

## 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 that, if scrupulously followed, would likely 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 pre-existing 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 have expected 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 invoke a preexisting 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 policies, and accordingly bypassed or preempted policies that, 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.



A 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, before Katrina, had 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, however, 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 two hundred 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 al-

most 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 the declared state of exigency—Tulane's Plan for Renewal—was less extensive. At the University of New Orleans, the faculty, its representative bodies, or both 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 nonexistent 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.

### 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 chapter VI 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 preexisting 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 institu-

tions’ 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 this report’s chapter II on the LSU Health Sciences Center) “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 the Health Sciences Center, and some have been reinstated, tenured furloughed professors have apparently not been recognized as having the right to be recalled that AAUP’s Regulation 4c requires. The situation at Loyola was most puzzling; although the official university policy on program discontinuance expressly imposed a pretermination obligation 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 postprobationary 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 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.

