new programs, among them medical records
administration, business entrepreneurship, and human development and family services.
Described as an academic plan with a "community-based emphasis," the plan's stated
objective was to make SUNO "relevant to the rebuilding of the city of New Orleans and
its surrounding communities."

The December 8 changes called for a pervasive shift in the nature and mission of
SUNO, from a largely liberal arts curriculum to a community-based one. The Special
Committee cannot assess whether the sweeping subtractions and additions of programs
were sensible or prudent, but the committee does express alarm that such fundamental
changes in the educational program were enacted without faculty involvement and
consultation. Indeed, the plan's release sparked immediate criticism from members of
the faculty about how it had been formulated. The president of the SUNO faculty senate
was reported in the local press as saying that "[n]obody can deny the fact that no faculty
input went into the development of that plan." The same article quoted the chair of the
Board of Supervisors as having said that he "was shocked to hear SUNO vice chancellors
had not met with campus academics," reporting that he planned to have a meeting with
the vice chancellors.

While the December furlough letters notified faculty members about their status
after December 31, they were silent about the right of appeal under a declaration of
"force majeure" approved by the Southern system's Board of Supervisors on November 18. The declaration, identical in every key respect to the declaration of "force majeure" approved by the Louisiana State University Board of Supervisors for the LSU Health Sciences Center on the same day, superseded the university's faculty handbook and the Board of Supervisors bylaws and provided for an appeal procedure only through administrative channels. In brief, affected faculty had five working days from their receipt of the furlough notice to appeal to administrative superiors, who were to make a recommendation to the chancellor. The chancellor's decision could be appealed to the Southern University system president, whose decision was final. Several faculty members filed appeals, all of which were rejected.

The criticism that the administration had not included faculty in the development of the new academic plan was followed by a series of faculty senate memoranda addressed to President Ukpolo on "Reductions in Faculty Ranks and University Reorganizations" (January 23, 2006), "Furloughs and Appeals Hearings" (March 9), "Teaching Loads" (March 20), and "Repeal of 'Force Majeure'" (April 5). Each memorandum sharply faulted the administration for actions taken or issues left unattended, and each proposed specific remedies. The April 5 memorandum, the shortest of the lot, merits full citation:

"Force majeure" is a legal concept protecting a person or organization from being forced to honor a contract when an act of God makes performance impossible. As such it is limited in both scope and duration. Once the disaster passes, "force majeure" expires. "Force majeure" covers the impossibility of performance, not convenience of performance.

Katrina is over. The event that makes performance impossible has passed. While the physical devastation lingers, the university took steps to reorganize and reduce expenses and these have left us in a stable posture. Further, spring enrollments provide a basis to make knowledgeable projections for summer and fall enrollments. There is no need to continue "force majeure" and its legal strength at this point is questionable.

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5 For a discussion of various features of the "force-majeure" declaration see this report's Chapter II, "Louisiana State University Health Sciences Center." With regard to the silence of the furlough letters about possible appeal, the declaration stated that "SUNO shall notify each affected employee of the proposed disaster-caused employment action in writing. . . . The notice shall include a summary of the proposed action, the reasons therefor, and the available review procedures."
The Faculty Senate at Southern University at New Orleans urges that, as chief officers of this institution, you either declare “force majeure” over or request the Board to take such action so that the university can resume using the Faculty Handbook as the guiding reference in making teaching-load and faculty-employment decisions. It is no longer acceptable to fail to fulfill all contractual obligations.

Responding on April 18 to the senate’s memorandum, Chancellor Ukpolo said that the “force-majeure” policy “is still relevant to deal with the uncertain future confronting SUNO. However, once we know our enrollment numbers for the Fall Semester 2006, we should re-visit the necessity of the ‘force majeure’.” In October 2006, at a meeting of the faculty senate, he stated that he would re-examine the need for the policy and recommend its revocation to the Southern University president if enrollment for the next semester increased by 10 percent. The Special Committee understands that the declaration is still in force.

The Association’s staff, having reviewed documentation provided by SUNO faculty members and officers of the AAUP’s Louisiana state conference, wrote to Chancellor Ukpolo, initially in February 2006, to convey the Association’s concerns about issues of tenure, academic due process, and academic governance posed by the furlough decisions. The staff later provided information to the chancellor about the establishment of this Special Committee and its plans for visiting New Orleans in August to meet with university administrative officers and concerned faculty members.

In a letter dated June 12, 2006, the chancellor responded at length to these letters. With respect to furloughed faculty, he stated that “those remaining in furlough status could maintain their [health-insurance] coverage by paying the premiums themselves. In the face of state-mandated cuts in SUNO’s budget and reduced student enrollment, there was no other alternative to this action.” Furloughed faculty were to be recalled “as circumstances dictated and, of necessity [we] eliminated low completer programs and reorganized curricula to meet our immediate academic needs based upon the programs maintained and projected and actual student enrollment.” These faculty had “the right to appeal” but “we set no deadlines by which any faculty member could appeal.”
With regard to the faculty's role in the furlough decisions and the decision to adopt a new academic program, the chancellor distinguished between the faculty senate, on the one hand, and the faculty as a whole, on the other:

While it is recognized that there is an elected faculty body of faculty representatives, SUNO does not operate on the premise that the faculty as a whole is incapable of participating in the decision-making process except as directed by that body. As SUNO's business unfolded, the entire faculty was given the opportunity to participate in the information gathering and disseminating process and to have direct input into matters that were affecting them.

Selected members of the Special Committee met on August 18 with furloughed SUNO faculty members, continuing officers of the SUNO faculty senate, and Dr. Joseph Bouie, who served as chancellor of the university for the period 2000-02. At the August 30 meeting attended by senior administrative officers of the three New Orleans public universities, committee members had the opportunity to hear directly from Chancellor Ukpolo.

C. Issues

1. Furloughs and Financial Exigency

The AAUP has long recognized that a college or university can legitimately terminate faculty appointments, including appointments with tenure, on grounds of financial exigency, but that a good deal can be done to avoid the necessity of this extreme step. Furloughs without pay, a familiar measure in industry and government, are one such step, which the AAUP has identified, along with numerous other steps, as a way for institutions to deal with pressing financial problems.\(^7\)

Payless furloughs are a mixed blessing, however, for faculty members. On the one hand, a furlough implies the possibility of returning to the campus and a paid position, and, as described earlier in this report, the December notices issued to SUNO faculty members announcing the furloughs explicitly referred to this possibility. On the other hand, the financial burden on the individual is no different from what it would be if the appointment had actually been terminated: in either circumstance, no salary is paid. It

\(^7\) "Financial Exigency, Academic Governance, and Related Matters," *Academe* 90 (March-April 2004): 112. For an account of a university that utilized payless furloughs which were then followed by appointment terminations see "University of the District of Columbia: Massive Terminations of Faculty Appointments," *Academe* 84 (May-June 1998): 46-55.
would therefore not be surprising to learn that faculty members placed on furlough will consider positions elsewhere as a hedge against furloughs that go on too long. An administration, for its part, if it is concerned that furloughed faculty members not leave for other positions, will try to limit the duration of the furloughs.

There is no question that SUNO’s financial condition in the aftermath of Katrina was grave, and that it faced the daunting tasks of rebuilding its physical infrastructure and its academic programs. Because a significant portion of the university’s operating expenses are linked to salaries and benefits, these were a prime target for reduction. SUNO’s faculty handbook and the Southern University System’s bylaws are silent with regard to furloughs, but the declaration of “force majeure” identified furloughs, defined as a “temporary leave without pay status before the end of the employee’s contract term,” as one of three “Disaster-caused Employment Actions.” The other two were, like those noted in the report’s preceding LSUHSC and UNO chapters, layoff (“the employee is temporarily dismissed before the end of the employee’s contract term”) and termination (“the employee is permanently separated from the institution”). The declaration stated that “both furloughs and layoffs may lead to eventual termination,” and it called for actions taken against faculty members to respect the “needs and rights of the affected employees to the fullest extent possible under these extraordinary circumstances.”

Despite the characterization of furlough (and even layoff) as temporary, SUNO faculty members placed on furlough had good reason to think that their professional futures lay elsewhere. The furlough notices made no reference to an expiration date or to a date by when the furloughs would be reassessed. They identified no criteria according to which the administration would determine if someone’s services were needed again, and they were silent about any plans for protecting faculty salaries and hence faculty positions in the future. Moreover, the approval by the Board of Supervisors of a new academic plan a few days before the furlough notices were issued had direct and far reaching implications not only for the curriculum and students but also for faculty appointments. A furloughed faculty member could understandably conclude that the furloughs were, or would very soon become, tantamount to terminations. In a remark that is consistent with this interpretation, Chancellor Ukpolo told the Special Committee that he wanted the university to become “lean, mean, and effective.”
In his November 21, 2005, memorandum that preceded the issuance of the December 16 furlough notices, Interim Chancellor Gex described furloughs as a "measure that will avert the need for layoffs." With another academic year now in process, however, and with most furloughed faculty members, including those with tenure, not having been recalled, the result in their cases has not been merely layoff but, it is increasingly apparent, permanent termination of appointment.

2. The Review Proceedings

The Special Committee turns next to the issue of the procedures available to those tenured faculty members who sought to contest the notifications of placement on furlough. As noted above, the university's policies in effect before the declaration of "force majeure" make no reference to furloughs, but afford to faculty members subject to termination of appointment because of financial exigency or "matters directly related" to such termination the opportunity for a full on-the-record hearing before an appropriate faculty committee. The elements of the SUNO hearing procedure are drawn verbatim from Regulation 5 of the Association's Recommended Institutional Regulations on Academic Freedom and Tenure, derived from the 1940 Statement of Principles on Academic Freedom and Tenure, including the right of the faculty member to cross-examine adverse witnesses and to be provided with a record of the hearing. The burden of proof rests with the administration.

By contrast, the declaration of "force majeure" called for any hearing to involve only the administration and indeed those same administrative officers who issued the furloughs being contested. The declaration provided no information about how the hearing should be conducted other than to say that the vice chancellor and the cognizant dean (or designee) "shall listen to and consider any facts and contentions by the employee." In short, as in the LSUHSC case, the declaration of "force majeure" at SUNO served to short-circuit the institution's existing procedural protections against involuntary termination of faculty appointments.

A few tenured faculty members promptly filed appeals. Among their various claims, they alleged that the administration had retained nontenured faculty members or engaged new contingent faculty to teach courses that they were qualified to teach. There
were delays in the administration’s processing of appeals, but Chancellor Ukpolo’s May
25 response to one of them appears to have been typical:

Please be informed that I have received the documentation from your Furlough
Appeal Hearing. After my review of the documentation you submitted, I concur
with the recommendation of the Vice Chancellor of Academic Affairs that the
decision for furlough remains unchanged.

The chancellor thus did not provide the affected professors with any reasons for his
decision, thereby offering them no indication of the grounds on which further appeal
could be mounted.

The five-day filing deadline prescribed in the “force-majeure” declaration perhaps
reflected concern that involvement of a faculty committee would have delayed decisions
that needed to be made quickly. But there is no reason to believe that a faculty hearing
committee could not have finished its work within at least the nearly six-month period
that the SUNO administration took to complete its task. Neither the Board of Supervisors
nor the SUNO administration explained why it was considered necessary to bypass the
university’s existing hearing procedure and replace it with a procedure that on its face,
and as it operated in these cases, was seriously deficient. Under it, the SUNO
administration determined that faculty members should be furloughed, announced that
furloughs were forthcoming, and issued letters to faculty members notifying them that
they had been furloughed. In their appeals, tenured faculty members questioned the
legitimacy of these decisions as applied to them and the process by which they had been
made. The administration was thus in the position of adjudicating its own contested
decisions. The failure of the Board of Supervisors and the SUNO administration to afford
to furloughed faculty members the opportunity for a faculty hearing represents, in the
judgment of the Special Committee, a flagrant deficiency in academic due process.

3. The Role of the Faculty in the Furlough Decisions

The official role of the SUNO faculty in financial exigency decisions was well
established before Hurricane Katrina struck New Orleans. The university’s policies
provided that a university committee, with at least half of its members appointed by the
elected faculty senate, would determine whether a financial exigency exists. Department
chairs, in consultation with a faculty committee elected by members of the department,
would “determine the individuals whose services are to be terminated.” Lastly, “any
proposed termination of tenured faculty based on financial exigency" would "be
reviewed by a committee of tenured faculty before a course of action is decided."
Consistent with standards set forth in Regulation 4(c) of the AAUP’s Recommended
Institutional Regulations on Academic Freedom and Tenure, these SUNO policies
conferred upon the faculty a significant role in financial-exigency decisions.

The “force-majeure” declaration addressed the faculty’s role only as follows:
“Prior to making a determination to discontinue a program [as a result of the university’s
lack of funds], the Chancellor shall take reasonable steps under the circumstances to
consult with deans, department heads, and faculty representatives.”

Faculty members at SUNO, furloughed and non-furloughed alike, have justifiably
complained about the absence of meaningful faculty involvement in any aspect of the
furlough decisions—from the determination to issue a declaration of “force majeure,” to
the determination of which academic programs were to be discontinued and which were
to be added, to the determination of the criteria for selecting particular individuals to be
furloughed, and to the identification of the faculty members to be furloughed.

Indeed, the SUNO administration itself complained about the role of the Board of
Supervisors and the Louisiana Board of Regents in SUNO’s affairs. In his letter of
resignation, Interim Chancellor Gex called the process that resulted in Dr. Ukpolo’s
appointment as chancellor a “sham search,” and he went on to criticize the treatment of
the SUNO administration by the two boards:

For me, I have felt disrespected since I arrived on the Baton Rouge campus. System
and Baton Rouge personnel were assigned to attend SUNO’s meetings so that the
administration knew what we were doing almost before we knew. SUNO was
micromanaged from the beginning. And the worst indignity occurred when a
delegation of System persons went to the Board of Regents to discuss SUNO’s
future with no representation from SUNO on that delegation.

Dr. Joseph Bouie, the former chancellor who met with the Special Committee, voiced
similar concerns.

As noted earlier, Chancellor Ukpolo, in his June 12 letter to the Association’s
staff, drew a distinction between the faculty as a whole and the faculty senate, suggesting
that the administration’s communications with the former could substitute for dealing
with the official agency for faculty participation in the governance of the university. Even
if the severity of the university’s financial crisis and the need for prompt action explained
why there was less than full consultation with the faculty senate, the faculty’s role seems to have been limited to reacting to decisions already made by the Board of Supervisors and the administration. This was notably true with regard to the issuance of the declaration of “force majeure,” the announcement of the new academic plan, and the issuance of furlough notices. All these decisions bore directly on the faculty’s responsibility for the teaching and research done at the university, and therefore the faculty should have had an important role in the decision-making process. Instead, the evidence is persuasive that these decisions were made entirely within the confines of the Board of Regents, the Board of Supervisors, and in smaller part the SUNO administration, and that the faculty was thus left without an effective voice in matters significantly affecting faculty status.

In not submitting proposed program changes to the Faculty Senate and instead reporting on them in a more inclusive but more amorphous manner to the faculty as a whole, the SUNO administration effectively denied the faculty an opportunity to respond expeditiously through its formal governance structure.

D. Conclusions

The Special Committee, throughout its inquiries, was continually reminded that the damage inflicted on Southern University at New Orleans and other universities in the city by Hurricane Katrina was unparalleled in the history of higher education in the United States. In the face of these extraordinarily difficult circumstances, particularly in losing the use of its campus buildings for an indefinite future, the SUNO academic community has undoubtedly made progress toward restoring the university’s operations. This achievement, however, has come at a high and unnecessary cost to faculty rights and particularly to principles of due process and academic governance. The Special Committee concludes:

1. The furloughed Southern University at New Orleans faculty members were denied the academic due process to which they were entitled under the university’s own policies, the 1940 Statement of Principles on Academic Freedom and Tenure, and the Association’s derivative Recommended Institutional Regulations on Academic Freedom and Tenure.
2. Actions of the Louisiana Board of Regents, the Southern University System Board of Supervisors, and the SUNO administration, taken singly or in some combination in matters fundamentally affecting the university's academic programs and the status of its faculty, manifested flagrant disregard for the faculty's appropriate role in academic governance as enunciated in the *Statement on Government of Colleges and Universities.*
V. Loyola University New Orleans

A. Introduction

Loyola University New Orleans was founded in 1912. Its pre-Katrina enrollment was about 5,600, with a complement of about 200 full-time faculty organized into several schools and colleges.

The university suffered relatively modest wind and water damage as a result of the hurricane as compared to the other New Orleans universities. According to President Kevin Wildes, the university claimed $4.8 million in property and content losses: $3 million was paid out by its insurance carrier and the remaining $1.8 million constituted its deductible under that policy. President Wildes estimated the university’s revenue shortfall attributable to Katrina to be about $25 million; the university has claimed $15 million against its carrier of business-interruption insurance and an additional $5 million in other claims, resulting in a $5-million shortfall under that head. No public statement has been made regarding sums from federal or other sources that have or might become available. The university’s endowment is about $300 million and its operating budget for academic year 2006–07 is about $125 million.

In consequence of the disaster, the university closed for fall 2005. When it reopened in January, more than 90 percent of its students returned. All faculty members were paid during the period of closure. For fall 2006, the university enrolled 700 new students; the previous year it enrolled 900 first-year students and had estimated a first-year enrollment in 2006–07 of 850. Total fall 2006 enrollment, of about 4,700 students, represents a 16 percent decline from the previous year. According to press accounts, the deficit for 2005–06 was $14 million and for 2006–07 it is estimated at $9 million.

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

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

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

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

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

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

1. A proposal to discontinue a program or department of instruction will be evaluated by the Standing Council for Academic Planning, which will apply the criteria established by the University Senate. The Standing Council for Academic Planning will advise, in writing, the Board of Trustees, the President, and the University Senate concerning the proposed discontinuance.

[Section 2 on placement and severance obligations toward affected faculty will be discussed later.]

3. A faculty member may appeal a proposed relocation or termination resulting from a discontinuance and has the right to a full hearing before the University Rank and Tenure Committee in which the essentials of an on-the-record adjudicative hearing are observed. The issues in this hearing will include the question of the University's failure to satisfy any of the conditions for this section. In such a hearing the determination by the Standing Council for Academic Planning that a program or department is to be discontinued will be considered presumptively valid, but the burden of proof on the other issues will rest on the administration.

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

(1) centrality to the university's mission; (2) program reputation and quality; (3) service to other programs or the common curriculum; (4) demand; (5) impact on the community; and (6) revenues and expenses.
On April 5, the date of the SCAP report’s issuance, President Wildes e-mailed the
Loyola faculty that on April 7 the data relied upon for program review would be posted
on the provost’s Web site and that the full details of a plan for reorganization would be
released three days after that, on April 10, in anticipation of final action by the Board of
Trustees a month later, on May 19. The president stated:

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

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

On April 10, the president released a six-page, single-spaced document,
“Pathways: Toward Our Second Century”—the product, it stated, of “consultation and
evaluation.” The president did not state with whom that consultation had occurred. The
report of a Senate subcommittee issued in June asserted that the various faculties or
representative faculty bodies, department chairs, and even deans were not consulted in
the process. (This complaint has been ongoing in the faculty’s reaction to the plan, most
recently in explanation of a vote of “no confidence” in the administration by the faculty
of the College of Humanities and Natural Resources, the university’s largest, in
September 2006.) According to what faculty members report, the plan was developed by
four persons: Provost Walter Harris, Assistant Provost John Cornwall, Assistant Provost
Brenda Joyner, and Special Assistant to the President David Estes.

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

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

The Pathways plan called for the termination of the appointments of seventeen faculty members, who were ostensibly rendered redundant by these discontinuances and consolidations. Of these, fifteen held tenure, most of them with long institutional service, and the remaining two were in the first year of two-year term appointments.

As noted previously, the university's rules governing program discontinuance require that the criteria to guide the decision be established by the University Senate and that a specific proposal to discontinue a program first be evaluated by SCAP in light of those criteria. The specific programmatic proposals announced to the Loyola faculty on April 10—for general discussion and comment in anticipation of board action only a few weeks later had not been the product of any evaluation by SCAP. In the administration's view, as announced on April 10, SCAP was as free to comment as a body as any individual member of the faculty, its institutional standing in the process being otherwise undifferentiated.

As it had promised, the administration posted the data relied upon in preparing Pathway's recommendations. These consisted of six tables setting out: (1) student
applicants, admits, and acceptances ("yield") by major for three academic years, 2002-
05; (2) a headcount of majors and minors as of February 23, 2006 (as provided by the
Office of Student Records); (3) undergraduate degrees awarded from 1994-95 through
2004-05; (4) graduate degrees awarded over the same period of time; (5) average net
revenue by department and class size for 2004-05; and (6) a comparison of instructional
expense by discipline compared with other universities. No explanation was provided of
what these data meant, how they were used, or how they were related to the qualitative
criteria set out in the April 5 statement. Even so, and despite the time allowed, a
subcommittee of SCAP undertook to evaluate the Pathways plan in light of the data
supplied.

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

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

Members of SCAP are well aware of the challenges of the post-Katrina
world and the need to make changes in the University. Though it is too
soon to know exactly how drastic those changes will have to be, it is clear
that fiscal demands may well necessitate elimination or cutting back
certain programs to deal with reduced revenue. Loyola will be a different
University. The concern of SCAP is that changes will be made without
complete and reliably analyzed data, and without any articulated rationale
for the changes. In the end, this will be harmful not only to individual
faculty, students, and staff and to historic programs at the University, but
also to the viability and growth of the University and to its mission.
Assistant Provost Cornwall, one of the drafters of the Pathways plan, later posted data in response to the Senate’s request; but these, too, were found significantly wanting by the Senate.

Meanwhile, in April, the faculty of the College of Arts and Sciences and the University Senate respectively voted “no confidence” in the process that produced the Pathways plan. The faculty’s disagreement went further. On May 11, the Senate took a “straw vote” of no confidence in the provost’s office—19 for the motion, 4 against, 2 abstentions. On May 12, the faculty of the College of Arts and Sciences voted “no confidence” specifically in Provost Harris and in Assistant Provosts Cornwall and Joyner—71 voting for the motion, 2 against, 4 abstentions. It further urged the Board of Trustees to table the plan until November 2006; key portions of the grounds for so urging are set out below.3 Interestingly, these motions did not address the faculty’s confidence in the president. From what the Special Committee was given to understand, the faculty leaders hoped, perhaps naively, that the president might take the faculty’s exclusion of him from its vote as an overture to mend fences. If so, the attempt failed. A week later, on May 19, the Board of Trustees adopted the Pathways plan.

On May 22, President Wildes sent an e-mail to the faculty addressing the board’s action. He discussed the need for the institution “to make choices about our future in this new environment and how Loyola could become a stronger community,” stating that “numbers’ were not the only factor to drive the decisions.” Although several suggestions were made in the “feedback” the administration received, he concluded that

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3. Criteria for restructuring have not been approved by SCAP or by the University Senate. There has been no vision put forward to guide any sort of wise restructuring plan. There has been no clear rationale put forward to justify the proposed cuts.
4. The current plan was not received by the deans or the faculty before it was put forward on April 10, 2006, therefore we have not had sufficient time, or access to complete data, to allow for reasonable deliberation and joint planning among administrators and faculty.
5. Severe and serious cuts to departmental majors and of tenured faculty members as proposed by the Pathways Plan should not be chosen as the best strategy to ensure the future health of our university, especially when these recommendations are based on inaccurate compilations and misinterpretations of data from just the 04-05 fiscal year.
6. The attrition of both students and faculty that has been caused by the mere announcement of the plan has not been assessed.
7. Alternative cost-cutting measures have not been proposed and explored by the whole university community.

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none provided “alternative ways to close the budget gap,” and that time was short given
the deadline laid down by the board. On the process of arriving at the plan, President
Wildes stated:

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

I know that a number of people have expressed concerns about the
program review. After reviewing everything, I am confident in the
analysis and the work that Dr. Harris and his staff did in this area. As the
Board has expressed confidence in my administration, I want to express
my clear confidence in Provost Harris and his staff for the work they have
done.

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

On June 8, a subcommittee of the Senate distributed a detailed report, “A Call for
Conversation and a Critique of Pathways.” The chair of the Senate prefaced it by noting
that he had asked that it be circulated to each member of the board. “I plainly stated,” the
chair wrote, “that the senate had not endorsed or advised the president on any
discontinuance or elimination. Moreover, the senate is of the opinion that SCAP had
virtually no time to react to Pathways and the faculty has been virtually excluded from
the whole process.”
The report asserted that the administration's action belied the claim of the university as a "constellation of communities," adverting to the failure to build support for a shared vision of the institution's mission and the lack of collegiality and of meaningful community input into the process. It alleged a lack of competence by the administration in its disregard of SCAP's role under the institution's governing rules, its reliance on invalid data, and its failure to provide any rationale for the plan. The latter two were singled out in particular for a more extended discussion. The Senate approved the report on June 21, and forwarded it to the president and the governing board.

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

With the beginning of the 2006-07 academic year, President Wildes sent a twelve-page memorandum via e-mail to the Loyola community. In it he discussed the institution's current and projected situation vis-à-vis enrollment and finances and the institution's "strategic goals"—the latter summarized in terms of resurrection. One strategic goal called for a revision in the university's "governance process to promote shared decision-making in line with new academic structure." The president explained:

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

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On September 26, the faculty of what is now the College of Humanities and Natural Resources voted to reaffirm the vote of "no confidence" in Provost Harris taken previously by the faculty of what was then named the College of Arts and Sciences—this time by vote of 70 to 10. On this occasion, the faculty went on to vote "no confidence" in President Wildes—61 to 19. The motions were prefaced by a recapitulation of what the faculty believed to have been the fundamental deficiencies in the process leading to the adoption and implementation of the Pathways plan.

Using the questions raised by the Senate's June "Call for Conversation" as "a frame of reference," President Wildes on December 6 sent the Senate's executive committee a nineteen-page memorandum that he characterized as his contribution to a potential "ongoing conversation" between the Senate's committee and a committee of the Board of Trustees. Whether the Senate will find this document responsive to its June questions or otherwise persuasive remains to be seen, and the Special Committee withholds comment on it while awaiting the Senate's reaction.

**C. The Association’s Involvement**

In March 2006, the Association’s chapter at Loyola alerted the Washington office staff to the prospect of a plan to discontinue programs. Shortly thereafter President Wildes called Associate General Secretary Jordan Kurland to inform the Association of the formulation of a plan and to solicit the Association’s reaction. A few weeks later, after the Pathways plan had been released, the staff wrote to President Wildes. It noted that the university’s governing instrument, Chapter 9 of the faculty handbook, closely tracks Association-recommended standards and procedures for program discontinuance and the consequent termination of the services of faculty members during the terms of their appointments. The letter questioned the administration’s adherence to the university’s rules in detailed respects. These concerns were reiterated in a letter of June 12 expressing surprise that the Board of Trustees would have acted in the face of an "evident lack of faculty support." The letter urged that the administration not proceed and, should it choose to do so, that no tenured faculty appointment be terminated without adherence to Association-supported standards embraced in Loyola’s own rules. Upon learning of the issuance of the letters of termination, the staff wrote on June 20 to convey the Association’s continuing concern.
President Wildes replied to the latter on June 26. He stressed the difficulties of recruiting students in a post-Katrina world, the need to adapt to tough circumstances in order to thrive, and the availability of due process for faculty members adversely affected by programmatic decisions. On the question of process, the president took issue with the staff's assessment. He acknowledged that Loyola's rules "virtually track" Association standards, but he asserted that these were followed to the letter and exceeded in spirit:

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

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

Strong words. The Special Committee will have recourse to them at the close of this chapter.

D. The Issues

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

1. "Pathways" and Program Discontinuance

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

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

Because program decisions are, at their core, educational, however they may be connected to long-term trends in enrollment, tuition, and curricular interests, Loyola’s rules assign a major role to the faculty in the decision-making process, premised primarily on the faculty’s educational expertise and secondarily on the need to maintain the faculty’s commitment to the institution in a stressful period of curricular change. The rules are fashioned to build trust in a process that may result in the termination of the appointments of colleagues of long and exemplary service—to assure not only those adversely affected but the faculty as a whole and the larger community as well that the decisions were soundly deliberated, educationally justified, and fundamentally fair. Loyola’s rules do this in two ways. First, they require that SCAP, a representative body of the faculty specially chosen for the task, “evaluate a proposal to discontinue a program or department of instruction,” under Senate-approved criteria: as a pre-condition, SCAP must advise the Senate, the president, and the Board of Trustees, in writing, concerning a “proposed discontinuance.” Second, those faculty notified of termination in consequence of programmatic change have recourse to a hearing before the University Rank and Tenure Committee. In that event, SCAP’s determination—that a proposed discontinuance is or is not warranted under the applicable criteria—is considered “presumptively valid.” Thus, the burden rests on the affected faculty member challenging the decision to show that the discontinuance, if SCAP-approved, is nevertheless arbitrary, discriminatory, or otherwise unwarranted; by contrast, the burden

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9 Recall that Loyola’s rules require that program discontinuance must be “based essentially upon educational considerations, which may involve finances,” and that financial matters do not include cyclical or temporary variations in contrast to long-range judgments.
rests upon the administration to rebut the presumption, to show that the discontinuance, if
SCAP-disapproved, is nevertheless justified and that the action taken is appropriate.

Despite the administration's protestations to the contrary, the Special Committee
sees no basis for doubting the fact that the administration of Loyola University failed to
comply in any significant respect with the institution's own rules governing the manner
in which decisions to discontinue programs are to be made. First, a set of criteria was
developed by SCAP as a template or guide for programmatic evaluation; but the Senate
did not adopt those criteria. Inasmuch as the rules require SCAP programmatic review
under Senate-adopted standards, just what these standards were had first to be resolved.
Second, and perhaps more important, the rules require SCAP, in the first instance, to
evaluate any proposal for program discontinuance. President Wildes has insisted that the
dissemination of the Pathways plan on April 10 conformed to and even exceeded that
requirement. The faculty disagreed. So does the Special Committee.

The rules contemplate an exacting deliberative process. If one assumes the April
5 SCAP recommendations to have been operative, they lay out a set of variable or
unspecified weights. A 1993 AAUP ad hoc committee investigating the proposed
reduction and abolition of programs of instruction at San Diego State University
commented on a similar situation. There the administration took upon itself the role of
designating departments for reduction and discontinuance based upon criteria established
by the San Diego State Senate that are almost identical with those set out by the April 5
SCAP report, that is, (1) quality, (2) centrality, (3) curricular and community need, (4)
diversity, (5) program size, and (6) cost (and resource generation) when all else is equal.

"These criteria," the investigating committee observed,

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

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94 (italics added).
At Loyola no rigorous, systematic process was conducted by the faculty body expressly charged under the institution’s rules to do so. Instead of performing that primary role as called for under the university’s own procedures, SCAP was placed in the marginal position of critic: no pre-decisional documents or analyses were shared with SCAP (or the Senate or the faculty as a whole) addressing why any of these programmatic decisions were made. The raw data relied upon were posted—as available to SCAP’s membership as to anyone else—but these were never connected to any particular decision, and no reasoned explanation for the decisions was given. Importantly, much that was relied upon was deemed by the faculty to be inexplicable because of the very absence of such connective analyses and explanation. The Senate’s June 21 “Critique of the Pathways Plan” summarized what the Senate believed were errors and lacunae in the data: only a one-year snapshot was relied upon; revenue for one year was compared with enrollment from another year; sub-specialties were wrongly treated as majors; and more.\footnote{For example, of the Department of Communications, one of the hardest hit, the Senate observed that four sequences were eliminated based on the 78 students enrolled as of a snapshot date:}

<table>
<thead>
<tr>
<th>Course</th>
<th>Students</th>
</tr>
</thead>
<tbody>
<tr>
<td>All of Communications</td>
<td>442 students as of February 23, 2006</td>
</tr>
<tr>
<td>Broadcast Journalism</td>
<td>27 students</td>
</tr>
<tr>
<td>Broadcast Production</td>
<td>21 students</td>
</tr>
<tr>
<td>Communications Studies</td>
<td>18 students</td>
</tr>
<tr>
<td>Film Studies</td>
<td>12 students</td>
</tr>
<tr>
<td>Total</td>
<td>78 students</td>
</tr>
<tr>
<td>Advertising</td>
<td>49 students</td>
</tr>
<tr>
<td>Photo Journalism</td>
<td>10 students</td>
</tr>
<tr>
<td>Print Journalism</td>
<td>18 students</td>
</tr>
<tr>
<td>Public Relations</td>
<td>66 students</td>
</tr>
<tr>
<td>Total</td>
<td>143 students</td>
</tr>
</tbody>
</table>

But the Senate report proceeded to add the following:

Note that: \(78 + 143 = 221\) students

And: \(442 - 221 = 221\) students who have not declared a specialty.

As students need not declare a specialty until they graduate, the report concluded that the administration neglected to count 221 students, or 50 percent of communications students. This could have been clarified, the Senate’s Critique observed, had the administration asked the faculty to make sure each of their advisees had declared a major. “Instead, the number was taken from the student records on what seems to be a random day, February 23, 2006.” The result is a working illustration of the theory of variable weight: “Notice that Photo Journalism has 10 students, lower than any of the specialties that were eliminated. Print Journalism has 18 students as did Communications Studies, but Communications Studies was eliminated.” No explanation of these and kindred inconsistencies has been supplied by the administration.
A later Senate critique of the data and methodology was even more pointed. It adverted, for example, to the following in the administration’s methodology: “[A]n instructional program at Loyola, on average, generates net tuition revenue equal to 2.28 times the instructional cost of salaries associated with that program. Programs that generate more than this amount are, in effect, subsidizing programs that generate less than this.” This, the Senate report argued, was a non sequitur:

Certainly any program or department that can claim a large number of students as majors contributes substantially to the overall ratio just by virtue of the fact that those students are on campus, they take classes at the university, and they pay tuition. No matter what department or program those classes are in, the numerator of the overall university ratio is increased if there are more students paying tuition at the university. But without breaking down the data further and looking more closely at all sorts of factors including majors, minors, electives, and Common Curriculum requirements, it is not possible to say which programs contribute more or less to the overall ratio of 2.28 just by looking at departmental or program ratios. There is a complex interplay between attracting students to the university in the first place, retaining them, and distributing their academic credits across courses and departments.

Let it be conceded straightaway that SCAP’s and the Senate’s critiques might themselves be flawed and that a cogent and coherent rationale actually does underlie the administration’s actions. The insuperable obstacle to making any judgment in the matter is the stark fact that a mass of raw data—some only a snapshot at a moment in time or over a short period of time—does not drive inexorably toward any obvious programmatic decision. This obstacle is heightened by the ostensible application of criteria of variable weight coupled to the total absence of any effort to relate the data to the criteria, that is, of any written, detailed explanation of how these decisions will lead the university in a better direction.\textsuperscript{12}

In sum, the rules call for an exacting deliberation in which these very issues, including the probing of the data and of the methodology and attendant assumptions undergirding their use, would be addressed and resolved by SCAP. This entails a sharing of comprehensive data, a candid joint exploration between the committee members and

\textsuperscript{12} Upon examining the data relied upon by Loyola’s provost, the Special Committee is as much at a loss to discern a rationale for the Pathways plan as is the Loyola faculty. Both these data and the faculty’s critique of them are available on the provost’s and Senate’s Web sites respectively.
the administration of precisely what they mean, a discussion of the benefits and
drawbacks of each discrete proposal in light of long-term trends and needs, and the
fashioning of a coherent rationale. Such is the assumption upon which the exercise of the
faculty’s educational judgment rests; indeed, the presumption in favor of SCAP’s
recommendation in any subsequent hearing challenging the decision simply makes no
sense otherwise. But the time allowed by the administration—from the promulgation of
the plan, April 10, to the date set for board action, May 19—alone would have precluded
the possibility of any meaningful deliberation. The faculty responded by calling for an
extension to November—an altogether reasonable request. But no justification was
offered for the brevity of the comment period, no demonstrable need has been shown for
the board to have acted so swiftly, and, it suffices to say, the administration declined to
engage any more with the urging for more time than it had with the specific criticism
levied at the data supplied and the total want of analyses.

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

Most of those with appointments to be terminated as a result of these decisions
have requested a hearing before the university’s Rank and Tenure Committee as provided
for in Chapter 9 of the institution’s rules. As previously stated, the first of the hearings
was held on November 13. A stenographic record was kept, Provost Harris served as the
administration’s main representative, and attorneys for both sides participated. The
Special Committee understands that two additional hearings were held in December, that
the fourth of the nine potential hearings has been scheduled for mid-January 2007, and
that the faculty hearing body intends to defer submitting a report until all the hearings
have been held.

2. The Terminations

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

provides:

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

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

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

D. A Concluding Observation

Well before Katrina, the administration of Loyola University had set its sights on a major assessment of the institution's academic programs, finances, and direction. Given the shifting landscape of private higher education today, the Loyola faculty like others has not disputed that such was a prudent decision. Nor did the Loyola faculty doubt that Katrina made that assessment at once more pressing and more complex: the area from which the institution drew a significant cohort of its students had been depopulated by half, and none could say how many would return; nor, to the extent that the university drew students from a distance, was it possible to predict how many prospective students would in future be chary of attending college in New Orleans.

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

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

E. Conclusions

1. The administration of Loyola University New Orleans, in acting to terminate the appointments of seventeen members of the faculty on stated grounds of program
discontinuance, proceeded in gross disregard of its own applicable official policies and of the Association-recommended standards with which those policies comport.

2. The administration, in rescinding teaching assignments that had been made for some of these faculty members for their terminal year and in barring them from campus access and facilities, effectively subjected them to summary dismissal in violation of the 1940 Statement of Principles on Academic Freedom and Tenure and the university's own official tenure policies.

3. In ignoring prerogatives and official actions of duly constituted faculty bodies and in being unresponsive to faculty calls for a cooperative relationship following successive faculty votes of no confidence in the administration, the Loyola University New Orleans administration has held to a position inimical to principles of shared governance as enunciated in the Statement on Government of Colleges and Universities.
VI. Tulane University

A. Background

Tulane University was founded in 1834 as a medical college and reorganized in 1884 as a comprehensive private university named Tulane. The majority of its schools and colleges are on the institution’s uptown New Orleans campus, while the medical school and university hospital are located downtown. The pre-Katrina uptown enrollment was 10,715 full-time and 2,499 part-time students. When the campus reopened in January 2006, the student enrollment was 9,480 full-time and 1,827 part-time. The total full-time pre-Katrina Tulane faculty numbered 1,166, a number as of January 2006 considerably reduced by resignations, retirements, and layoffs, with additional layoffs to follow suit effective May 31, 2007.

The president of Tulane University, Scott S. Cowen, has served in that capacity since 1998. Prior to that time he was dean of the School of Management at Case Western Reserve University. The governing board of Tulane University is formally titled the Administrators of the Tulane Educational Fund, but in daily parlance it is generally referred to as the Board of Administrators. At the time of Katrina and its immediate aftermath the chair was Catherine D. Pierson, since succeeded by Philip Greer. Provost and senior vice president for academic affairs Lester A. Lefton took office in 2001 and held it until July 1, 2006, when he became president of Kent State University. He was replaced by an interim appointee, Dean Paul L. Barron of the School of Law. Dr. Ian Taylor was dean of the School of Medicine until December 2005, and was replaced by Dr. Paul K. Whelton, who also retained his existing appointment as senior vice president for the health sciences. He resigned from Tulane, effective January 31, 2007, to assume the presidency of Loyola University Health System in Chicago.

The degree of flood damage to Tulane’s uptown campus was moderate, but the medical school and university hospital suffered extensively. President Cowen initially estimated property damage and operating losses for the 2005-06 fiscal year as exceeding $300 million. While the uptown campus reopened in January, the reopening of the medical school, many of whose staff, students, and educational functions had been
shifted to the Baylor School of Medicine in Houston for the fall 2005 semester, was not completed until fall 2006.

All full-time faculty members received their salary and benefits during the four months that the university was closed. In the wake of a decision by the Board of Administrators on December 8, 2005, to declare financial exigency, however, at least 160 members of the faculty, with some estimates ranging upwards of 210, received notifications of release that were sent on the same day. In the days that followed approximately 90 additional faculty members resigned or took retirement. Most of the releases were in the School of Medicine, where the Tulane University Hospital staff was cut by half and clinical faculty accounted for about 120 of the total number who were released. The tenured Tulane faculty members who were released included 35 in the School of Medicine (31 clinical and four basic science), in addition to six in the Freeman School of Business and 18 in the School of Engineering (for a total of 59). \(^4\)

Tenured medical faculty received twelve months' severance pay, and nontenured clinical faculty three to twelve months. In the case of tenured engineering and business faculty notified of release, their contracts were set to expire as late as June 2007. What is less clear is the basis for many of these decisions (especially since a number of units reported that nontenured faculty members had been retained while tenured faculty were released) and the process that led up to such decisions. Likewise, less than transparent is the discontinuance of three departments in the School of Engineering (Mechanical Engineering, Civil and Environmental Engineering, and Electrical Engineering) and two programs in the School of Business. Also at issue is the role of faculty not only in these decisions but also in the adoption of an ambitious "Plan for Renewal" unveiled before the university reopened. Placing these matters in context requires going back to the weeks and months of fall 2005, in the wake of Hurricane Katrina’s damage.

\(^4\) Figures on the number of released faculty and the categories varied somewhat over the period, but some examples will give an idea of the scale. According to Yvette Jones, the university's chief operating officer and senior vice president for external affairs, 132 faculty members out of 550 in the School of Medicine were separated (American Psychological Association, Monitor on Psychology, March 3, 2006). According to a draft Strategic Plan for the medical school issued by the Tulane administration in spring 2006, "we were forced to separate 122 faculty members in December 2005 that, when combined with 89 additional resignations, caused an unprecedented 33% reduction of our faculty count." The situation is somewhat complicated by the question of how and when the number of voluntary resignations and retirements was taken into account.
B. Events During Fall 2005

After Hurricane Katrina struck and fall classes were cancelled, Tulane faculty members, like colleagues at other New Orleans institutions, took various courses of action. Some were able to conduct university business in other settings (in the case of the medical school, as has been noted, in Houston). Some, faced with damaged homes to which they could not return in a city in which evacuation orders had been given, joined professors in other parts of the country or found temporary professional quarters at other institutions where they had contacts. The administration and displaced professors both made efforts to maintain contact during the fall. President Cowen periodically sent messages to staff and faculty on an e-mail list, "Tulane Talk"; the university server, whose cable had been subject to repeated flooding, was back on line although periodically overloaded. In some instances department chairs or higher-level administrators encouraged uptown faculty to return to classes in January, and in no case known to the Special Committee was any professor discouraged from returning — especially since, as will be shown below, additional teaching was necessary to make up for the lost semester.

Some time in the second or third week of September 2005, Provost Lepton asked deans to communicate to their respective faculties that all tenure clocks had been frozen for 2005-06 "as a result of the catastrophic disruptions caused by Hurricane Katrina to our personal and academic lives."15 All mid-probationary reviews, promotion and tenure reviews, and reviews for promotion to full professor were cancelled for that year, and there would be no "hearings of requests for reconsideration of last year’s unsuccessful third-year reviews and/or promotion and tenure cases.” The effect of stopping the tenure clock was to provide all tenure-eligible faculty with an additional year in their probationary period, while those faculty members seeking promotion to the rank of full professor were asked to “wait for a more propitious time to seek promotion.” External evaluators and schools where promotion and tenure committees had already convened were to be notified of the postponement. The announcement may have encouraged

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15 The Special Committee derived its copy of the referenced statement from a hard copy of the Web site of the School of Business, “last updated 9/21/05,” and hence its estimate of the date of notice.
faculty members to regard the delay as an unfortunate hiatus rather than the initiation of a process of layoffs and terminations.

As reported in a communication of Dean Angelo DeNisi to the business school faculty, the Tulane administration proceeded to take some additional steps in the face of the disaster, including the centralization of the university’s budgeting system, the elimination of discretionary funds for travel or research and of overload (that is, additionally compensated) teaching and having everyone subject to being “asked to take on whatever duties seem appropriate.” According to the dean, “The President has said that anyone who refuses to carry out such an assignment will be fired or (in the case of tenured faculty members) they will no longer be paid until we return in January.” Programmatically, Tulane undergraduates would be offered courses in a fifteen-week session beginning in January and a nine-week session that would end in June, to ensure that students did not fall behind. “We are working on schedules right now. This is usually something that would involve a great deal of faculty consultation, but we need to get this done RIGHT NOW, and we have had a number of faculty and administrators working on this [emphasis in the original].” With respect to teaching appointments, however, “we may not be able to afford the luxury of all the adjunct faculty we have employed in the past.” Except for the threat to suspend the pay of noncooperating tenured faculty, no indication of larger layoffs or terminations appear in this statement.

As return to New Orleans became possible, President Cowen convened several meetings of the President’s Faculty Advisory Committee (PFAC), a body elected by the Tulane University Senate for the purpose of serving as a consultative instrument and a sounding-board for both faculty and administrative concerns. During the fall PFAC met four times (the first time in Houston on October 19) at approximately two- to three-week intervals, until the Plan for Renewal (to be discussed below) was issued in December. The record of this body’s relationship with the president has been reported, even by his critics, as generally good. According to persons who had served on it at different times under President Cowen, there was a sense that the views of the committee were generally listened to and taken into account. As one former member of the committee put it, the president not only asked for such input and advice but also attempted at all times not to prejudice the committee’s deliberations with statements reflecting his personal position.
Under more normal circumstances, the general understanding of PFAC’s role was that it never acted as a substitute body for the senate, but rather as a conduit to and from that body, following which, on any issue of gravity, the senate would be consulted. It must also be noted, however, that the senate constitution describes the committee as elected specifically for advising the president “where subjects of great urgency or delicacy require immediate consultation.”

On November 11, President Cowen devoted “Tulane Talk” to a message to faculty subtitled “The Future of Our University.” He alluded in general terms to “conversations about the university’s future,” involving “a number of external advisors from such institutions as Harvard, Johns Hopkins, University of Michigan, Rice and Princeton” and consultation “on a regular basis with members of the President’s Faculty Advisory Committee ….” The letter cautioned that, while Tulane would ensure its commitment to academic excellence in balance with its “long-term financial viability,” a number of “difficult decisions” would be taken in the next months, “but the result will be a stronger, vibrant and more focused university prepared for the extraordinary challenges of the 21st century.” Listing several goals, President Cowen stated that “the center of the renewed Tulane should be an exceptional undergraduate program…strengthened and surrounded by a limited number of graduate, professional and research programs,” thus tipping the administration’s hand with respect to the forthcoming Plan for Renewal.

President Cowen felt, the Special Committee believes with some justification, that the extraordinary events of 2005 placed the relationship of PFAC and the president on the kind of emergency footing envisioned in the senate constitution. The president informed PFAC of the need to declare financial exigency and, judging by the outcome, his appeal was persuasive. PFAC as a whole, according to members who met with the Special Committee, did feel that based on the evidence presented, which included some preliminary disclosure of plans for cutbacks in the schools of engineering, business, and medicine, there was no alternative to the declaration, which PFAC was specifically asked to endorse and did in the event endorse. Members stated to the Special Committee that they felt their endorsement of the financial exigency declaration was conditioned on the basis of the information provided by the administration as of December 3, 2005, and that
the declaration did not necessarily represent the last word on conditions which PFAC
understood to be still evolving.

After the events of that December, however, some members of PFAC expressed
concerns as to whether they had been encouraged in any meaningful way to canvass
alternatives either to a declaration of financial exigency or to a shutdown, such as an
across-the-board reduction of salaries. One member of PFAC told the Special Committee
that the consultation seemed to be “form, not substance.” “We were basically told this is
the way it would be…. My gut feeling was that the train had left the station at that first
October meeting.” An additional and important complication in the events of this period
involving PFAC was the general aura of secrecy surrounding its proceedings. As one
example, when the chair of the Department of Mechanical Engineering called the faculty
senator from the School of Engineering who was serving on PFAC to find out if there
was anything in the deliberations he should be informed about, he was told that PFAC
members had been instructed to remain silent on all issues. Had the discussions at PFAC
actually revolved around the fate of individual faculty members, the injunction might
have been understandable. Given the fact that what was at stake was the future of the
department, however, the exclusion of a broader faculty voice seems to the Special
Committee to be comprehensible only following a determination that it was a fait
accompli not subject to discussion.

As controversial as the circumstances surrounding the declaration of financial
exigency were, the Tulane “Plan for Renewal,” also presented to PFAC in December,
was at least equally so. The Plan, stating that “survival and recovery were not the
finishing line” but rather a starting point for long-range restructuring, put forward a
proposal for a significant refocusing on the undergraduate experience. The Faculty of
Liberal Arts and Sciences and the School of Engineering would be reorganized into the
School of Liberal Arts and the School of Science and Engineering as part of a significant
de-emphasis and reorientation of the existing engineering programs, with the number of
accredited programs in the present engineering school being reduced from nine to two.
The Plan announced the indefinite suspension of numerous Ph.D. programs in the social
sciences, humanities and fine arts, and sciences (with some regrouping of degree
programs), five engineering programs, social work, and law. It proposed what was
described as high-quality doctoral programs in the professions, as redefined and
regrouped. As part of an effort to offer undergraduates more instruction by full-time
faculty, the existing faculty would be supplemented with “Professors of Practice” who
would be full-time, non-tenure-track faculty members not expected to undertake regular
research or service responsibilities. Other new initiatives, such as a Center for Public
Service maximizing possibilities for student outreach in New Orleans, were also set forth
in the Plan. Newcomb College, a longstanding undergraduate college for women, and
Paul Tulane College would be “suspended” (in effect, would cease to exist) as of fall
2006, while a Board of Administrators task force would examine how both names and
dependents would be used to support a new undergraduate college.

So far-reaching a reorganization obviously had direct implications for Tulane’s
curriculum and for faculty status, which under widely accepted national norms as well as
AAUP-supported policy are the primary responsibility of the faculty.17 The reaction of
PFAC to the Plan was mixed. Though it neither endorsed nor rejected the Plan, it did
succeed in blocking some changes set forth in the initial proposal. Procedural questions
turned on whether the implementation of the Plan, without further faculty discussion, was
governed by quite the same considerations of urgency as the declaration of financial
exigency. Was it really necessary to press forward with the implementation of the Plan
before faculty had the opportunity to return in January and discuss it? Might general
assent to its overall direction have been sought while giving the faculty opportunity to
review it in the course of implementing the undergraduate curriculum necessary to carry
it out? The argument was also advanced that restructuring should have been delayed
until later in the spring when the university knew how many students had returned for the
second semester and had a better handle on likely first-year enrollments. To this, the

16 The proposal for Professors of Practice had been under discussion at Tulane and though it was, in the
event, approved by the University Senate in March 2006, disagreement exists between the administration
and some members of the faculty as to whether in fact the provost had been correct in his report to the
senate that the various schools and colleges had concurred in the proposal. Proponents of the appointment
category defended it on the grounds that it represented a welcome move to reduce dependence on part-time
faculty members; opponents saw it as another attempt on the part of the administration to weaken tenure in
the post-Katrina environment.

17 See, e.g., the Association’s Statement on Government of Colleges and Universities.
administration responded that delay would have exacerbated the university’s already dire financial situation.

At a more fundamental and more disturbing level, members of the Association’s Special Committee heard a reiterated claim by Tulane faculty members that the Plan was in effect an “opportunistic” attempt to implement failed pre-Katrina proposals, several of which had been previously sought by the administration and resisted by the faculty. According to this line of argument, Katrina had provided the opportunity for change that normal organs of faculty governance had resisted. The administration has vigorously contested this allegation, arguing that some components of the Plan, including the hiring of “professors of practice,” had been previously debated and approved by various segments of the faculty.

On the other hand, some of President Cowen’s statements as reported in the press suggest a point of view very close to faculty perception. In remarks quoted in the Chronicle of Higher Education (December 9, 2005), he stated that “we basically cut the programs that were not the strongest…. Under the current way universities operate, you can’t make those decisions under normal circumstances. It takes an event like this.” In another report, “Using the powers granted him as a result of the school’s financial emergency, [President Cowen] has enacted a bold, controversial, and wrenching ‘renewal plan,’ with which he hopes to remake Tulane from a very competitive school into a truly elite one. ‘I wouldn’t wish this on anybody,’ he says. ‘But out of every [disaster] comes an opportunity. We might as well take the opportunity to reinvent ourselves.”18 The Special Committee sees very little daylight between such reported statements and the view of dissenting faculty members on the matter.

C. The Appointment Terminations of December 2005: The Medical School

During fall 2005 some 35 faculty members from the School of Medicine went to Houston at their own cost and began to develop a program for medical students, assuming various new responsibilities. One of these individuals, a professor of fifteen years’ standing who was subsequently to receive notice of termination, acted as interim

clinical clerkship director and handled other assignments that needed to be carried out in
anticipation of previously scheduled visits of accreditation bodies. Upon their return to
New Orleans, many such faculty had to try to restart their laboratories and research
programs in anticipation of the return of students. Several medical school professors told
the Special Committee that they attempted frequent and regular contacts with their chairs
for directions and volunteered for numerous duties on their return to a city where much,
programmatically, remained to be salvaged.

Even as professors planned and executed their returns to New Orleans,
discussions were already under way as early as September 20 in the medical school
regarding the identification of “mission-critical faculty” and the sorting-out of “non-
essential” faculty whose funding (through research or patient income) or role in training
clinicians was not deemed adequate to justify their continuance. A 34-page matrix
identifying all faculty members by name, degree, rank, and department, was used to enter
such factors as their tenured status, and their clinical and research contributions, and,
where deemed appropriate, a date of termination, retirement, departure, or a decision to
retain. The use of this matrix and the accuracy of the data it contained were questioned
by a number of professors who spoke to members of the Special Committee. Inasmuch
as the Special Committee does not have access to the data that may have figured in many
of the individual cases, it suffices for the time being simply to say that, aside from a
general evaluation of the professor’s funding record and programmatic usefulness (and it
is not clear that in all cases even this was instrumental in the decision on retention), the
lack of clarity in the decision-making process itself caused considerable anxiety and
aroused resentment among faculty members. Further complicating the picture was that in
the medical school, where no program in its entirety as such was explicitly targeted for
discontinuance, the termination of specific tenured faculty appointments often left
untended professors untouched, creating the suspicion among many that a process of
“cherry-picking” was going on.

On December 7, 2005, the Board of Administrators met to discuss the criteria for
retention and dismissal of faculty members. The available evidence indicates that no
faculty body was consulted in the development of these criteria. On December 8,
coincident with the declaration of financial exigency, termination notices were sent to
more than 120 faculty members in the School of Medicine (see comments earlier for variations in the reported figures). Some professors reported that they were called by their chairs at the last moment. (The suddenness of this notice was not confined to the medical school: one professor in engineering told the Special Committee that he had learned the news of the discontinuance of his particular program half an hour before the university announcement from a reporter who called him for his reactions.)

At a meeting that same December 8, department chairs in the medical school were handed brown envelopes containing the names of persons in their units whose appointments were to be terminated, which in some cases included the chairs themselves. In a number of cases, the Special Committee was informed, there was no necessary connection between the lists the chairs had been invited to submit earlier and those that were returned to them in the brown envelopes of December 8. Whether all chairs were equally in the dark cannot be ascertained, but the facts indicate that responsibility for the decisions rested essentially in the hands of Senior Vice President Whelton, following the deliberations of the administrative group which had defined the category of "mission-critical faculty." In addition to the December 8 notifications, termination notices signed by Dr. Whelton went out to medical school professors, many of whom were still scattered across the country, in the next several days. Outlining the severity of the post-Katrina situation as it affected Tulane finances, the critical paragraph of the particular letter to which the Special Committee has had access reads, "I regret to inform you that as part of the university's response to the financial exigency, the Health Sciences Center and the School of Medicine will be restructured in a manner that involves a reduction in size of the faculty. As part of this reorganization, your position will be eliminated and your employment with the University will end effective January 31, 2006." The next paragraph stipulated that as a result of termination, the professor would receive a monthly severance payment in an amount equal to the professor's monthly base salary plus 50 percent of the current supplemental salary, excluding employee benefits, for three months. No mention was made of any right of appeal under the Tulane statutes.

Members of the Special Committee and the staff spoke either in person or by telephone with twelve professors from the medical school, nine of whom had been directly affected by the cutbacks. Of these twelve, nine were tenured and three were non-
tenured clinical faculty, one of whom had voluntarily left the tenure track several years before to help meet pressing clinical needs. Those who were tenured had been awarded tenure between 1969 and 1998. Four held endowed chairs. One of these was reinstated under pressure from the primary donors, but at a salary based entirely on dollars generated by the endowment with no additional financial support from Tulane, while another, who had been at Tulane for 22 years, stated that none of his salary was paid by the university but rather generated through patient fees and endowment money. Still another endowed-chair holder had also served as department chair until the preceding summer, when he voluntarily stepped down to resume an active research program. One clinician stated that seven-eighths of his income came from the Veterans Administration hospital, with the remaining eighth supplied by Tulane. Of the two other nontenured clinicians, one stated that he had been in patient care for 28 years and generated three-quarters of his own salary through the Tulane clinic and the Veterans Administration hospital, while the other estimated that his patient-care income just about covered his own salary.

At least two of the professors had directed large and well-funded training programs in their discipline. In the Department of Psychiatry and Neurology, with approximately 50 faculty, half were released, including all but one of the tenured psychologists, thus decimating a psychology internship program whose continued accreditation by the American Psychological Association was thus cast in doubt. Elsewhere in the School of Medicine, a basic scientist and the most recently tenured professor among those with whom the Special Committee spoke, carried a full-time teaching load, was active in getting grants, and had been active as well in faculty governance; at the president’s request she had attended, as a representative of PFAC, the meeting of the Board of Administrators at which the issue of financial exigency was discussed. In one case, the department chair of the tenured professor being dismissed had asked that the latter be retained on funds currently available in the department’s master account; the chair was informed that the money could not be used in that manner, and that the program was to be discontinued. Several of the professors had active links in the New Orleans medical community, not only with the Veterans Administration hospital but also with the LSU Health Sciences Center.
In some, though not all, of the foregoing cases, the affected professors contended that previous disagreements with the administration, especially the administration of the medical school, played a role in their release; others had no such record and therefore, weighing their own performance, found the decision puzzling. Reasons for the terminations were repeatedly described as having been based on unclear criteria and carried out secretly. This need not mean that all terminations must be presumed to be without justification, but the question of consistency in the application of standards remains very much open. While the Special Committee has no doubt that income generation played a key role in many if not most termination decisions in the medical school, it noted exceptions made for course coordinators in some areas, while in other cases it found no clear evidence of how much money the Tulane administration believed it was effectively saving in such terminations.\(^{19}\) A number of instances were alleged in which tenured faculty with no recent history of grants and no critical function in either education or clinical training were retained. The perception of age discrimination was almost inevitable in circumstances which favored funding by younger researchers while older professors had taken on unremunerative service activities.

On a purely programmatic basis, it was difficult for the affected faculty to discern the operative principles of selection of who should go and who should stay. Tenure did not seem to pose any additional protection to those who held it, other than more adequate notice of termination and/or severance pay. The Special Committee heard reports that nontenured professors were retained, some of them having been trained by tenured professors who had been let go. In the Department of Ophthalmology, the committee was informed, six of thirteen full-time faculty were tenured, and four were let go, of whom one was tenured. One professor stated he had been told by an administrator that "tenure was not considered." At last report, that department had appointed part-time faculty to teach the pathology course formerly taught by the released tenured professor in order to satisfy accreditation requirements. The perception that the process leading to the termination of an appointment had been anything but transparent was matched by

\(^{19}\)The Special Committee acknowledges, of course, that salary lines may not tell the whole story, and that overhead costs must be factored in as well. But since no disclosure of figures, either aggregate or broken down, is known to have been made by the Tulane University administration, this committee has no way of ascertaining how such considerations played out.
uncertainty as to just what was happening after December, several faculty members
reported that they had heard of some reinstatements but had no more sense of what
principles governed reinstatements than they did of those that had dictated termination
decisions.

D. Faculty Appeals in the School of Medicine

Of four tenured professors in the School of Medicine who contacted the
Association, only one pressed his appeal through the grievance committee of the school
to the Senate Committee on Faculty Tenure, Freedom, and Responsibility (FTFR), an
elected body which is normally the next and final stage of appeal at the faculty level.
FTFR has institutional-level jurisdiction over all appeals involving termination of
appointment. To judge from the school grievance committee’s handling of that case (for
reasons that will be explained shortly), it would in fact have been idle for others to
present their own grievances, and by the time the single appeal reached FTFR it was
summer and the committee was in process of reconstitution. The professor in question
subsequently took a position at another university, and his case warrants brief comment
mainly to dramatize the appellate problems as they existed generally; they were equally
applicable in the case of program discontinuance.

This professor was one of the endowed chair-holders, in his fourth year of service,
with an extensive teaching record (which the administration disputed), little or no record
of external funding (his area of research was the medical humanities, in which such
funding is sparse), and no expectation of clinical service connected with his initial
appointment (although the administration cited that as a reason for the determination that
he was non-essential). In its review of the matter following separate presentations (the
administration declined to make an appearance, providing only a written response and no
opportunity for cross-examination), the medical school grievance committee, in its report
of May 3, supported the administration’s contention that a condition of financial exigency
existed, that the Association’s Recommended Institutional Regulation 4(c) (which the
complainant had adduced in support of his case) was not binding on the Tulane
administration, and that it was “beyond the scope of an Article V review [under the
Tulane faculty handbook] to evaluate the establishment and implementation of criteria for
dismissal of programs or faculty.” It added that the administration had the authority to
redirect endowed funds (which had provided a portion of the salary in this case) to other retained faculty with appropriate qualifications, assuming that the donors were notified of the intent to redirect, and that “because so many other positions were terminated post-Katrina, there were no other ‘suitable positions’” to which the faculty member could be reassigned. The report concluded that the dismissal was carried out in accordance with handbook guidelines, though in what might be termed a slap of the wrist it did state that its assessment of the case “would have been expedited by the presence of an Administrative representation” at the hearing, and it suggested that the appeal would be best served by FTFR, which could ensure uniformity in the application of termination standards.

Regulation 4(c) of the Association’s Recommended Institutional Regulations on Academic Freedom and Tenure speaks to procedural standards in the termination of faculty appointments for reasons of financial exigency. In claiming a right on behalf of the faculty member for a full hearing, it states that such a hearing “need not conform in all respects with a proceeding conducted pursuant to Regulation 5 [which governs dismissal for cause], but [that] the essentials of an on-the-record adjudicative hearing will be observed.” By contrast, Article V of Tulane’s faculty handbook states only that the faculty has the right to have the issues reviewed by the divisional faculty and FTFR. The Special Committee believes that the right of each party to cross-examine the other at a hearing, and the provision of the same evidence to the complainant that is given to the hearing committee, are essential components of a hearing on termination of appointment and that their absence constituted a serious departure from AAUP-supported standards of academic due process.

E. The Appointment Terminations of December 2005: The School of Business

On December 8, 2005, the provost sent out several termination notices to tenured members of the School of Business faculty similar in wording to those received by tenured faculty members in the medical school. The business school professors were issued contracts expiring June 30, 2007. On December 23, Dean DeNisi notified his faculty that as a result of the financial straits in which the university found itself, the school would have to share in the burden of reducing faculty costs.
The School of Business is organized not by departments but by programs, each with a coordinator. According to the dean's memorandum, two programs were now scheduled for elimination and replacement by a differently named entity. One was Marketing, to be replaced by a new unit called Consumer Behavior, and the other was Operations Management/Information Systems, or as it is also referenced in the material, Information and Operations Management (IOM). According to the dean, each area would be staffed by faculty members with expertise specific to the new nomenclature, supplemented by one or two others whose versatility would make them logical additions.

The result of this restructuring, not previously discussed by the general faculty of the school, was, in the event, the appointment terminations of two of the three tenured professors in IOM and four of the six tenured professors in the marketing program. Two of the three nontenured, tenure-eligible professors were retained in the first unit, and both of the nontenured, tenure-eligible in the second, so that the weight of the terminations fell most heavily on the tenured, and older, professors, several of whom had two or more decades of service to the university – one as a tenured full professor for 34 years, another for fifteen.

In the marketing program, three of the four released professors took positions elsewhere and the fourth retired; as of the date of preparation of this report, only one case of involuntary termination of tenure in the business school, that of a more recently tenured faculty member in IOM, remains unresolved. While tenure, as in the School of Medicine, has been acknowledged in notice and severance arrangements, the Special Committee was told that three of the tenured professors over 65 years of age were offered a one-year buyout to leave July 1, 2006, with a 17 percent bonus if they signed an agreement never to discuss their terminations; a similar offer was reported in IOM.

F. Program Terminations in the School of Engineering

As reported above, the Plan for Renewal envisioned the dissolution of the School of Engineering as a separate entity and its absorption, with considerably reduced numbers, into a newly constituted School of Science and Engineering. On December 10, 2005, Dean Nicholas Altiero of the engineering school sent an e-mail to Tulane engineering students expressing his disappointment that the Board of Administrators had decided to discontinue the departments of Civil and Environmental Engineering.
Electrical Engineering and Computer Science, and Mechanical Engineering, and that he had opposed the move. "President Cowen agreed that I presented a very strong case but he said that this is a strategic decision and that, in his view and that of the Board, the three affected engineering departments are far too small relative to their counterparts to effectively compete for national prominence." The departments of Biomedical and Chemical Engineering would be merged into the new School of Science and Engineering as of July 1, 2006, while the degree programs offered by the other three departments would not end until June 30, 2007, so that all current juniors and seniors in those majors could complete their degrees. With additional adjustments contemplated for sophomores, only first-year students, according to the administration, would be affected and would have to transfer to another major if they remained at Tulane. Dean Altiere wrote with respect to the affected professors that "President Cowen, Provost Lefton and I have all offered our assistance in helping them secure positions elsewhere and I am certain that there will be many universities around the country eager to recruit such talented colleagues."

The dean stated that he had been offered, and accepted, the new position of dean of science and engineering because he was "intrigued by the new model that will be implemented at Tulane and would very much like to play a part in its implementation."

He argued that the new model would make cooperation between science and engineering, and between both areas and the medical school downtown, more effective.

G. Faculty Appeals in the School of Engineering

The three affected departments decided to press their appeals separately and sequentially. The first in line was the Department of Mechanical Engineering (DME), whose chair, Professor Monte Mehrabadi, and his colleagues addressed an appeal to President Cowen complaining that the department's fate had been decided without consultation with them. In this, its first documented protest, the department rested the case for its continuance on arguments which continued to be mainstays of its case over the next several months: (1) that the department was financially independent, with two endowed chairs, a named professorship, and a named undergraduate scholarship, a high undergraduate enrollment, ranking second among all uptown programs; (2) that the department was nationally competitive as gauged by the employment record of its
graduates and their recruitment by top graduate programs, its ability to attract high-
performing undergraduates, its ability to attract highly qualified junior and senior faculty,
and its record of external funding; and (3) that the discontinuance of Mechanical
Engineering was unsound because it served as “the foundation for Biomedical
Engineering and provide[d] crucial support for Chemical Engineering.”

As the following narrative illustrates, the process followed in DME’s appeal was
analogous to that in the single case which the Special Committee has examined in the
medical school: the department prepared a careful statement of its case, the
administration responded in terms that were at best obliquely related to the matters at
hand and in some cases inconsistent with the understanding that the complaining person
or body had brought to the table, and in neither case did the two parties hear each other’s
case directly.

In a letter of March 7, 2006, the department took its appeal to FTFR, asking for a
hearing to determine first, whether a state of financial exigency existed at Tulane and had
been determined with adequate faculty participation, and second, whether the extent of
the exigency and the plan to resolve it involved appropriate faculty participation. Third,
it asked whether the process by which the department was being eliminated was
consistent either with “principles of faculty governance of Tulane University or with
AAUP guidelines,” and fourth, whether every effort had been made to place DME faculty
members in other suitable positions as called for in the Tulane faculty handbook.

The initiation of proceedings by FTFR was marked by extended procedural
wrangling. When FTFR outlined a procedure under Article V in the handbook that
would request written testimony in advance of the hearing, a presentation by both parties,
and the right of each side to pose questions to the other if such questions were also
submitted in writing to the committee, the provost objected that FTFR seemed to have in
mind the more formal provisions of Article VI governing the dismissal of faculty. Article
V, under which program terminations were discussed, stipulated only a general right of
the faculty “to have the issues reviewed.” According to the provost, the administration,
under this reading, was obligated only to submit written statements in advance. Dr.
Lefton suggested that FTFR have a separate one-time session in private with Yvette
Jones, senior vice president for external affairs and chief operating officer, and Anthony
Lorino, senior vice president for operations and chief financial officer, "to explore and respond to questions about the issue of financial exigency." Such a private session could then serve as a source of information for any future challenges to the programmatic decisions, on which the two administrators would provide no specific information.20

The department protested what it thought was an unnecessarily restrictive reading of Article V (which, while it did not require, also did not prohibit additional procedural guarantees). It objected also to what it contended were the inadequacies of a procedure based solely on an oral interview of two senior vice presidents, without any obligation to produce documented evidence for the decision and without permitting the right of the department to be present and cross-examine. The administration's view, however, ultimately prevailed with FTFR. On May 11, when the chair and two of his colleagues in DME were permitted to meet with FTFR, the administration sent no representatives. FTFR's meeting with vice presidents Jones and Lorino took place on June 8 with no engineering faculty representatives present. Thus through this point in the proceedings there was no forum in which either side could challenge the other on the merits of their respective cases. Before discussing the findings of FTFR, this report moves now to the substantive, as opposed to procedural, matters of dispute.

To read the exchange of documents that constitute the grounds of dispute, both procedural and substantive, between the two parties is to experience a mounting sense of the surreal. On April 28, still in advance of the proceeding, the administration provided a general statement on the discontinuance of this and the other two departments in the engineering school, and attached a confidential second statement -- to which neither the department nor this Special Committee, as a result of that provision, has had access -- on the state of financial exigency confronting the university.

The statement to which this Special Committee does have access proceeds with what might be described as an air of serene unperturbability. In fact, it provides nothing more than a restatement of the original decision which was by this time a matter of public record:

20 Professor Edward C. Strong, chair of FTFR, to Provost Lefton and Professor Mehrabadi, 11 April 2006; Lefton to Strong, 25 April 2006 and to Strong and the other FTFR members, 2 May 2006. In his first letter, the provost additionally requested that a member of FTFR who was also a member of DME be disqualified from participation in the proceedings. That individual recused himself from participating.
In deciding which programs to retain, which to discontinue, and which to reorganize, the administration took into account, for example, such factors about the University’s academic programs as: past and projected ability to meet enrollment goals; revenue generation, including the extent of tuition discounting in the program, and whether tuition from students in the program may be replaced by enrolling additional students in other programs at little or no incremental cost; reputation and ranking in national surveys; quality and extent of competitive research funding per faculty member compared with other institutions; external support for the program, including restricted and unrestricted gifts; costs associated with operating, improving and expanding the program; program size compared to other programs around the country; and external reviews. Application of these considerations resulted in the decision to eliminate the Departments of Civil & Environmental Engineering, Electrical Engineering & Computer Science, and Mechanical Engineering.

Such a statement provided neither FTFR nor the department with any new information.

If more powerful reasons specific to the dismantling of the department were expressed in the confidential financial statement, then the requirement of confidentiality blocked the department from access to precisely the information that it needed to contest the decision in the first place.

In a document of the same date (April 28), and in a subsequent document dated May 10, 2006, which provided tabular evidence of its contentions, DME offered FTFR extensive evidence in support of its view that, far from representing a fiscal drain on the university incommensurate with its achievements, the department had been highly successful in developing endowment and alumni giving, that it bore its share of indirect-cost recovery funds for the college, outstripping its two nearest competitors in 2004 and 2003, and that it served the third largest enrollment of all departments on the uptown campus and ranked fifth place in all aggregate undergraduate enrollments. The April 28 document, which gave much of the May 10 data in a preliminary form, questioned the “existence and severity of a state of financial exigency at the University.” It presented a defense of the fiscal role of DME in the school, and it questioned “the nature and extent
of faculty participation in the decision to terminate the Mechanical Engineering Department," challenging the adequacy of the discussions within PFAC. A final section dealt with the efforts made, or not made, to find other suitable positions for the affected faculty. Since the new School of Science and Engineering contained a Physical and Material Sciences Division, DME argued, its faculty would provide crucial support for both biomedical and chemical engineering.

The April 28 document also raised questions about the *bona fides* of the university’s declaration of financial exigency, inasmuch as new programs were being put forward, open positions in some fields were being filled, and several new commitments made, notably the reinstatement of several athletic programs and a recently announced $20-million Research Enhancement Fund from which faculty could apply for research expenses.

Provost Leitton replied in a letter of May 10 that, since engineering faculty who had received notices of termination were being retained and given their full salaries until June 2007, it was not yet known what positions might become available before then. Any faculty member receiving notice of termination of appointment was at liberty to express an interest in any open position and would be considered. "I note," added the provost, "that the Faculty Handbook does not require the University to attempt to place faculty terminated by reason of financial exigency in other available positions." As for the question of participation in decision making, the provost responded, "President Cowen and the Tulane Board made the decision to eliminate the Mechanical Engineering Department. As described in prior communications, President Cowen consulted PFAC extensively during the process of formulating the Renewal Plan, during a time when other
faculty members were scattered across the country." Once more, the provost’s letter of
May 10 did not go beyond a recounting of familiar events consequent upon the decision.
It did not discuss the grounds for that decision.

Finally, with respect to how the elimination of the department would contribute to
the alleviation of the condition of financial exigency, the provost wrote as follows:
Professor Mehrabadi’s assertions, that there cannot be financial exigency
because the University has invested in new and existing programs, filled
open positions, and was able to reopen this year, are unsound. The
University was not required to run other programs into the ground in order
to save the discontinued programs. To the contrary, strategic investment
and revitalization are necessary measures to position the University for
survival and success in the future. Further, to the extent that the
University’s financial position appears stronger today than it did last Fall,
that is a result of the Renewal Plan; it does not indicate that the Plan was
not needed. As we have noted previously, the success of the Plan to date
cannot be cited to argue that it should not have been implemented. We
will not know for some years whether the Plan, taken as a whole, has
succeeded in positioning the University for success in the post-Katrina
environment. To unwind prematurely elements of the Renewal Plan
would have disastrous consequences. Moreover, Professor Mehrabadi’s
argument that financial exigency should not take into account projections
about the future is unrealistic and illogical. Fundamental management
principles required the University to gauge the financial condition of the
University going forward, based on available information.

Under Association-recommended policy, “bona fide financial exigency” is defined as “an
imminent financial crisis which threatens the survival of the institution as a whole and
which cannot be alleviated by less drastic means [than termination of continuous faculty
appointments].” By January 2006, with the Plan for Renewal unveiled, the Tulane
administration apparently believed that it could make decisions in the direction of
“strategic investment and revitalization,” decisions which are not normally made in
conditions of financial exigency and for which the term “financial stringency” might be
more appropriate. On the other hand, since the discontinuance of DME and the release of
the faculty members in that department could not take place until 2007, it is not clear on
what other grounds the Plan for Renewal could be considered to have succeeded as early
as May 2006.
Given the difficulties under which both the department and FTFR may be said to have labored as a result of the administration’s insistence on a narrow interpretation of Article V and its refusal to enter into any direct discussion with the department, it is notable that the report of FTFR, issued on June 12, amounted to a comprehensive repudiation of the grounds adduced by the administration for closing DME. It found that the vice presidents who had appeared before the committee “did make a plausible case that the University was facing a severe financial problem in the form of a likely large recurring operating deficit,” but that there was a gap between the general statement presented to FTFR and the specific decisions leading to the elimination of particular units. It stated that extraordinary actions taken to relieve the state of financial exigency should be linked specifically to the reduction of financial stress. “This is essentially a conservator’s approach, aimed at preserving those parts of the institution that are viable, while eliminating those that cannot support themselves and/or are not central to the institution’s financial mission.” Absent such a link, “financial exigency could be invoked to circumvent fundamental university principles that are articulated in its constitution and faculty handbook.”

FTFR observed that, on the basis of material submitted, DME had made a substantial net contribution to the financial health of the school, and that DME met its budgetary goals while “adding to its endowment, enrollment, and indirect cost recovery.” It noted the absence of any countervailing data from the administration. Given these facts, FTFR concluded “that the Mechanical Engineering Department was terminated for reasons other than its financial performance and that, in effect, its elimination worsened rather than improved any exigent financial condition that may have existed.”

On the question of faculty consultation, FTFR further found no evidence that PFAC had provided specific advice on the discontinuance of the department, and it noted that broader consultation was not impossible in an era in which the administration routinely used e-mail, telephone, and video-conferencing to contact faculty. It recalled the fact that PFAC had been restricted by confidentiality, thus reducing whatever channels for consultation might otherwise have existed. It quoted the faculty handbook on the obligation of the administration to make affirmative attempts to place terminated tenured faculty in other suitable positions, and recommended, finally, that the decision be
evaluated by the Senate Committee on Educational Policy, that the department be
retained within the new School of Science and Engineering pending the evaluation
results, and that the administration comply with the handbook requirement “concerning
placement of faculty terminated because of abandonment of a department or program of
instruction.”

On July 13, Professor Mehrabadi sought a meeting of representatives of the
department with President Cowen on the grounds that in January the president had stated
his willingness to be available for discussions arising out of the events of the preceding
fall. The next day President Cowen replied by stating, inasmuch as the administration
was “in the midst of a formal grievance process,” that such a meeting would not be
appropriate “at this time.” Faculty members concerned about their particular status (a
question not raised in the department’s request) could consult Dean Alterior or Interim
Provost Barron, who had by this time succeeded Dr. Lefton as interim provost and senior
vice president for academic affairs. It should be noted that the grievance was regarded as
ongoing because the administration itself had decided to pursue the matter to the next
stage, an appeal to the board challenging FTFR’s report. The administration rejected the
reviewing body’s defense of a “conservator’s approach,” arguing that “the law on point
does not limit faculty terminations based on financial exigency to financially troubled
units.” Nonetheless, the administration was prepared to assert that “the decision to
discontinue Mechanical Engineering would pass even [this] unrealistic test as a net
contributor to the University’s financial losses.” The only point at which the
administration directly addressed the department’s tabular data, however, was in its
observations that the tables
generally purport to show only that the Mechanical Engineering
department met financial targets -- without showing that the targets were
sound; the endowment level associated with the department -- although the
University can apply much of the endowment to other programs and is
working to ensure productive use of all the related, and undergraduate ME
enrollment -- without showing associated expenses or effect on the
University’s financial condition. None of the cited data refute that
discontinuance of the School of Engineering strengthened the University
and was a key element of the Renewal Plan.

On September 13, the department submitted its own response to the
administration’s most recent statement. In a closely reasoned thirteen-page document, it
pointed out, *inter alia*, that the targets were set by the administration itself, not the
department, and that the discontinuance of the school was not the focus of the grievance,
but rather the status of the department as the chief source of contribution to the Material
Science curriculum in the proposed new School of Science and Engineering. To this the
Special Committee would add that the administration’s reference to endowments would
appear to concede that the department’s endowment offered an attractive target of
opportunity for redeployment, whether or not on terms that might have been acceptable to
the original donors. Perhaps the most striking feature of the administration’s response
was its demand that the department be held to a standard of financial proof that was not
in any respect met by the administration itself in its rebuttal. Indeed, it can hardly be said
that its rebuttal met the standard already set by the department.

On September 21, 2006, the board’s attorney notified President Cowen and
Professor Mehrabadi of a hearing scheduled for October 26, at which the administration
and faculty would each be allowed a maximum of three representatives plus counsel, a
maximum of 25 minutes per side to present their respective arguments, and ten minutes
on each side for rebuttal. Whatever the constraints of the format, the meeting on October
26 was the first occasion, and then only at the behest of the board, on which the two
parties spoke with each other in a hearing.

By letter of December 8, 2006, Chair Greer of the Board of Administrators
informed DME Chair Mehrabadi and President Cowen that the board had adopted
recommendations from a subcommittee relating to the termination of DME. The board
thereby determined that a state of financial exigency existed at the time the decision to
discontinue the department was made and that it continues to exist, that Tulane handbook
provisions regarding the termination were followed, that faculty participation in the
decision was not a handbook requirement (although consultation with the faculty did in
fact occur), that, in the context of financial exigency and a reasonable recovery plan, a
department can be terminated based on factors other than past financial performance, and
that placing tenured DME faculty in available new positions is not a handbook
requirement.
The outcome of the Mechanical Engineering appeal brought no immediate word
from the two other engineering departments being discontinued regarding their
previously expressed intent to follow with their own appeals.

Meeting on December 27, the officers of the Tulane AAUP chapter adopted the
following statement for appearance on the chapter’s web site and transmission to the
president of the university, the vice chair of the senate, the chair of FTFR, and AAUP’s
national office:

The recent action of the Board of Administrators in denying the appeal of the
Department of Mechanical Engineering confirms a dismaying current pattern
at Tulane: an utter refusal to give either financial or academic reasons for
abolishing a particular program or department; a similarly pointblank refusal
to respond to the detailed case that the department put forward for its
continuance and the FTFR Committee firmly supported; and a basic disregard
for the university’s obligations to its tenured faculty members. Moreover,
new programs, e.g., Materials Science and Engineering and Engineering
Physics, are being proposed in the School of Science and Engineering for the
Physics Department without reference to the faculty in the Department of
Mechanical Engineering whose professional expertise falls in this area....

Neither faculty tenure nor academic governance at Tulane University will be
secure until the administration acknowledges the key role of professional
career in programmatic decisions and the need to demonstrate why it
believes such expertise should be overridden by other considerations in a
specific case.

H. Major Issues

The Association’s Washington office was in touch on a monthly, and sometimes
more frequent, basis with the Tulane University administration beginning in January
2006 and continuing as more information and additional faculty complaints, whether
about terminations of appointments or closing of programs, reached the office. A
recurring theme of administrative communications at Tulane, as well as in President
Cowen’s correspondence with Association staff members, is that Tulane is obligated to
observe only the procedural standards set forth in the faculty handbook, not those
standards (except where they concur with Tulane’s) promulgated by the Association.
The AAUP speaks for principles that over nearly a century have been widely accepted by
the academic community. While it does not set aside those norms for the prospectively
less stringent procedural protections that may be set for faculty locally, neither does it
believe that as a matter of sound practice a college or university is constrained from
exceeding the minima set by its own published standards on matters of fairness and
fundamental due process. Accepting for the present, however, the president’s view of the
matter, the Special Committee will confine itself in this section of its report to asking
whether the Tulane administration adhered to the provisions that are set forth in Tulane’s
own faculty handbook. The issues present themselves under two principal heads.

1. Termination of Tenured Appointments

Article IV of the Tulane Faculty Handbook sets forth three grounds for the
termination of a tenured appointment: (a) dismissal for adequate cause, (b) “extraordinary
circumstances caused by financial exigency or by bona fide discontinuance of a program
or a department of instruction,” and (c) demonstrated medical reasons that render the
faculty member incapacitated from performing his or her duties. Article V, Section 1,
“Termination of Tenure,” references the specific procedural standards of Article VI
(“Dismissal Procedure”) to be exercised in cases where adequate cause has been alleged.

Section 2 of Article V states that where the termination of a faculty appointment
is based on financial exigency or bona fide discontinuance of a program or
department of instruction, Article VI shall not apply, but faculty members shall be
able to have the issues reviewed by the faculty of the division in which they hold
appointment, then by the Senate Committee on Faculty Tenure, Freedom and
Responsibility, with ultimate review of all controverted issues by the Tulane
Board of Administrators. In every case of financial exigency or discontinuance of
a program or department of instruction, the faculty members concerned shall be
given notice as soon as possible and never less than twelve months notice, or in
lieu thereof they shall be given severance salary for twelve months. Before
terminating an appointment because of the abandonment of a program or
department of instruction, the institution shall make every effort to place affected
faculty members in other suitable positions. If an appointment is terminated
before the end of the appointment period because of financial exigency or because
of the discontinuance of a program of instruction, the terminated faculty
member’s place shall not be filled by a replacement within a period of two years
following the effective date of termination, unless the terminated faculty member
has been offered reappointment and a reasonable time within which to accept or
decline it.

As has been seen, although the School of Engineering Grievance Committee recused
itself from a divisional review of the closing of DME, review by FTFR and ultimate
review by the board did take place under the terms of this provision. The administration
also points out, correctly, that it gave notice not only in accordance with, but also in
excess of, the faculty handbook’s twelve-month notice requirement, and in the case of
medical school faculty whose services were terminated immediately, twelve months of
severance pay.

With respect to the obligation of the institution to “make every effort to place
affected faculty members in other suitable positions,” the Tulane administration has been
less forthcoming. In response to a staff letter of May 10, 2006, President Cowen and
Board Chair Pierson wrote that “the Faculty Handbook does not require the University to
attempt to place faculty terminated by reason of financial exigency in other available
positions. A sentence in the Handbook regarding placement of faculty, cited by some
faculty members, when read in the context of the several sentences that precede it, does
not apply under financial exigency.” This reading of Article V, which figures in
subsequent correspondence and declarations made intramurally, strikes the Special
Committee as tortuous. If the discontinuance flows from an assertion of financial
exigency, as occurred at Tulane late in 2005, then the administration is making a
distinction without a difference, a form of hair-splitting that does not square with the
president’s widely reported impatience with normal bureaucratic processes under
extraordinary circumstances. Indeed, it seems most unlikely that, but for the
extraordinary fiscal consequences of Hurricane Katrina as they were perceived, the
administration would have moved to close DME in the precipitate manner in which it did.

The May 10 letter to the staff from Dr. Cowen and Chair Pierson continues,
“Nonetheless, the University intends to consider terminated faculty members for any
open positions in which they express interest if they are qualified.” Given the June 2007
notice, “it is not yet fully known what positions may become available before then or in
what positions terminated faculty members may be interested.”

In the case of DME, the administration had already made plans for material
science courses in the new school, and a proffer of appointment to affected DME faculty
would appear to be a logical consequence which, whatever the fate of DME as a unit,
need not have been deferred until June 2007. But a still more fundamental point lurks
behind the administration’s reply, and has implications beyond the status of the
Department of Mechanical Engineering. Instead of making every effort of its own, the
administration has placed the burden on the dismissed (tenured) faculty – the “talented
colleagues" of Dean Altiero’s letter -- both to apply for such positions and to shoulder the
evidentiary burden for being restored to the Tulane faculty. In effect this places the
affected professors in the same position as a candidate for a junior position. The Special
Committee regards this as an entirely unacceptable way of proceeding in the case of
tenured faculty members, some of whom have given a career of service to the institution.
The Tulane administration appears to have lost sight of the fact that it was obliged itself
to make every effort to place affected tenured professors in suitable positions elsewhere
in the university before acting to terminate their appointments.

The final sentence of the handbook’s Section 2, quoted above, spells out a
different consequence in the case of terminated tenured appointments in the School of
Medicine, where notice under the twelve-month standard did not apply because of
immediate drops in revenue. As has already been stated, the Special Committee received
disquieting reports that in some cases nontenured faculty were retained to teach courses
that tenured faculty had taught and in some cases trained them to teach. The
Association’s staff raised this question on several occasions with the Tulane
administration, but its only response turned on the earlier decision of the medical school’s
grievance committee (in that committee’s own words) not to “evaluate the establishment
and implementation of criteria for dismissal of programs and/or faculty,” including
dismissal of tenured as opposed to nontenured faculty. The administration argued that
that committee had concluded in regard to such matters that (again in its words) “due
process had been initiated and is being carried out in a manner consistent with the Faculty
Handbook.”

But even if, as in this case, the administration’s position is that the scale of
dismissals in the School of Medicine did not permit the relocation of affected faculty in
other departments, the faculty handbook does stipulate that “the terminated faculty
member’s place shall not be filled by a replacement within a period of two years
following the effective date of termination, unless the terminated faculty member has
been offered reappointment and a reasonable time within which to accept it or decline it.”
The AAUP’s own principles do not preclude the retention of nontenured over tenured
faculty, but they permit such an action only if a serious distortion of the academic
program would otherwise result.21 While new faculty members have been appointed in
the School of Medicine, the Special Committee is unaware of the administration’s first
having approached any of the displaced tenured professors. Absent further and more
compelling evidence, therefore, the only reason that the Special Committee can discern
for such practices in the School of Medicine is that nontenured faculty simply do not cost
as much as tenured faculty. And absent additional evidence based on the records of duly
constituted faculty hearings (the grievance committee’s decision in one such appeal was
apparently taken as the standard for all such appeals), the Special Committee has seen
nothing to dispel the appearance that personnel decisions in the School of Medicine as
well as in the School of Business amounted to a kind of “cherry-picking” intended, at
least in some cases, to settle old scores. In effect, the proceedings as orchestrated by the
administration provided no more of an obstacle to the termination of a tenured than that
of a nontenured appointment, even where some deference was paid to tenure by the terms
of the notice or severance pay.

2. Academic Governance and the Bona Fides of the Declaration of Financial
Exigency

As the foregoing discussion indicates, the only faculty committee to play a role in
the decision to declare a state of financial exigency was the President’s Faculty Advisory
Committee, which acted to endorse the statement on what was presumably a mixture of
considerations: the recognition that the fiscal situation at Tulane did seem to be very
serious, the need to show some degree of unanimity at a moment of crisis, and less
positively the sense that, as one person put it, “the train had left the station,” and that
there was no point in resistance. While PFAC is a creature of the senate and therefore
presumably has some reporting obligations to that body, it seems also to have been the
case that, on occasions in the past, the nature of its exchanges with the president had been
confidential. Nonetheless, the repeatedly recited view of the administration, that
consultation with PFAC represented all that was possible or indeed necessary under the

21 Recommended Institutional Regulations on Academic Freedom and Tenure, Section 4 (c) (3). In light of
the Special Committee’s decision to restrict the discussion in this section to Tulane’s compliance with its
own regulations, it does not adduce this reference to argue that under Tulane policy it should have been
applied, but only to dispel the frequent misunderstanding that the Association under all conditions, without
respect to the facts of a given case, favors the retention of tenured faculty over nontenured faculty. That is
a guiding presumption, indeed, but it is not without exceptions.
circumstances of looming fiscal crisis and a faculty scattered in all directions, warrants
some additional analysis.

While communications with the faculty were no doubt difficult in the first few
weeks following Katrina, they were not impossible, and technological difficulties appear
to have been alleviated well prior to the reopening of the uptown campus. Certainly at
the school level, where communications among smaller groups of peers facilitated
exchanges, academic decision making did not altogether grind to a halt. Thus the dean of
the business school, who was in touch with most if not all of his faculty, had formed a
faculty task force to redesign the MBA curriculum, a task completed before the campus
opened in January.

Once PFAC had begun its meetings prior to the declaration of financial exigency,
the stipulation of confidentiality made it impossible for faculty members not on that
committee to ascertain what was going on. Even assuming, however, that PFAC itself
was given only an overview of the facts and, in broad outline, their implications,
individual faculty members facing termination of their appointments, and faculty
representatives of programs threatened by discontinuance, should have had access to
something more than a blanket statement of criteria that are far from self-explanatory in
their application to individual cases. At a certain juncture in circumstances such as
Tulane faced, therefore, the Special Committee would argue, if suspicion about the
administration’s motives was to have been either forestalled or dispelled, that openness
and candor rather than a continued adherence to confidentiality would have been in the
administration’s own best interest.

Much of the effective power in Tulane’s system of faculty governance rests, the
Special Committee is informed, at the school level. The Faculty of Liberal Arts and
Sciences, however, contrary to its own bylaws, played no part in recommending its own
division into a School of Liberal Arts and a new School of Science and Engineering, the
creation of a category of Professors of Practice, or the suppression of Newcomb College
and the Paul Tulane College as separate entities. Similar reports, documented in varying degrees, have reached the Special Committee from faculty representatives of other schools. The role of department chairs seems equally unclear, with some of them claiming that the personnel decisions reported to them, particularly in the School of Medicine, bore little or no resemblance to the recommendations they had made. The Special Committee has also noted several instances in which deans made similar disclaimers to their faculties and stressed their own resistance to the plans finally implemented. This pattern of decision making does not augur well either for the faculty as a whole, deprived of a strong central body to urge their claims, or for spirited and independent administrators.

I. Concluding Remarks

The bona fides of the declared state of financial exigency and its continuance -- which the administration has argued (in letters to the Association) must for now be seen as indefinite -- need also to be weighed. The Special Committee takes no position regarding the likelihood of adequate recovery through insurance, a point still unsettled (and indeed, the committee is informed, in at least one case in litigation). Neither does the committee protest that more attention was not given to across-the-board salary cuts, briefly canvassed by PFAC but not endorsed by the administration, since a plausible argument can be made that a proper response to financial exigency does not necessarily include an action that might have in fact precipitated resignations in the units that were singled out for survival and long-term strengthening, as well as among faculty members whom the institution might be most eager to keep. Nor would the Special Committee presume to second-guess decisions regarding the possible use of the Tulane endowment for operating expenses; indeed, the administration's decision not to draw down the endowment in such a manner has powerful arguments in its favor. As matters presented themselves in December 2005, the committee would acknowledge further that the

22 The language of the constitution of the Faculty of Liberal Arts and Sciences, Section II ("Responsibilities of the Faculty"), reads in part that the faculty has primary responsibility for "(1) Formulation and implementation of academic plans and policies; (2) Its own governance; (3) Election of faculty representatives to advisory and decision-making bodies at the University-wide level; (4) Discharging the following responsibilities... (d) Establishment and maintenance of educational and instructional standards and policies and the recommending of procedures and decisions governing faculty status... (5) Formation, elimination, division, and merger of academic departments."
administration may have had strong prudential grounds for fearing a more substantial loss
of returning students and tuition income.

Since December 2005, however, the administration has publicly announced a
recovery of over $200 million from a variety of insurance, federal, and private sources. It
has donated $1.6 million to a local public school and started a new $20-million research
endowment fund for which faculty members can apply. It did not freeze hiring, and
according to press reports it purchased an apartment building from an investor who sold it
to the university within a week after his own purchase at an estimated 30 percent above
the market price. It has made advances on a new stadium and rented a cruise ship for
classroom space. The repeated declarations of President Cowen that the public has
reason to trust in a revitalized Tulane sit oddly with the continued arguments directed
internally at the faculty for the draconian cuts of the fall 2005 semester and the continued
refusal to entertain arguments that some of the cuts have in fact adversely affected the
university’s income prospects.

In the meantime, the School of Medicine has released a draft of its 2007 strategic
plan, which sets forth the next stage of the “remarkable recovery efforts following
Hurricane Katrina,” including the hiring of “additional research-active faculty” and,
perhaps ominously if vaguely, a removal of “the institutional barriers that currently
exist.” A key paragraph under “Overarching Goals,” entitled “Retention and
Recruitment of Faculty,” reads:

The loss of faculty within the School of Medicine will have a significant impact on the
number of faculty available to teach medical students, graduate students and residents; to
practice medicine; and to conduct basic, translational, and clinical research. It will be
important for us to focus on retaining the remaining faculty and recruiting additional
strategically-targeted faculty to help support the education, research, and clinical
missions.

With this kind of public language, it is difficult to accept President Cowen’s
representations to the Association that a state of financial exigency continues to exist at
Tulane. Indeed, the conclusion seems inescapable that the administration of Tulane
University and its medical school used the declaration of financial exigency to enable it
to undertake a major reshaping of the existing body of faculty and a new set of

23 Tulane University School of Medicine, 2007 Strategic Plan, Draft for Review, n.d., p. 10.
commitments no less ambitious, far-reaching, and expensive than those which it had just
shed.

The Tulane administration appears to have used the declaration of financial
exigency to cover decisions which, as the Special Committee has seen in a number of
cases, do not provide any obvious relief from financially exigent circumstances. Thus
FTFR pointed out, correctly, that except when such a link is shown, financial exigency
may simply be a means of circumventing “fundamental university principles that are
articulated in its constitution and Faculty Handbook.”

The oscillation between an overly literal reading of existing rules and a liberal
disregard of others, depending on whether or not they support the administration’s
position, may derive in part from the role of President Cowen as an energetic
administrator, impatient with precedent and eager to fashion a new vision for the
university. Dr. Cowen’s own field is management, and he is a well-published writer on
management issues. Revealing, perhaps, is a comment attributed to President Cowen in
the on-line Times-Picayune, Everything about New Orleans (www.nola.com), which
interviewed him in his capacity as a member of the mayor’s Bring New Orleans Back
Commission with special responsibility for public education reform. Citing the need to
move more quickly in that area, he is quoted as saying, “We’re moving at what I call
bureaucratic time, rather than entrepreneurial time, where you realize speed is of the
essence.” He reports, when informed that his idea for running the city’s schools with a
board of business and community leaders would violate the Louisiana state constitution,
that “my view was I’d find a way around it, because these are strange times. We’re at a
tipping point with the school system, and one way to proceed is to throw out the old rule
book, which we didn’t do. Instead people said, ‘We’ve still got the old rule book out
there and we’ll do the best we can with it,’ but unfortunately that always leads to
suboptimal results.”

Equally disturbing to the Special Committee was the general sense of betrayal that
some faculty members said they felt and continued to feel at the decision to terminate
their appointments. The chief harvest of the events of fall 2005, not only in the School of
Medicine but also in other units of Tulane, seems to be a pervasive mistrust. President

Cowen and Board Chair Pierson, in their correspondence with the Association, repeatedly
and correctly pointed to the unprecedented disaster Hurricane Katrina represented for the
entire city of New Orleans. It is not, however, clear that an appropriate response was to
bring about an equally unprecedented disaster in terms of what was among the highest
numbers of tenured faculty terminations, at a single blow, in the history of American
higher education. If academic freedom, tenure, and faculty governance cannot withstand
the most unprecedented disaster, they will be increasingly at risk in the face of lesser
challenges. Those professional institutions of academic freedom, tenure, and governance
all derive ultimately from the classical formula of the 1940 Statement of Principles on
Academic Freedom and Tenure, which describes faculty members not as employees but
as officers of their college or university, and the 1966 Statement on Government of
Colleges and Universities, which assigns to the faculty the primary responsibility for
such fundamental issues as curriculum, subject matter and methods of instruction” as
well as “faculty status.” The great universities with which Tulane would like to compare
itself are those where, over many years, these standards have been upheld and where, as a
result, faculty quality as well as faculty morale has flourished.

J. Conclusions

1. The Tulane University administration’s refusal to provide any but the most generic
evidence with respect to the declared state of financial exigency, as well as its refusal
to elaborate on its reasons or in at least one major case to participate directly in the
hearing process, effectively deprived individual faculty members, whether tenured or
nontenured, of the ability to assess the bona fides of the declaration and its
application to their particular case. The administration’s actions thereby disregarded
the applicable provisions of the 1940 Statement of Principles on Academic Freedom
and Tenure and the Association’s derivative Recommended Institutional Regulations
on Academic Freedom and Tenure.

2. In declining to take any steps to relocate affected tenured faculty members in other
suitable positions, the administration of Tulane University acted in violation not only
of the procedural standards of the Association set forth in Recommended Institutional
Regulations 4(c)(4) but also of its own stated policy.
3. In reorganizing the Faculty of Liberal Arts and Sciences into separate schools of liberal arts and sciences and engineering without faculty consultation, the administration also acted in disregard of the *Statement on Government of Colleges and Universities* as well as that faculty's bylaws with respect to its right to determine its own organization.

4. In discussions to terminate more than 200 faculty appointments on the grounds of financial exigency, the Tulane University administration made no perceptible distinction between tenured and nontenured faculty members except in the terms of notice and/or severance pay. Coupled with recent and ambitious plans for rebuilding, the administration has not only undercut its own claims of continuing financial exigency but has also demonstrated a view fundamentally inimical to the system of academic tenure.
VII. Overall Observations

From the investigations and the resulting findings and conclusions, several overall observations emerge as prelude to general conclusions.

*First*, none of the authors of the applicable existing personnel or other policies could possibly have imagined conditions approaching the gravity of those that the New Orleans universities faced in the days following Hurricane Katrina. Such policies were framed in the context of fathomable, if not familiar, challenges, and could not have anticipated the inconceivable.

*Second*, however, the relevant AAUP-supported policies – most notably those that recognize the special challenge of “financial exigency” -- are sufficiently broad and flexible to accommodate even the inconceivable disaster. These policies have, in fact, been successfully invoked (as documented through AAUP experience) in situations which may not have matched the gravity of those in New Orleans in fall 2005, but which surpassed conditions that the institutions eventually forced to declare financial exigency had anticipated.

*Third*, applicable AAUP policies that address financial exigency might -- but should not -- be confused with other policies that permit termination of continuing appointments because of the bona fide discontinuance of an academic program or department essentially for educational reasons. There are situations in which financial considerations lead to program discontinuance. Whether financial exigency mandates the discontinuance is crucially important in determining which procedures are followed.

*Fourth*, the AAUP’s recognition that a condition of financial exigency may justify termination of tenured and continuing appointments presupposes extensive faculty consultation both in the making of such a declaration and in its implementation, as well as rigorous procedural safeguards to protect affected faculty members. However grave the institution’s fiscal situation may be, and however clearly a lay observer might assume that fiscal exigency did exist, adverse personnel judgments are permissible only if the attendant procedures have been scrupulously observed.

*Fifth*, however cumbersome faculty consultation may at times be, the importance and value of such participation become even greater in exigent times than in more tranquil times. The imperative that affected faculties be consulted and assume a
meaningful role in making critical judgments reflects more than the values of collegiality;
given the centrality of university faculties in the mission of their institutions, their
meaningful involvement in reviewing and approving measures that vitally affect the
welfare of the institution (as well as their own) becomes truly essential at such times.
The Special Committee has been impressed with how deeply devoted the vast majority of
faculty appeared to be to their institutions at a time of stress and, often, of significant
personal economic loss. Administrators were able effectively to draw from that
wellspring in dealing with the immediate aftermath of the disaster, in pulling their
institutions together. But an institution cannot be rebuilt on mistrust or worse on a
broadly shared sense of betrayal. Action that manifests regard for the faculty’s collective
role is essential in order to rebuild commitment and trust.

Sixth, the Special Committee is unaware of evidence that the faculties of the New
Orleans universities failed to appreciate the gravity of the post-Katrina environment and
the severe consequences of drastically changed conditions. Indeed, it is evident to the
committee that the faculties by and large understood the critical challenge their
institutions faced and were prepared to share in the sacrifices that would be required in
the rebuilding process.

Seventh, the central issue before the Special Committee has not been whether,
given the benefit of hindsight and time for reflection, it might have addressed the post-
Katrina situation at the particular institution differently. Rather, the committee believes
the fair and proper issue to be whether key actions that were taken at the five investigated
institutions departed significantly and detrimentally from their own and AAUP-
recommended policies designed to protect academic freedom and due process.

Eighth, the Special Committee learned of examples of commendable practice on
the part of several of the beleaguered institutions, and appropriate note has been taken in
the preceding chapters. The laudable incidents do not, however, mitigate or diminish the
Special Committee’s deep concerns about reprehensible actions, nor do they excuse
lapses in other areas.
VIII. Overall Conclusions

The wide variations in both practice and policy make generalization in this concluding section difficult. Yet the Special Committee has identified several areas of overarching concern and importance, affecting (albeit differently) the faculties of all five of the institutions it has studied. Recognizing the limits of aggregation under such circumstances, the committee offers the assessments that follow.

1. Pre-Katrina Policies

Pre-Katrina Faculty Policies, Though Reflecting Varying Degrees of Commitment to Academic Freedom and Due Process, Provided Templates Which, If Scrupulously Followed, Would Have Averted Many of the Harmful Results.

Although the relevant policies to be found in the pre-Katrina faculty policies of some of the New Orleans universities conformed more closely to AAUP recommendations than did others, rigorous adherence to those preexisting policies would almost certainly have done much to ensure due process and fairness even in the face of catastrophe. As the preceding reports have noted, significant departures from or complete abandonment of the established procedures cannot easily be explained, since it appears to the Special Committee that compliance was by no means impossible. Specific areas of such deviation will be noted in the paragraphs that follow; suffice it to say that the established rules, had they been followed, would probably have prevented most of the problems noted in these reports.

2. Disaster Preparation

Disaster Preparation Was Also Uneven, and Might Well Have Included Keener Anticipation of Problems in Communicating with Faculty and Obtaining Information.

Although the Special Committee does not have full information about the degree of disaster preparedness, its members were not surprised to learn that major flooding and storm damage had been widely anticipated, as one would expect in a community so prone to such natural occurrences. At least one of the New Orleans universities had an information technology and electronic data backup immediately available a thousand miles to the north, while another had detailed evacuation plans that made possible prompt relocation to Houston of vital programs and activities. The gravity of Katrina did, however, severely impede physical relocation, and for a time precluded access to theoretically available backup systems. Thus, while the affected institutions were
certainly prepared for an imaginable disaster, they could not have anticipated the
systemic disruption that actually occurred.

3. Adherence to Policy
Widespread Failure to Adhere to Stated Policy Almost Universally Created Serious,
Sometimes Inexplicable, Lapses in Protecting Academic Freedom and Due Process.

In only one of the five investigated cases did the institution properly invoke a pre-
existing basis for termination of continuing faculty appointments. The governing board
of Tulane University initially declared financial exigency in a manner that drew minor
Special Committee concerns, but was basically consistent with handbook provisions. The
boards of two public institutions, however, the LSU Health Sciences Center and Southern
University at New Orleans, reverted to the concept of “force majeure,” nowhere
recognized or defined in prior personnel policy, and accordingly bypassed or preempted
policies which, if conscientiously applied under the drastic conditions of post-Katrina
New Orleans, might well have warranted a prompt and faculty-endorsed declaration of
financial exigency. Several months later, financial exigency rather than “force majeure”
was declared for the third public institution, the University of New Orleans, but the
declaration was accompanied by procedures for implementation that discarded essential
safeguards of academic due process for tenured faculty that the existing financial
exigency policies had clearly mandated. The board and administration of Loyola, the
fifth institution, made no attempt to invoke the financial exigency provisions in the
faculty handbook (which apparently were seen as not justifying a consequent declaration
at a campus that suffered much less physical devastation than the three publics). Instead,
the Loyola administration invoked established provisions for program discontinuance that
(as the Special Committee has recognized) virtually track the AAUP-recommended
policies – but then proceeded to disregard attendant procedural safeguards that are vital in
order to terminate continuing faculty appointments when programs are closed out even
for the soundest of educational reasons.

4. Rationale for Extraordinary Action
The Rationale for Extraordinary Action Not Only Varied Widely But Also in
Several Cases Failed to Invoke Conditions That Might Have Warranted Draconian
Steps, Albeit Within Procedures That Were Seldom Actually Observed.
Here, too, the response to the Katrina disaster varied widely. Although the
Special Committee is not sufficiently informed to make an independent appraisal of the
financial condition of any of the five institutions, it notes that the extent of reliance on
what were sharp declines in income reflected no consistent pattern across the city.
Ironically, Tulane University, which declared financial exigency, seems to have been
financially far less pressed than the two public institutions that eschewed such a
declaration but might well have been better able to demonstrate that “imminent financial
crisis which threatens the survival of the institution as a whole” which AAUP-
recommended policy posits as an essential prerequisite.

A related and highly sensitive issue should be addressed here. The Special
Committee heard statements to the effect that several of the New Orleans universities
took advantage of Katrina and its aftermath to effect major changes – both programmatic
and personnel – that would otherwise have been impossible or difficult and time
consuming to accomplish. At least three of the institutions had, before Katrina,
considered plans for significant change along lines that actually were initiated after the
storm. Such a concordance would not, by itself, necessarily taint the eventual response.
Indeed, it would have seemed unwise to disregard such prior plans in the rebuilding
process. There is surely no imperative that an institution suffering such devastation must
recreate its former self without modification. A question that has troubled the Special
Committee is whether Katrina created an opportunity to make major changes –
specifically, to terminate the appointments of certain tenured faculty members – that
could not have been made in the absence of such devastation. The Special Committee
has been made aware of allegations in a few instances that the Katrina emergency was
used as a subterfuge to rid the institution of faculty troublemakers or critics of the
administration, but the committee has not been provided with requisite evidence that
would warrant pursuing these complaints. The concerns here are subtler, and simply
prompt the committee to question whether Katrina provided a convenient occasion for
effecting major programmatic and personnel changes without following procedures that
would have been unavoidable in the absence of a natural disaster.
5. Quantity of Terminations
The Numbers of Persons Affected Also Varied Widely, Though at All Institutions
the Number Who Were Initially Notified of Adverse Personnel Action Exceeded the
Inescapable or Minimal Needs of the Institution, Sometimes Substantially.

It is too early as of this writing to prepare a reliable tally of the number of persons
whose teaching careers were severely disrupted or terminated by Katrina-related actions.
The scale of announced involuntary temporary or permanent release of faculty members
varied widely – from well over 200 at Tulane to much smaller numbers at the University
of New Orleans and Loyola. There also remains a substantial discrepancy between gross
and net figures. Some persons who had initially been targeted for furlough or termination
have been reinstated, and some still may be. Others simply resigned, retired, or took jobs
elsewhere, and thus might not be counted as Katrina victims in a final tally – even though
the adverse effects on many of them may have been almost as harsh as on those who did
not leave on their own. In a few cases, internal review procedures have not yet run their
course, and in others litigation is in prospect.

6. Faculty Consultation
Faculty Consultation in Most Cases Not Only Fell Far Below Minimal AAUP
Standards, But Also Below the Level of Consultation That Could Have Been
Achieved.

The actual extent of faculty consultation, a vital element in declaring financial
exigency or discontinuing academic programs, varied widely. At Tulane, the
administration did seek and obtain the concurrence of the designated faculty committee
before seeking such a declaration, though members of that committee were uncertain
whether less drastic alternatives had been fully canvassed. Consultation with respect to
the implementation of exigency – Tulane’s Plan for Renewal – was less extensive. At the
University of New Orleans, the faculty and/or its representative bodies were kept
informed of the Restructuring Plan at various stages, but how much actual consultation
occurred is uncertain. At the other end of the scale, consultation was virtually non-
existent at the three other investigated institutions. (Apparently this was also the case at
Xavier University, whose president, Norman Francis, stated in response to the
Association’s concerns that “it was totally unrealistic to suggest that we had time to
consult with faculty regarding our reduction decisions.”) Consultation with the faculty
was not even attempted in two cases, and sought in so perfunctory a fashion at Loyola as
to be almost meaningless. Loyola’s president has insisted that he spent “countless hours
in one-on-one and small group meetings with faculty,” but there is no record of actual
consultation with the most appropriate faculty bodies or indeed of recognizing the official
role of these bodies under Loyola policies in the decisions that were reached.

The distinction between “knowledge” and “notice” is crucial; though some, even
many, professors may have been aware of the administration’s planned course of action,
and may even have had an opportunity to speak with the president, there simply is no
substitute for a scheduled meeting with the duly constituted faculty committee, affording
it an opportunity to review and appraise all relevant data. Indeed, the data component
identifies one other failing of consultation. Even at Tulane, where data sharing seems to
have been by far the most extensive, faculty committee members were enjoined to
silence, while the administration’s posted data at Loyola were so incomplete and
inaccurate that even their systematic review availed a faculty committee little. As for
Tulane’s medical school, there does not seem to have been any consultation in shaping
the criteria that drove the massive number of faculty terminations.

One final comment about the perplexing paucity of consultation seems in order.
The avoidance of any faculty review at some campuses and its limited use at others seem
to reflect an administration view that professors could not be trusted to assess the perilous
condition of their institution, or to advise on appropriate responses – a disheartening
inference at best. That collegial governance seemed to function so poorly in calamitous
times does not bode well for calmer conditions.

7. Notice
The Notification and Timing of Personnel Actions at Most Institutions Also Failed
to Meet AAUP Standards and Created Needless, Even at Times Unconscionable,
Uncertainty.

In this regard the variation among the universities was perhaps most pronounced.
Tulane, most conscientious in this respect (as the preceding chapter on Tulane
recognizes), gave notice to tenured faculty “not only in accordance with, but exceeding,
the [AAUP] twelve-month notice requirement, and in the case of the medical school
faculty whose services were terminated immediately, twelve months’ severance.” The
same could not be said of the other New Orleans universities. Loyola did provide a year
of severance payment for laid off faculty, but otherwise severed the targeted professors
from campus responsibilities and privileges within a brutally brief time period. Teaching
by some of the professors that had already been scheduled for the next semester was
immediately reassigned to others, thus disregarding a basic AAUP premise that removing
a faculty member from assigned teaching responsibilities is tantamount to summary
dismissal unless that person is the subject of a current dismissal proceeding and his or her
continued presence poses an immediate threat of harm. Moreover, the affected Loyola
professors were deprived of their offices, computer access, and library and parking
privileges. No reasons were given for such peremptory and summary eviction. Nor was
any cogent explanation given for similarly abrupt displacement of most of the furloughed
faculty at the two public campuses following the “force-majeure” declarations. Although
arguably the concept of “furlough” implies immediacy in implementation, the absence of
pre-existing policy left matters of timing, as well as the selection of the faculty members
to be furloughed, to the unfettered discretion of the administration.
8. Alternative Placement
Alternative Placement of Affected Faculty Universally Fell Below AAUP Standards,
But also Fell Short of the Institutions’ Apparent Capacity to Mitigate the Harshest
Effects of Inevitable Personnel Reductions.

It was in the area of placement and help in finding suitable alternative positions
that all the investigated New Orleans universities may have failed most seriously. At the
LSU Health Sciences Center, faculty furloughs seem to have been made (quoting from
the report’s LSUHSC chapter) “without acknowledgment or apparent recognition of
eligibility of potentially furloughed faculty to a preemptive right to transfer to other
positions for which they were qualified.” While furloughed faculty have apparently been
considered for reinstatement as positions reopened at LSUHSC, and some have been
reinstated, tenured furloughed professors have apparently not been recognized as having
the right to be recalled that AAUP’s Regulation 4(e) provides. The situation at Loyola
was most puzzling; although the official university policy on program discontinuance
expressly imposed a pre-termination duty to “make every effort to place the faculty
member concerned in another suitable position” and, failing such a placement, only with
“severance salary equitably adjusted to the faculty member's length of past and potential
service,” there does not seem to have been even cursory compliance with the placement
provision. Finally, the Tulane experience is uniquely complex. Although a fair reading
of the financial exigency provisions – adapted almost verbatim from AAUP-
recommended policy – seems unambiguously to create a duty of alternative placement,
the university’s administration drew no such inference. In what this report’s Tulane
chapter terms a “tortuous” exercise in close reading, the university administration insisted
that the placement duty applied only to program discontinuance and not to the effects of
financial exigency – a curious irony for an administration that had generously construed
the timing and notice provision in the affected professors’ favor.

9. Internal Review

Opportunity for Internal Review of Adverse Judgments Failed to Meet Most
Accepted Standards of Due Process as Well as the Institutions’ Own Established
Review Procedures.

In no case did the opportunity for internal review of an adverse decision match the
expectation that AAUP-supported policies or the institution’s own pre-Katrina
procedures would have sustained. Nor did any of the five institutions adequately explain
the need for such a departure. Loyola, for example, provided in its AAUP-based policy
on program discontinuance for substantial hearings of record, yet layoffs were
implemented before the scheduling of hearings in which the administration is required to
demonstrate the need for the layoffs. Tulane’s financial exigency policies also provided
for substantial hearings on the record; there were problems with the administration’s
cooperation, and in the one completed case the administration and then the governing
board rejected the findings and recommendations of the faculty hearing body that
strongly supported the faculty complainants. The public institutions that operated under
the “force majeure” declaration had effectively replaced the substantial existing official
procedures with a manifestly inadequate substitute – a five-day window within which to
seek review by the very campus administrators who had made the adverse judgment,
followed by an even briefer period within which to seek review by the system’s chief
executive. The Special Committee notes that the procedure actually offered to these
affected faculty members fell far short of AAUP-recommended standards or of the
institution’s previously existing policies for any adverse personnel action with such grave
consequences.
10. Tenure

Faculty Tenure, Previously Recognized and Generally Respected by All the
Institutions, Received Far Less Deference Than AAUP Policy and Prior Practice of
These Institutions Would Have Required.

The pervasive and troubling conclusion from the separate reports is that faculty
tenure received little if any of the deference that both institutional tradition and AAUP
policy would compel. Each of the New Orleans universities had long accepted the
institution of tenure and had conferred that status upon post-probationary members of its
faculty. Pre-Katrina policies uniformly recognized the special status of tenured faculty.
Yet in the application of the storm-driven policies, that distinction seems to have been all
but obliterated in several ways. In the process of selecting faculty for termination of
appointment or furlough, the most that could be said is that tenured status appears to have
been one among myriad relevant factors. Even where affected faculty members applied
for alternative positions within the institution, the burden fell upon them in ways that
strike the Special Committee as quite inconsistent with traditions of tenure. Particularly
outrageous to the committee were reports it received of situations in which tenured
professors were actually replaced by—or at least their teaching tasks were assigned to—
nontenured persons whom in several cases the released senior person had actually trained
for that task. The distressing conclusion from such data is that faculty tenure, contrary to
AAUP policy and the institutions' own historic commitment, made far less difference
than it should have made, and received substantially less deference than it deserved.

11. Prospects for Academic Freedom

The Condition of Academic Freedom in the Investigated New Orleans Universities
Remains Alarmingly Uncertain.

A recurring theme echoed at all the institutions investigated was the concern that
Katrina provided the occasion to single out faculty for separation who were disliked by
those in authority for having previously opposed or criticized their actions or who were
seen as expendable. The Special Committee has not attempted to assess these charges,
nor could it. Given the manner in which these decisions were made—the malleability of
standards, the absence of meaningful faculty involvement, the disregard for tenure, and,
often, the inadequacy of review—it is almost inevitable that such would be a common
perception. This leaves all the affected institutions under a cloud of suspicion that cannot be dispelled and that augurs ill for the future absent effective remedial action.