

Report

Academic Freedom and Tenure Termination of Tenured Appointments: MCP Hahnemann School of Medicine (Pennsylvania)¹

This report concerns the discharge from their faculty positions of thirteen to fifteen tenured members of the basic-science faculty of the MCP Hahnemann School of Medicine, in response to a declaration of financial exigency, with minimal notice, inadequate severance salary, and a complete absence of normal procedural safeguards in violation not only of applicable Association-supported standards but also of the bylaws of the institution itself.² That generally accepted norms of academic behavior were disregarded is not in dispute, as will be explained later. What is in dispute is who should be held responsible for the actions taken, and whether the current administration of the medical school should be expected to remedy the plight of the discharged faculty members.

The uncertainties and complexities in this case arise in good part from the fact that, coincident with the actions taken against the above-mentioned tenured professors, dramatic changes occurred in the ownership, administration, and management of the institution, as it moved from a declaration of financial exigency into bankruptcy proceedings from which it then, Phoenix-like, arose.

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

2. There is some ambiguity about the number of professors discharged, as certain faculty members originally so designated have agreed to a variety of special arrangements. The investigating committee met with eleven such faculty. We shall utilize the number thirteen as the number actually dismissed. As will be seen below, MCP Hahnemann is currently under the management of Drexel University.

I. The Institution

The present MCP Hahnemann School of Medicine is the successor to two previously separate, well-established medical schools in Philadelphia: the Medical College of Pennsylvania (MCP) and the Hahnemann University Medical School (Hahnemann), each of which was acquired by the Pittsburgh-based, hospital-centered Allegheny Health, Education, and Research Foundation (AHERF), and formally merged into one institution in 1994.

The Medical College of Pennsylvania is the successor to the Female Medical College of Pennsylvania, founded in 1850. By 1969, after several name changes, MCP and its associated hospital had become coeducational, with a focus on community service. It retained an emphasis on medical services for women (though this was not its exclusive activity) and had only minor involvement in medical research. In 1987 MCP and its hospital were acquired by Allegheny Health Services (predecessor of AHERF), under the entrepreneurial leadership of its president, Sherif S. Abdelhak, as part of his ambitious efforts to establish a statewide medical network, efforts that included acquiring eight hospitals in the Philadelphia area as well as numerous primary and specialty physician practices (to funnel more patients to its hospitals). Prior to AHERF's acquisition of MCP, faculty at the college operated with the conventional sorts of faculty status, including eligibility for tenure after a probationary period.

Hahnemann University was established in 1848 as the Homeopathic College of Pennsylvania, but in 1884 it became Hahnemann Medical College of Philadelphia. Almost a century later, having added schools of nursing and of allied health professions, the institution changed its name to Hahnemann University. The medical school and its associated hospital have earned a reputation for excellence in both clinical and research activity. They were acquired in 1993 by AHERF and merged with MCP a year

later. Until relatively recently, none of the Hahnemann faculty had tenure, but in a blanket action some time prior to the merger, all those with the rank of associate or full professor were awarded tenure. The merged institution was initially named the Medical College of Pennsylvania and Hahnemann University, but it was subsequently renamed MCP Hahnemann, as a unit within the Allegheny University of the Health Sciences (hereafter referred to as Allegheny University or AUHS).³ After the merger, the medical school had a basic-science faculty of about a hundred (of whom about one-third were dismissed in 1998), and many hundreds of clinical faculty.

Although these two institutions with significantly different faculties, traditions, and missions were formally "merged" in 1994, they were never fully integrated; discussions of the need for both administrative and faculty consolidation began with the clear prospect of reductions in faculty size. Much of the medical school's leadership (Provost Leonard L. Ross and most department chairs) came from the MCP side; most of the basic-science faculty who were eventually dismissed and whose treatment is the subject of this report—largely Ph.D.'s—came from Hahnemann.⁴

II. Factual Background: Selected Events, 1994 to 1999

At the time of the merger of MCP and Hahnemann, the Allegheny University administration recognized tenure. The regulations then in effect included the following:

The Board of Trustees shall have the right to terminate the appointments of tenured members of the Faculty . . . [in circumstances of] financial exigency of the University. A state of financial exigency of the University involving the termination of appointments of tenured Faculty can only be declared by the Board of Trustees . . . after consultation with the University Council [the Faculty Senate]. Such consultation shall include the presentation of criteria for declaring financial exigency and the criteria for the selection of positions for termination.

3. Not to be confused with Allegheny College, a wholly distinct entity.

4. The number of different medical institutions that figure in this report, and the various changes of name that they have undergone over the past decade, may give rise to some confusion. The medical school that is the focus of the investigating committee's inquiry has been named the MCP Hahnemann School of Medicine since 1994 and still bears that name. The larger university of which it has been a part, consisting of four professional schools, was called the Allegheny University of the Health Sciences (AUHS) until November 1998, when it was renamed the MCP Hahnemann University (MCPHU) as part of a "restructuring" discussed below. Prior to that time, AUHS, including the medical school, was a part of the Allegheny Health, Education, and Research Foundation's network of institutions. AHERF is no longer in the picture, having relinquished its management of AUHS to Drexel University, also as of November 1998.

. . . Except in the case of dismissal for cause, the University shall:

(a) make a conscientious effort to use the services of such Faculty member . . . [or] give him/her first consideration for any new positions to be filled in the future . . . within a period of two years after the effective date of his/her departure.

(b) provide one year's notice prior to termination. . . .

(c) not fill the released faculty member's place within a period of two years . . . unless the released Faculty member has been offered reappointment and declined.

The regulations go on to describe in substantial detail the procedures to be followed, including written notice, the right to a hearing, and the right to be represented by counsel.

During spring and summer 1994, the AUHS administration initiated steps to reduce the size of the newly combined Hahnemann and MCP faculties and instructed the department heads to conduct evaluations of all faculty, tenured as well as nontenured. In July at least forty-eight tenured faculty members received, through their department heads, letters such as the following:

Dear Dr. _____:

This is to inform you of your options as a tenured faculty member for participation in, or separation from, the activities of the Department of _____ of the Medical College of Pennsylvania-Hahnemann University.

Two options are outlined in detail in the attachment to this letter. The conditions for participating in the future program of the department by fulfilling the goals and objectives that we discussed in late June are described in Option 1. Option 2 should be chosen if you would prefer to leave the department. In Option 2, you have forty-five days from the time you receive the plan document to either accept or reject the separation agreement. . . . If you do not wish to choose either Option 1 or 2, you may elect to resign no later than June 30, 1996, and your goals and objectives will be modified accordingly (see attachment). You should write me a letter within forty-five days saying you want this alternative.

I hope this gives you the information you require to decide what your future course will be. I will be happy to discuss these matters further with you at your convenience.

Sincerely,

Professor and Chairman

Attachment [excerpts]

Option 1

1. The tenured faculty member should be informed that he/she will be expected to fulfill specific reasonable goals and objectives consistent with the programmatic needs of the department.

2. The specific goals and objectives will be reviewed at the end of the academic year. At that time, the chair will evaluate whether the faculty member has satisfactorily achieved these goals and objectives.

3. If a faculty member fails to satisfactorily achieve these goals and objectives, he/she may be subject to notice of non-reappointment and termination.

4. All faculty members are expected to fulfill the programmatic needs of the department. All faculty members will be given goals and objectives as part of a phased-in process beginning with tenured faculty who, in recognition of their faculty status, have been placed in the first phase of this process to allow them the opportunity to fully participate in the fulfillment of departmental programmatic needs.

5. Goals and objectives which are established for these tenured faculty members should be consistent with the reasonable expectations of any member of the department. For example, if all researchers in the department are expected to obtain funding for 75 percent of their salaries, this expectation can also be applied to these tenured faculty members.

Option 2

1. For those tenured faculty who do not wish to take advantage of option one, they should also be advised of the severance package which will be made available to them.

* * *

If the faculty member does not elect either option 1 or 2, the faculty member may elect to resign effective no later than June 30, 1996. The goals and objectives assigned to a faculty member during this terminal appointment will be designed to reflect that the faculty member will remain in the School of Medicine for a limited period of time. The faculty member will receive an appointment letter that will fully outline the terms and conditions of [his or her] appointment.

Upon receipt of this letter, several of the affected faculty members filed grievances with an appropriate faculty committee. This, in turn, eventually led to a negotiated agreement, dated December 1, 1994 (which is quoted at length below), that, in effect, removed the threat of any termination actions, and went on to specify that "[a]ny reductions in Faculty may be accomplished by attrition, with due regard given to tenure and years of service."

Despite this apparent victory of the faculty in 1994 in resisting dismissals, the next several years cannot have been without uncertainty and strain, as financial pressures on the university became increasingly known and discussed.

1. 1997 and 1998

In fall 1997 AHERF, the health-care conglomerate that included Allegheny University and its medical school among the foundation's extensive statewide holdings, laid off more than two thou-

sand employees in its Philadelphia-area hospitals.⁵ Although these layoffs did not directly affect AUHS or the MCP Hahnemann faculty, they were seen as reflecting the severity of AHERF's growing financial difficulties and as having potential ramifications for the university and the medical school. On February 16, 1998, in a letter addressed to "Delaware Valley Colleagues," including members of the AUHS faculty, AHERF president Abdelhak offered assurances that AHERF's "financial position remains very strong with sufficient reserves to minimize the effects of the severe reductions we have experienced in our revenues." He went on to announce, however, that the foundation was considering divesting itself "of certain programs and/or assets [in the Philadelphia area] that are not central to our academic mission and/or require a disproportionate amount of time, effort, or subsidy. . . . [S]uch action is a prerequisite to the continued vitality of our central health, education, and research mission."

In the months that followed, AHERF engaged in serious negotiations with Vanguard Health Systems, a private for-profit health provider, for the sale of most of the foundation's eastern Pennsylvania properties (but not AUHS). The proposed sale, as originally structured, fell through in late June because it failed to meet AHERF's financial requirements. In the meantime, on June 5, as the magnitude and sources of the financial distress facing AHERF became public, President Abdelhak was discharged and replaced by Anthony Sanzo, chief executive officer of the foundation's western Pennsylvania hospital system. Later that month, Dorothy McKenna Brown, a member of AHERF's board of directors, was named acting president of Allegheny University—a position she held until November 1998.

On July 20, 1998, the AHERF board, which had continued its discussions with Vanguard Health Systems, announced an "agreement in principle" to sell all nine of its Philadelphia-area hospitals to the company. The board also announced that "AHERF and four of its subsidiaries" (including AUHS) were "filing for protection under Chapter 11 of the bankruptcy code." Vanguard's offer, if accepted, would have created the first for-profit hospital chain in a city served exclusively by nonprofit hospital systems. According to a press release, "AHERF, in cooperation with Vanguard, is also committed to developing a long-term plan for AUHS, which would remain an independent, not-for-profit organization." On the same day as these announcements, AHERF officials were holding preliminary talks with executives of Tenet Healthcare Corporation of Santa Barbara, the nation's second largest for-profit hospital chain, in case Vanguard's proposal were to fall short.

On July 21, listing debts of \$1.3 billion, an amount that was soon raised to \$1.5 billion, far in excess of its ability to pay, AHERF filed a petition in the bankruptcy court in Pittsburgh.

5. As of summer 1998, according to press reports, AHERF comprised 55 different corporate entities, with 10 separate boards, 132 directors, and 117 senior managers.

The petition covered nearly all of AHERF's Philadelphia operations, including 8 hospitals, more than 160 physician practices representing over 300 doctors, and AUHS. According to a later report in the *Philadelphia Inquirer*, "The filing represented the largest non-profit health-care collapse in the nation's history and marked the first time a medical school had sought court protection." Dr. Jordan Cohen, president of the Association of American Medical Colleges, was quoted as stating, "It's literally unprecedented for a medical school to be caught up in this kind of bankruptcy proceeding." Fears were expressed at the time of the filing that the bankruptcy proceedings and the assumption by creditors of AHERF's assets would be a likely prelude to the closing of several of the hospitals and the demise of the medical school. These fears were credible in view of the existing oversupply of hospitals in the Philadelphia area, and the fact that there were three other medical schools in the city—those of the University of Pennsylvania, Temple University, and Thomas Jefferson University.

In the meantime, the MCP Hahnemann medical school had been experiencing mounting financial difficulties of its own. The local press reported in spring 1998 that the school was losing \$26 million in that calendar year. In May a large number of the medical school faculty, many of them tenured (including some who had been previously identified in 1994 for termination of their services), were called in to meet with the provost and were informed that their department chairs had determined that they had not fulfilled their "goals and objectives." On July 1, by identical letters addressed to all nontenured faculty members at the medical school, the AUHS administration tendered notice of nonreappointment to be effective on June 30, 1999. President Sanzo, in a message to the AUHS community accompanying this action, said (in part), "Let me emphasize that . . . it is not the intent of the Board of Trustees or senior management to dismiss the entire faculty. We are not closing the University. We may need to eliminate some programs or services, which could require some faculty reductions and/or reorganizations." Also on July 1, the faculty was informed that the "University must address immediately the financial crisis which is currently adversely affecting its operation. Therefore, the University is developing plans to reverse its severe operating losses. All options for correcting the imbalance between revenues and expenses are being examined. . . . In response to this, the . . . board of trustees has specifically authorized adjustments in faculty and non-faculty compensation and benefits of up to 25 percent. These adjustments are effective immediately."

In early August a body calling itself the Committee for the University, Inc., consisting of faculty members, hospital doctors, students, alumni, and staff, was established to work with the administration in developing a reorganization plan to be presented to the bankruptcy court in Pittsburgh before a scheduled September 29 auction of AHERF's eight Philadelphia-area hospitals. The committee's stated goal was to bring the university out of bank-

ruptcy court as an independent, self-supporting institution with local control under a new president and governing board.

In mid-August, according to a report in the *Philadelphia Inquirer*, Tenet Healthcare made an offer to AHERF that was said to "include not only a higher price for the hospitals [than Vanguard had offered] but also more funding to assist the AUHS in a transition to an independent institution."

By late September a petition was signed by thirty-five tenured faculty members asking "that all necessary actions be taken to ensure that the University upholds all of the tenets of the University bylaws pertaining to the rights of faculty." The University Council, the faculty's principal governance body, submitted a letter addressed to the trustees and to the provost that stated in part, "We are aware that the termination of tenured faculty is planned as part of the restructuring of the University. The University Council would like to remind the Board of Trustees that the University Faculty Bylaws include certain procedures to be followed in connection with a declaration of financial exigency. It is our hope that [these] procedures . . . will be adhered to in this process." The president of the local chapter of the AAUP, Professor Gerald Soslau, wrote in a similar vein.

The faculty petition and the council and chapter actions were to no avail. On October 8 the administration sent identical letters signed by Provost Ross to all of the nontenured and most of the tenured faculty members whose department chairs had identified them for termination of services. The text of this letter is as follows:

Dear Dr. _____:

A major challenge of the University leadership during the Chapter 11 proceedings in the bankruptcy court has been to maintain the integrity and quality of the educational programs while at the same time reducing costs and maintaining the value of both the human and financial assets of the institution individually and in relationship to the other Allegheny organizations which are to be sold at the end of this month.

It has been determined by the University leadership working closely with faculty representatives including the "Committee for the University" that the only feasible way to maintain the viability of the University is to restructure it by reorganizing programs accompanied by a reduction in the number of faculty. Therefore, we must seek the bankruptcy court's approval of the termination of the employment of faculty members whose contributions are not consistent with the needs of the University's programs after restructuring. I regret that I must inform you that your employment agreement has been determined to be one of those that the University will request the bankruptcy court's approval to reject which will result in the termination of your employment.

In the next several days you will receive a copy of a motion seeking court approval of the rejection of your employment agreement and the employment agreements of other University

faculty from the bankruptcy court. Enclosed with this letter is information relating to your benefits.

On behalf of the University, I express my appreciation to you for your contributions during your appointment and offer my sincere wishes for your success in the future.

Sincerely,

Leonard L. Ross, Ph.D.
Provost

No specific reasons were given to the affected individuals for their having been identified for release. Following the issuance of these letters, the faculty leadership of the Committee for the University expressly disavowed the provost's implication that it had approved these actions.

On October 14 the AUHS board of trustees declared the university to be in a state of financial exigency pursuant to its and AHERF's earlier petition for bankruptcy protection. The board authorized the administration "to take any and all actions necessary to implement financial, programmatic, and administrative adjustments to alleviate the state of financial exigency and to preserve the mission of the university." On this same day the board adopted a second resolution whereby it reduced "its current financial commitment for academic services of tenured faculty, also referred to as the academic base, to zero, effective immediately." The resolution further stated that the "board will review its financial commitment to tenure annually and may adjust its commitment commensurate with its financial resources." According to the board's resolution, "[t]he state of financial exigency will continue until declared terminated by the board."

In the meantime, on September 29, at the eleventh hour in the bankruptcy proceedings, an agreement was reached to sell AHERF's several hospitals in the Philadelphia area along with Allegheny University, including the medical school, to Tenet HealthCare for \$345 million. This amount covered only a fraction of the standing debts, but AHERF's creditors viewed the sale as better than any perceived alternative. The sale, however, was subject to the condition imposed by Tenet that AUHS become a separate unit to be managed by an existing university in the area, with Tenet providing short-term financing. Drexel University, the only credible institution that did not already have a medical school, evinced a special interest in taking over the management of AUHS.

On October 13, however, despite President Constantine Papadakis's strong support, Drexel's board of trustees voted to withdraw its offer to pursue an association with a restructured AUHS, urging Tenet to look for another academic partner to operate the university. The board cited as its major concern the potential diversion of energies of the Drexel administration with regard to a major fundraising campaign it was preparing to launch. By the end of October, responding both to intense political pressure from the mayor of Philadelphia and the governor of Pennsylvania who sought to avoid the massive layoffs that would have accom-

panied a shutdown of the AHERF properties) and to additional financial incentives, Drexel agreed to manage the "new" university for a limited time, but with the option and the expectation that it would eventually be merged into Drexel University. The financial incentives included some increase in state aid and Tenet's agreement to provide the medical school with \$123 million for the first year's operations and \$23 million for the second year. Additionally, AHERF's creditors made an unconditional \$50 million contribution to Drexel's endowment, nominally to compensate the university for the time its top executives would have to divert from their planned capital campaign.

On October 28 the bankruptcy court judge approved the sale of Allegheny University to a newly created nonprofit entity, the Philadelphia Health and Education Corporation (PHEC), managed by Drexel and with Dr. Papadakis as its president. In mid-October, as part of the "restructuring" process, AUHS had applied to the Pennsylvania Department of Education for permission to amend its articles of incorporation to allow for the transfer of substantially all of its assets, including programs of instruction, research programs, and the authority to award degrees and diplomas.

In early November a group of AUHS faculty members petitioned the state education department to delay its approval of AUHS's application pending a public hearing. Such a delay, it was believed, would prevent the completion of the sale to Tenet. The bankruptcy court, in the meantime, had granted AHERF's petition to be allowed to abrogate many existing employment contracts, including those of numerous members of the MCP Hahnemann faculty who had been designated by their department chairs for release. The court subsequently rejected a counterclaim on behalf of the affected faculty members that the existing bylaws of Allegheny University with respect to the discharge of faculty in the case of financial exigency should be honored. The judge approved the immediate discharge of the designated faculty members, with two weeks of severance pay, without regard to their tenure status or their rights under the AUHS bylaws.

On November 9 the AUHS faculty who had requested that the Department of Education halt the sale to Tenet pending a hearing withdrew their petition so as to permit the agreement with AHERF to go forward. The withdrawal of their petition was part of an agreement that AAUP chapter president Gerald Soslaw, among others, had worked out with the "restructured" university, in cooperation with Tenet and AHERF's creditors, whereby the tenured basic-science faculty members targeted for release would receive a more significant amount of salary for the remainder of the academic year than the two weeks of severance authorized by the court and would retain use of their assigned office and laboratory space through June 1999.

Once the petition to the Department of Education was withdrawn, no further obstacles lay in the way of the actions that the AUHS administration had already announced would be taken against these faculty members. That same day, Dr. Papadakis,

writing as president of PHEC, sent identical letters of termination, all dated November 9, to each of the tenured basic-science faculty members previously identified for release, along with a "faculty transition agreement." "Organizational changes" were the only grounds cited for taking these actions.

Here are parts of a sample letter and of the "transition agreement," under which a faculty member was given twenty-four hours to accept or face immediate discharge. By accepting the transition agreement, the affected faculty members were eligible to receive the extended separation pay (termed a "transitional stipend") that Professor Soslau had helped to persuade the creditors to provide, although at a rate substantially below their annual full-time salary. But that same agreement required a waiver of all rights of appeal and of any future legal claims against the university.

Dear Dr. _____:

As you know, the Allegheny University of the Health Sciences is undergoing many changes as the transition out of bankruptcy occurs. A new organizational structure is being developed and staffing requirements are being identified. While it is unfortunate that we cannot retain all of the current employees, this reorganization is crucial to the success of the new venture.

As a result of these organizational changes, it has been determined that your employment will be terminated by Allegheny University of the Health Sciences effective at the close of the transaction (anticipated to be November 10, 1998). In order to minimize disruption to your continuing research efforts and academic pursuits to the extent possible, I am pleased to offer you a transitional arrangement with the Philadelphia Health and Education Corporation, which is the legal entity name for MCP Hahnemann University (the University). This arrangement is outlined in the attached Faculty Transition Agreement. If you are currently eligible for benefits, you will also be eligible to participate in the benefit plans and programs described in the accompanying attachment and at the contribution rates shown in the rate schedule.

FACULTY TRANSITION AGREEMENT

1. *License to Use Office and Laboratory Space.* The University hereby grants Faculty Member a license to use the office and laboratory space used historically by Faculty Member as a member of the faculty of Allegheny University of the Health Sciences.

2. *Transitional Stipend.* Faculty Member shall receive a transitional stipend as set forth in Schedule A attached hereto and incorporated herein by reference. Compensation shall be payable as an employee in accordance with University policies and procedures.

4. *Term.* The term of this Agreement shall expire on June 30, 1999.

6. *Faculty Status.* Faculty Member acknowledges that Faculty Member does not hold a faculty appointment with the University and that Faculty Member shall not have the rights and privileges of a faculty member of the University.

10. *Release.* In consideration of the terms of this Agreement, Faculty Member hereby releases Allegheny University of the Health Sciences, a Pennsylvania nonprofit corporation ("AUHS") and Allegheny Health, Education, and Research Foundation, a Pennsylvania nonprofit corporation ("AHERF") from and against any and all liability it may have with respect to the termination of Faculty Member's employment agreement with AUHS (the "AUHS Agreement") or with respect to severance benefits (excluding COBRA benefits) to which Faculty Member might otherwise be entitled; provided, however, this release shall not affect any rights or claims Faculty Member may have, if any, for incentive compensation or deferred compensation payments under the AUHS Agreement. Such release shall inure to the benefit of AUHS and AHERF, which, notwithstanding anything to the contrary contained in this Agreement, are intended third-party beneficiaries of this Section.

Letters to faculty members who were to be retained, also signed by President Papadakis, were notable in their use of the phrase, "offer you employment," and in including an "employment agreement," also to be signed within twenty-four hours. In the PHEC-Drexel administration's view, faculty were being appointed de novo, not retained, and any rights under the now-abandoned AUHS bylaws had presumably been withdrawn.

On November 10, 1998, the newly renamed MCP Hahnemann University (MCPHU) emerged from the Allegheny bankruptcy with a substantial infusion of new funding. That same day the interim president of AUHS, Dorothy McKenna Brown, stepped down and was replaced by a "management team" from Drexel, which assumed operation of the "new" university. The November 9 letters of termination, however, had been signed by President Papadakis, a day before the new administration took over. On November 12 the dean of the medical school, Dr. Barbara Atkinson, announced her resignation, effective as soon as her replacement was selected. "My goal over the last few months," she stated, "was to get the school restructured, reorganized, and ready to move out of bankruptcy. I feel we accomplished that. . . . Now is the time to allow new people to lead the medical school forward." In the weeks that followed, a new board of directors was appointed, and virtually the entire top administration of MCPHU was newly installed; most came from Drexel, but some, including the interim dean, Dr. Warren Ross, came from outside.

On December 4, 1998, the bankruptcy court's release of documents relating to the bankruptcy disclosed that AHERF's basic accounting and financial systems were in disarray. Among the unsealed documents was a fifty-page motion filed by the health

system's creditors, their number estimated at sixty-five thousand, who were collectively owed \$1.5 billion. They charged the foundation's leadership with having engaged in a systematic and ongoing pattern of "gross ineptitude and mismanagement." They claimed that AHERF executives had engaged in a "complex financial shell game" from the day they entered the Philadelphia market in the late 1980s. They also claimed that Allegheny's board and executive officers "failed utterly to restore . . . anything approaching financial stability and, instead, permitted most of the value of the [Philadelphia-area] hospitals to dissipate. They were wholly unsuccessful in controlling costs."

As AHERF's Philadelphia operations were losing more than \$10 million a month, the system's executives were said to have "resorted to desperate measures, such as defaulting . . . on medical malpractice policies required to maintain their operating licenses. And even raiding endowment and other restricted funds to keep [Allegheny's] operations afloat." One forensic accountant hired by the creditors raised "concerns [about] deliberate concealment or obfuscation of critical financial matters." These various allegations were said to be the focus of "more than a dozen investigations, including two federal grand-jury investigations . . . , to review mis- and malfeasance, by former and current management." On February 23, 2000, the Pennsylvania attorney general filed suit against several Allegheny health system executives and trustees, seeking repayment of nearly \$80 million in charitable assets allegedly diverted from their intended uses in Philadelphia.

2. 1999

The new administration authorized the department chairs, who were continued from the previous administration, to begin at once to fill vacancies in their faculties that had resulted from the discharge of "unproductive" faculty and from the departure of a significant number of other senior faculty who resigned to take positions elsewhere during the period of uncertainty and turmoil. These vacancies were to be filled in such a way as to meet most efficiently the educational and research needs of the "new" MCP Hahnemann. In March 1999 the interim dean of the medical school reported that the school had already added fifteen new faculty members and was actively recruiting seventy-six more.

On April 14, 1999, Drexel's board of trustees voted unanimously to continue to operate MCPHU through June 30, 2001, under the terms of the operating agreement entered into between Drexel and the Philadelphia Health and Education Corporation. As a result, Drexel received the remaining \$40 million of the \$50 million gift from creditors that was part of the deal with Tenet it had made in fall 1998. Interviewed in fall 1999 by the *Chronicle of Higher Education*, President Papadakis indicated that an eventual merger will occur only if MCPHU achieves a balanced budget. "Drexel is not going to subsidize a losing institution," he was quoted as saying.

Thirteen tenured faculty members who had been discharged on November 9, 1998, and who had not made separate severance arrangements were scheduled to vacate their offices and terminate all connections with the medical school by June 30, 1999. Of the thirteen, either five or six were permitted to work for the university after July 1, but on conditions drastically different from those of their previous employment. An example of one such arrangement is as follows.

July 14, 1999

RE: Position of Research Professor of _____

Dear Dr. _____:

It is my pleasure to offer to you a faculty position in the Department of _____, as Research Professor of _____ without tenure at the MCP Hahnemann University ("the University") School of Medicine, beginning July 1, 1999, to no longer than June 30, 2000 (as outlined in 5). Your academic title, subject to the appropriate School and University approval, will be Research Professor of _____.

Role and Responsibilities:

You will be expected to fulfill to the best of your ability the duties assigned by the Chair of your Department. About 100 percent of your time will be devoted to development of your independent research activities and collaborative research with other members of the department. Your continued employment is dependent upon your covering all of your research expenses, including your salary and fringe benefits, from extramural research funding.

Compensation:

This position will be full time and your base compensation will be at the annualized rate of \$42,000.⁶ The University shall have the exclusive right and authority to retain all grants or contract revenues, professional services revenues, and fees generated by you, subject to University policies and procedures relating to prizes, honoraria, and similar forms of compensation. Your compensation will only be continued as long as you generate sufficient funds from extramural sources to cover the costs of your research expenses including 100 percent of your salary and fringe benefits.

Policies and Procedures:

Your appointment and the discharge of your academic responsibilities are subject to the provisions of the University and School Faculty Bylaws, the applicable University and School Policies and Procedures. . . .

6. The salary authorized was less than half of the salary earned by the faculty member at the time of his terminal notice in November 1998.

The University is making no commitment of facilities, laboratory space, or office space to you for the conduct of your research program other than the temporary use of your current research space. When this space is assigned to another person, you will be given adequate notice to vacate this space.

Notice of Termination:

It is specifically understood and agreed that this letter will control and supersede all other oral, written, express or implied communications, agreements and understandings relating to your faculty employment and/or appointment. This position will terminate June 30, 2000, or when extramural funds to support all your research activities, including 10 percent of your salary and fringe benefits, are exhausted, whichever comes first.

At least one of the discharged professors (a formerly tenured professor of pathology) applied for two of the newly advertised positions that seemed clearly within his field, but he received no notification of which he was aware. Six weeks later, he was informed that his application was "no longer under consideration." As far as the investigating committee knows, none of the discharged professors were considered for "rehiring" into the newly advertised positions, and no reasons were given for not doing so. The new (PHEC-Drexel) administration takes the position that the current university is different from the post-bankruptcy, post-sale-to-Tenet one. It contends that the dismissals and other actions made necessary to bring this new university into being were carried out by a prior administration, and were wholly replaced. The discharged faculty members strongly dispute this position, asserting that the new Drexel administration should recognize its assumption of responsibility for what happened to them.

The Association's Involvement

In the spring of 1998, the American Association of University Professors was informed of the serious financial difficulties that were confronting AUHS and about resulting threats to terminate numerous faculty appointments. During the summer, AAUP chapter president Gerald Soslau sought the Association's assistance concerning AUHS's declaration of bankruptcy of its Philadelphia operations and the bankruptcy's potential impact on the university. He provided the Association's staff with an extensive file of newspaper reports and administration memoranda. Toward the end of 1998 several faculty members provided the staff with documents concerning the termination of their services. On February 12, 1999, the staff wrote to Drexel University's president Papadakis, setting forth the Association's concerns about what were judged to be serious departures from the AAUP's recommended standards in connection with the terminations of faculty appointments. The letter noted that the large sums of money Tenet was paying to the medical school raised questions

about the need to terminate these particular appointments, and it urged the administration to rescind the actions pending demonstration in a hearing of record before a faculty body of the financial necessity to do so.

Responding on April 2, President Papadakis noted that the local AAUP chapter had been "involved with faculty transition issues at the time of the sale of the AUHS assets to Tenet and during the formation of the new university." He also stated that the university had "many financial, administrative, and academic issues" that it needed to address in order to make the university "a vital institution with a stable long-term future." He concluded that "it would be counterproductive and damaging at this time to nullify or reconsider those settlements and the administration cannot pursue such a course."

The staff responded to the president's letter on April 14, observing that "the national AAUP was not a party to the settlement, and the chapter's involvement does not affect the Association's long-standing responsibilities in this matter."⁷ The staff also reiterated the Association's concern "that the university administration has yet to justify the financial necessity to terminate tenured faculty appointments or to explain why these particular individuals were selected for dismissal."

With this concern remaining unresolved, the Association's general secretary authorized an investigation. By letter of May 4, President Papadakis was informed of the composition of the undersigned investigating committee and of the dates planned for its visit to Philadelphia.

The investigating committee visited MCP Hahnemann University on June 14 and 15, 1999. Thanks to the arrangements made by Professor Soslau and to the cooperation of the PHEC-Drexel University administration, the investigating committee had the opportunity to speak with key members of both the previous (AUHS) and present administrations, with retained and dismissed faculty members, and with leaders of important faculty groups that had been heavily engaged in attempts to modify and ameliorate the treatment of released faculty members. President Papadakis was out of town at the time, and the committee regrets not having been able to meet with him. The committee did, however, have two meetings with Dr. Richard Astro, provost of both PHEC and Drexel, and it considers those interviews and the others it conducted, along with the large volume of documentary material it reviewed, to be sufficient to support this report's findings and conclusions.

7. As stated in a previous case report approved by Committee A, "The Association has long held that the standards embodied in the 1940 *Statement of Principles on Academic Freedom and Tenure* constitute sound academic practice for all institutions of higher education. This has been the Association's basic premise in cases where provisions in institutional regulations differ from those in the 1940 *Statement*, and it is no less applicable at institutions where . . . [an] agreement was negotiated with a local chapter of the Association." ("The Polytechnic Institute of New York: A Report on a Case of Excessive Probation," *AAUP Bulletin* [winter 1974]: 420.)

III. Issues

It is customary in reports of this kind to discuss at some length a number of salient issues, including the role of faculty in making personnel decisions; the role of faculty in determining whether the claim of financial exigency is valid, whether there are less drastic means of meeting the financial crisis than the termination of tenured faculty appointments, and, should such terminations be required, whose appointments should be affected; the adequacy of notice and of severance pay where terminations occur; and the availability of procedures that give faculty facing separation the opportunity to contest the reasons for the actions taken against them.⁸

The investigating committee believes that none of these issues need further discussion here, because it is unmistakable, and undisputed, that the members of the AUHS faculty were given none of the expected roles to play (although they sought them), that notice and severance pay were far less than what would be considered adequate (even with the ameliorative efforts and results to which the president of the AAUP chapter contributed),

8. The basic norms of sound academic governance in American higher education are enunciated in the Association's *Statement on Government of Colleges and Universities*. This statement calls for the faculty to have primary responsibility for decisions affecting the institution's academic programs and determining faculty status, including decisions regarding termination.

Regulation 4(c) of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure* sets forth standards for faculty participation in the decisions preceding any termination of continuing appointments on grounds of financial exigency. These standards call for meaningful participation by a faculty body in deciding whether a financial exigency exists or is imminent. They confer upon the faculty or an appropriate faculty body primary responsibility for making judgments on where within the overall academic program termination of continuing appointments may occur, if less drastic means for ameliorating the situation cannot be identified. They call for the faculty or an appropriate body of the faculty also to have primary responsibility in determining the criteria for identifying the individuals whose appointments are to be terminated, and they assign responsibility for identifying particular individuals whose appointments are to be terminated to a person or group designated or approved by the faculty.

The standard for notice or severance salary called for under the Association's *Recommended Institutional Regulations*, if financial exigency is the basis for the action, is at least one year of terminal salary or notice for the faculty member with tenure.

Regulation 4(c)(2) of the *Recommended Institutional Regulations* calls for affordance of an on-the-record adjudicative hearing before an elected faculty committee to a faculty member whose appointment is terminated on grounds of financial exigency. At such a hearing, according to the standards, the burden rests with the administration to demonstrate the existence and extent of the exigent condition. The validity of the educational judgments, the criteria for selecting those whose appointments are to be terminated, and the application of the criteria to individual cases are also subject to review at such a hearing. The hearing process permits the testing of the application of the judgments and criteria in particular cases and serves the purpose of identifying, and permitting correction of, specific mistakes. The governing board should be available for final review.

and that no procedures were utilized to give the released faculty members an opportunity to learn the reasons for their dismissal, or to appeal the decisions against them. The explanation given by the current administration for these severe shortcomings is that the actions were not governed by academic standards, but came to be determined, instead, by the bankruptcy court, which was concerned solely with facilitating the process by which the creditors received as much of a recovery as was feasible.

Three issues will be discussed: the causes and bona fides of the claim of financial exigency, and the discharge of tenured faculty as necessary to such a condition; the opportunity for, and responsibility of, the Drexel management to mitigate the impact of the dismissals on the affected faculty members; and the nature and status of tenure, in this situation, and more generally in medical schools.

1. Financial Exigency and the Termination of Tenured Appointments

The 1940 *Statement of Principles on Academic Freedom and Tenure* allows for the termination of tenured faculty appointments under extraordinary circumstances because of a demonstrably bona fide condition of financial exigency. Regulation 4(c)(1) of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure* defines financial exigency as an "imminent financial crisis which threatens the survival of the institution as a whole and which cannot be alleviated by less drastic means" than the termination of tenured faculty appointments. The regulation calls upon an institution to pursue "all feasible alternatives" to termination of such appointments. The regulation also provides that

If the institution, because of financial exigency, terminates appointments, it will not at the same time make new appointments except in extraordinary circumstances where a serious distortion of the academic program would otherwise result. The appointment of a faculty member with tenure will not be terminated in favor of retaining a faculty member without tenure, except in extraordinary circumstances where a serious distortion of the academic program would otherwise result.

The regulation further provides that

Before terminating an appointment because of financial exigency, the institution, with faculty participation, will make every effort to place the faculty member concerned in another suitable position within the institution.

At AUHS in 1998, discussions about how to deal with the university's financial difficulties were predicated on the assumption of the need to terminate faculty appointments at the MCP Hahnemann School of Medicine.

In summer 1998, when AHERF filed for bankruptcy protection, and in the fall of that year, when the AUHS board of trustees declared that the university was in a state of financial exigency, the institution was indeed in dire financial straits, and the "survival of the institution as a whole" was very much in doubt. But there are strong grounds for questioning whether the university met the second half of the requirement, namely, that the exigent condition "cannot be alleviated by less drastic means" than terminating tenured faculty appointments.

The financial difficulties that undoubtedly existed were the product of two reinforcing sets of circumstances: first, those felt by hospitals and medical schools everywhere as a result of changes in the ways in which medical services are paid for, and second, specific unwise practices of AHERF. Distinguishing between them is important because, to the extent that the financial crisis was a result of the latter, it could be, and was, reversed by the sale to Tenet. After that sale, inappropriate or unnecessary terminations could have been rescinded if the conditions "threatening the survival of the institution as a whole" had been eliminated. The investigating committee believes that this may well have been the case at MCP Hahnemann.

National Trends in Financing Medical Education. Major traditional sources of financing for medical schools have included, in addition to tuition revenue, sizable contributions from the affiliated hospitals in which clinical teaching occurs, both in providing the major part of the salaries of the typically very large number of highly paid clinical professors, and in direct payments from the hospitals and the clinical departments to the medical schools. In the not-so-distant days when hospitals were highly profitable enterprises, the burden of these subsidies was understood but more easily borne. In addition, affiliation with a medical school provided, as it still does, a supply of relatively low-wage residents whose value to the hospital exceeded the hospital's contribution to their salaries.

Recently, rapid and still-evolving changes in health-care delivery and (probably more important) in reimbursement both by the federal government for Medicare and by managed-care institutions have turned most hospitals from profit centers to sources of loss.⁹ Trends already occurring were accelerated by the Balanced Budget Act of 1997, which slashed Medicare reimbursements.

A further, significant source of funding has come from external research grants, which provide not only salary support for some faculty, but also overhead funds to the institution. The competition for such funding has become more intense, and in many cases the allowed overhead rates have been reduced. Combined with escalating research costs, this trend has contributed to financial stress.

9. At one point the "productivity" of doctors in bringing in revenue for hospitals was measured by the billings they generated; today, the growing gap between billings and actual payments has—it was emphasized to the investigating committee—become crucial.

These problems have been exacerbated by the proliferation of empty hospital beds, and the shortening of hospital stays. It has been estimated that a hospital, to break even, must achieve 70 to 80 percent occupancy; very few hospitals do so. As "teaching" hospitals have come under increasingly intense pressure to reduce costs, their willingness to support professors who are deemed "unproductive" (in the revenue-generating sense) and to subsidize medical education and basic research has declined, despite the benefits in prestige of a medical-school affiliation.

Hospitals affiliated with academic medical centers (AMCs) have suffered even more severely than other hospitals. Owing to their roles in conducting clinical research and educating students and residents, teaching hospitals are substantially more costly than community hospitals. They service a much higher proportion of indigent patients; they typically get more complex cases; they usually have more, and more expensive, equipment. None of these additions to their costs are adequately reimbursed in the now very competitive market in which health maintenance organizations (HMOs) and other insurers select health-care facilities for their subscribers. Reimbursement rates are aggressively bargained downward, and reimbursements are typically painfully slow. Interestingly, fewer and fewer HMOs and private hospitals accept Medicare patients, arguing that the federal reimbursements are inadequate.

In order to become more competitive, some AMCs (including those associated with AHERF) have purchased established medical practices and made employees of the physicians, with the expectation that referrals to the home hospital will increase and offset the \$200,000 to \$300,000 cost of acquiring these practices; this has not proven to be a successful formula.

Several outstanding AMCs have recently experienced enormous deficits. Harvard's five largest affiliated hospitals amassed deficits of \$150 million last year; the University of Texas Medical Branch at Galveston expects to lose \$110 million this year; the University of Pennsylvania Health System lost \$90 million in 1998; and Georgetown University expected to lose about \$75 million in 1999, after having lost \$62 million the previous year and \$57 million in 1997. To a greater or lesser degree, all AMCs located in urban centers share in these difficult times.

It was in this climate that AHERF, after having acquired several financially troubled hospitals, numerous medical practices, and the MCP and Hahnemann medical schools, declared bankruptcy in summer 1998 with debts of about \$1.5 billion.

Financial difficulties have led a growing number of AMC administrations to enter into partnerships with hospital chains that, it is argued, have management or business expertise and the financial resources to make the hospitals viable. The acquisition of a prestigious AMC as a tertiary health facility is worth a great deal to a business composed of multiple community hospitals. Tenet, the for-profit chain that acquired the Philadelphia-area holdings of the AHERF system, including MCP Hahnemann, had previously purchased Saint Louis University Hospital.

Viewed in the light of these trends, an annual deficit of \$25 to \$30 million, such as was encountered by MCP Hahnemann, does not seem extraordinary, nor so large as to have threatened the survival of the institution as a whole. But there was more to the plight of MCP Hahnemann than the above-described problems, which have beset virtually all medical schools in the country.

Exacerbating Factors in MCP Hahnemann's Financial Situation. Under the leadership of President Abdelhak, AHERF engaged in actions that led directly to the \$1.5 billion deficit and thus to the bankruptcy court and from there to the sale to Tenet. Some of these actions, it has been suggested, may have been grossly negligent—or worse—and are currently under investigation by various state and federal agencies. The Association's investigating committee is in no position to assess these matters or to establish what part, if any, they might have played in the financial disaster that overtook AHERF and ultimately embroiled the medical school. But there are other actions that unmistakably contributed.

A primary source of AHERF's difficulty was the poor timing of its expansion into eastern Pennsylvania by acquiring hospitals and other medical-related facilities when they were in actual and growing financial difficulty. The press made much of the extraordinary compensation increases for Mr. Abdelhak and his chief lieutenants at a time when the growing financial woes of area hospitals were being documented. On January 19, 1997, under the headline, "Despite Lean Times at Area Hospitals, Top Execs Get Raises," the *Philadelphia Inquirer* reported that Mr. Abdelhak had received a raise of \$287,000, to bring his total salary to \$979,000 plus additional benefits of \$115,000, and that AUHS provost Leonard Ross had received a raise of \$118,567, to bring his salary to over \$540,000 plus additional compensation of \$115,000. The significance of these numbers is suggested by the fact that the total salary of the thirteen discharged tenured professors in 1998 was about \$1 million.

AHERF's borrowing of large sums to acquire medical practices—contracts that were, like the faculty ones, voided by the bankruptcy court—surely also added to its debts. But none of this explains why the medical school was dragged into a state of crisis: its excess of cost over revenues accounted for at most 2 percent of AHERF's deficit.¹⁰

The key action that explains the medical school's being brought to the brink of crisis was that when AHERF borrowed large sums for the operations of its new hospitals, it identified the university as part of the "obligated group" whose assets and revenue streams were security for the loans. Thus the creditors had valid claims against both the revenues and the assets of the medical school to meet AHERF's obligations that had nothing to do with the medical school's operations. The AHERF bankruptcy proceedings thus threatened the survival of the medical school,

although the deficit in MCP Hahnemann's operations was a minor portion of the problem. The bankruptcy court looked to all of the obligated assets as fair game for the creditors. When bankruptcy seemed imminent, closure of the medical school became a realistic possibility, and the AUHS administration prepared plans for such an event.

The savings to be achieved by terminating the services of the thirteen tenured faculty members and abrogating their notice and termination rights under the university's bylaws could not have had much bearing on the inadequate overall repayment of the creditors. A different argument, however, could be made to justify the action. The whole Tenet deal (which was necessary for the creditors) required that Drexel University be persuaded to assume the management of the medical school, but Drexel would not have been willing to do so, it might be claimed, without a free hand to build a "new" medical school on the foundation of the "old." The Drexel administration did not explicitly make that claim in its discussions with the investigating committee, but rather argued a slight variation of it, to the effect that in order to have its best chance of creating a viable, restructured medical school, it had to pursue every opportunity, no matter how small, to increase its chances of success.

The investigating committee does not find either version of this argument compelling. The large influx of new funding to the medical school after the Tenet takeover, the apparently quick escape from financial exigency, and the aggressive new hiring then undertaken by the administration, which seems to have excluded the released professors from serious consideration, lead the committee to the conclusion that the discharge of tenured faculty was seen as an opportunity rather than a necessity. Expensive, less "productive" (in terms of grantsmanship), or simply disliked faculty members arguably could be dismissed quickly and cheaply, without opportunities to appeal and without a threat of litigation. Indeed, some of the released faculty members were "reappointed" (but not in faculty-status positions) to teach their old courses in the fall 1999 term because replacements had not been found.

Since spring 1999, the MCP Hahnemann administration itself has been painting a rosy picture of the institution's finances. In an interview with the *Philadelphia Business Journal* that appeared in early June 1999, Dean Warren Ross was reported to have stated that he expected the medical school to be doing "better than break even in 2001." Asked about any difficulties in recruiting new faculty, in light of the "notoriety of Allegheny's bankruptcy," he was quoted as stating:

The problem is getting the opportunity to talk to people. Once we get in we can talk about our relationship with Tenet and the improving financial picture and the opportunity to come to a school that is reinventing itself.

The bankruptcy was a kind of baptism. It provided us with an opportunity to wash away an awful lot of baggage. Now we have

10. That percentage very possibly exaggerated the medical school's contribution to the deficit, since it was charged what the investigating committee was told were excessive amounts for space.

the opportunity to reinvent MCP Hahnemann as one of the country's most modern medical schools. (Emphasis added.)

An advertisement for a "chair of biochemistry" that ran in the *Chronicle of Higher Education* in early December 1999 began as follows: "MCP Hahnemann's recent alliance with Tenet Healthcare and Drexel University has created *significant resources* . . . to continue its rich tradition of quality academic medicine." (Emphasis added.) "Interested individuals" were invited to submit their applications to a Philadelphia search firm.

2. Locus of Responsibility

The PHEC-Drexel management takes the position that its hands are clean—that the preacquisition medical school and university had already terminated the services of the tenured faculty members whose treatment is the subject of this report—and that any and all arrangements that AUHS or its component units had made with these faculty members, or any violation of their rights, were past history, and not the concern of the present administration. The current administration asserts, moreover, that its present responsibility is to manage the "new" MCP Hahnemann in such a way as to maximize the medical school's chances of success; that its operating instructions to those with day-to-day responsibility (such as department chairs and deans) reflect that view. These persons, in turn, believe that, subject to the budgetary constraints imposed upon them, they are to build the strongest medical school possible. Retaining or further compensating released faculty members (or other released employees) would not, in general, be consistent with their responsibility.

The administration's argument raised three questions. First, is the medical school in operational fact, if not in legal structure, a "new" institution or a mere continuation and reorganization of the prior ones?¹¹ Second, did the PHEC-Drexel management group, as a matter of sound academic practice, have a responsibility to alleviate the plight of the released faculty members, either because it was a witting party to the negotiations that led to the terminations, or because it is able to reverse decisions based on a financial crisis that has now been averted? Third, does the subsequent behavior of the new administration provide assurance that the past events are not likely to be repeated?

On the first question, to counter the claim that a new administration and a new control structure constitute a new medical school, one may point to several clear indications of continuity, including the name of the medical school, clearly retained to suggest continuity; the physical locations of its activities as well as its buildings and equipment; its courses of study and accreditation; the student body, none of whose members were expected to apply for admission to a new medical school, nor to have their curricu-

11. The plural is intended: the institution has gone through many reorganizations that reflect its history.

lar or financial arrangements modified; and (presumably) treatment of prior graduates of MCP Hahnemann as valued alumni.¹² Moreover, a great majority of the faculty and staff of the "old" university, including department chairs, was retained with little or no inquiry into possible de novo alternatives. At no point did the university or the medical school cease operations. To the investigating committee, it is clear that the "restructured" MCP Hahnemann School of Medicine is today in essential respects, that is, in measuring what an academic institution is or does, a continuation of the "former" institution.¹³

On the second question, soundness of academic practice and consequent responsibility, it is clear that Drexel University and President Papadakis were significant parties to the negotiations between AHERF and Tenet, which dealt with the status of the faculty members of the medical school whose services the bankruptcy court had allowed to be terminated. The November 9 letters of termination, one of which is reproduced above, were signed by President Papadakis, not by an officer of AUHS or of AHERF.¹⁴ What the bankruptcy court had made *possible* was not

12. In a conversation with a member of the AAUP's staff in late December 1999, the senior executive associate director of the Commission on Higher Education of the Middle States Association of Colleges and Schools stated that there has been no break in accreditation, and that MCP Hahnemann University has retained the accreditation status of Allegheny University of the Health Sciences.

13. Two previous investigating committees have dealt with the "new institution" argument. See "Academic Freedom and Tenure: Harris-Stowe State College (Missouri)," *Academe: Bulletin of the AAUP* (May 1981): 134–35; and "Academic Freedom and Tenure: The New Community College of Baltimore," *ibid.* (May–June 1992): 38–39. In the case of Harris-Stowe State College, which passed from municipal to state control in 1979 with the word "State" added to its former name, the investigating committee reported having been informed by the U.S. Office of Education's Division of Institutional Development "that the institution has been accredited since 1924 and, according to the North Central Association, 'the accreditation of the college continues unchanged.'" "In addition to accreditation," the investigating committee stated, "there is abundant other evidence of continuity. The buildings and equipment are the same. The courses of study, including course descriptions and numbers, are the same. The students are the same; a student who successfully completed the sophomore year at Harris-Stowe College was automatically a junior at Harris-Stowe State College if he or she chose to continue."

In the case of the New Community College of Baltimore, which in 1990 also passed from municipal to state control with the word "New" added to its former name, the investigating committee found that the "new" college was essentially the same as its predecessor. The committee stated that a vote by the Middle States Association's Commission on Higher Education to "continue the accreditation" of the college "is by no means the only evidence of continuity. . . . At no point did the college cease operations. Faculty members have retained their salaries, academic ranks, sick days, and retirement benefits. Students have advanced to the next year, retaining their grades and credit. The curriculum, while undergoing some modification, has been retained substantially intact."

14. Provost Astro stated to the investigating committee that this was a mere technicality, made necessary by the brief time in which the final negotiations were completed.

made *necessary* unless the Drexel administration insisted upon it as a condition of assuming management responsibility.¹⁵

Moreover, following its takeover of AUHS, PHEC-Drexel, having been shielded from any financial liability for the medical university's debts, had resources that could easily have converted the poor treatment of long-term, loyal tenured faculty members into either continued service or a more dignified but consensual separation. Several of those released were at an age at which a graceful retirement was possible; the investigating committee was told that one or more others were eligible for medical leave or long-term disability. None of the costs of such arrangements need have come from PHEC's operating budgets. The investigating committee estimates that the total additional cost of such arrangements would have been less than the interest earned in the first year on the \$50 million contribution to Drexel's endowment. If there had been a will, there was a way.¹⁶

15. Responding to a prepublication text of this report, President Papadakis commented as follows: "I do not take exception to the facts you cite with regard to the dismissal of those members of the tenured faculty. Indeed, they seem consistent with what we know about what happened during the last days of Allegheny University of the Health [Sciences]. But I must tell you that I am very troubled by your inference that those of us at Drexel who assumed management responsibility for what is now MCP Hahnemann University were somehow responsible for what happened before our arrival on November 11, 1998. We inherited an institution that had totally collapsed and was on the very brink of closing had we not stepped forward to save it. And while I acknowledge that it is always regrettable to terminate faculty for reasons of financial exigency (particularly tenured ones), the university and its hospitals were losing about \$1 million a day prior to bankruptcy. . . ."

"During the past fourteen months, we have worked very hard to rebuild MCP Hahnemann University. We have not yet completed our work, but we are well on our way. The fact that those academic programs that have been subject to various accreditation visits during this period have received satisfactory reviews is proof positive that our rebuilding efforts have been successful and that our instructional and research efforts at the University are growing progressively stronger. To lay any of the blame for what happened prior to our arrival at 'our doorstep' seems to me to be grossly misplaced criticism.

"In summary, let me reiterate that we are working very hard to build a new and vibrant MCP Hahnemann. I would only suggest that, as you finalize your own recommendations, you consider that fact carefully and that you accept the premise that we were not (and could not be) responsible for what happened at Allegheny prior to our arrival."

16. In his response to the draft text President Papadakis stated: "I feel that it would have been grossly inappropriate for us to reverse what appeared to be prudent measures to save what was a 'sinking ship.' What we did instead is set aside \$1.1 million to pay salary to the thirty-three terminated tenured faculty from November 11, 1998, to June 30, 1999. What was left at that time, \$309,000, we split among eleven faculty who had not found another job as of that date. I believe that this gesture on our part was most generous and one that we had no obligation whatsoever to offer, especially since the university continued to lose money." Counsel for MCP Hahnemann University, in his comments on the prepublication report, stated that "the [released] faculty members . . . were assisted by the AAUP chapter of the former Allegheny University of the Health Sciences and were represented by legal counsel who advised them prior to the voluntary transition agreements, these faculty members shared in a \$1.1 million settlement that was distributed to them in the form of transitional stipends."

The investigating committee believes that there were and (even at this late date) are prudential reasons for the new management group to reverse grounds and to resolve the cases of the released tenured faculty members. Certainly, the general academic community would look very favorably on an enlightened response to an earlier administration's harsh actions. And, quite possibly, such a response might make the future recruitment of faculty easier by reflecting a sensitive administration, committed to a respect for faculty rights. Additionally, we believe that such a response would presumably make the final integration of the medical school into Drexel University more attractive to the Drexel faculty. The present administration's rejection of these considerations—assuming that it even took them into account—suggests part of the answer to the third question. More of the answer is provided by looking at the question of tenure, and the apparent hostility of the present medical school administration to it.

3. Tenure in the Medical School

Medical schools are, in important ways, very different from other colleges and universities with which the Association regularly deals, and for which its principles and procedural standards have been developed. Questions within the Association about faculty status in medical schools, and especially about the appropriateness and definition of tenured appointments, were extensively and thoughtfully addressed in a Committee A report entitled "Tenure in the Medical School."¹⁷ Much of that earlier discussion bears directly upon questions faced by this investigating committee in the MCP Hahnemann matter.

Some coverage of the same ground seems useful here, because the specific events that are the subject of this report are (and, the investigating committee believes, ought to be) evaluated in the context of what may have become the standard practice in medical schools generally, even if that standard is less than ideal.

Three Kinds of Appointments in Medical Schools Today. Medical school faculties are a heterogeneous group of individuals with different training, activities, and relationships to the institution. For present purposes it is useful to distinguish three groups: (1) clinical faculty, typically M.D.'s, who are based in clinical departments such as medicine, surgery, neurology, psychiatry, or anesthesiology; (2) basic-science faculty, typically Ph.D.'s, also located in clinical departments; and (3) basic-science faculty holding appointments in preclinical basic-science departments within the medical school, such as biochemistry, physiology, pharmacology, or cell biology. Appointment relationships, including the meaning of and expectations respecting "tenure," vary among the three groups.

Clinical faculty customarily spend much of their time and effort in the practice of medicine and substantially less in research and university service. Although many clinical faculty members

17. *Academe: Bulletin of the AAUP* (January–February 1996): 40–45.

operate research programs (often applied research), this is seldom the major focus of their activities. Most of the teaching by clinical faculty is done in the hospital setting, with students who are interns, residents, or in their third or fourth year of medical school. The majority of clinicians do not have tenure in the usual form and do not typically receive a significant portion of their income directly from the general funds of the university to which most medical schools are attached. While they typically hold university appointments, they derive most of their compensation from a portion of fees collected for rendering medical services to patients seen at the university-affiliated hospital. The money is typically routed through an organized practice plan.

Tenure for clinical faculty members, if it is awarded, is usually without guarantee of salary or with a base-salary component that is so low relative to doctors' incomes that physicians would not remain at the medical school if that were their only compensation. Professorial titles are commonly awarded even to nonteaching clinicians, although usually without involving tenured or probationary appointments. Effective, well-regarded clinical faculty are typically appointed on multiyear contracts that are renewed indefinitely. When, as happened at Hahnemann, tenure is given by a blanket action to all of those with titles of associate professor or professor without any individual specification of precisely what is implied, it is perhaps inevitable that there will be ambiguity as to what tenure means.¹⁸

Basic-science faculty located in clinical departments are typically research faculty without significant teaching or service responsibilities. They may be valued both for the prestige that their research lends to the department and the school and for the frequently substantial overhead payments that accompany their research grants and are captured by the department or the school. But research faculty members do not produce patient income, and they are largely dependent on research grants and contracts to cover the expense of their salaries and fringe benefits as well as the other costs of their research programs. Typically, such research professors are not on the tenure track and depend on the "soft money" that they or others generate. But, again, honorific titles such as "research professor" or simply "professor" are both sought and given. Once more, there is ambiguity about what tenure means, if it is granted to such faculty members, and about how long their departments or the university will retain them if their research funding ceases. Unlike their M.D. colleagues, these fac-

ulty members have no immediate alternative external source of salary support if the university does not provide it. Ideally, this ambiguity is resolved, individual by individual, by explicit contractual agreement. When, however, there is no individual negotiation on this matter (as there was none at Hahnemann), the respective expectations of the administration and of the individuals who have titles that carry with them the designation of tenure may be far apart on matters not explicitly covered in the institution's applicable regulations.

In years past, when clinical departments generated significant surpluses, they could afford to support basic research in their disciplines. For example, surgery departments could conduct research on animals involving wound healing, transfusions, or experimental procedures, and neurology departments could support research on cellular mechanisms that cause epileptic seizures. Much of this research was performed by Ph.D.'s working in clinical departments. These persons would apply for grants, but if they failed to obtain enough money to pursue their research, the department could and would subsidize that activity, as it lent prestige, training opportunities, and academic credibility to the department. As clinical enterprises have fallen on harder times, many deans and department heads argue that they can no longer afford to support this kind of research. Furthermore, when financial stress is felt, their clinical "colleagues" often perceive these basic scientists to be a drain on departmental resources and a threat to their own compensation. They may be described as "unproductive," independent of the quantity or quality of their research output, if they do not generate sufficient funds to cover the expenses associated with them and their research programs.

Members of the third group of faculty, basic scientists in basic-science departments, are essentially equivalent to scientific faculty in non-medical-school departments.¹⁹ They typically have probationary or tenured appointments. They are expected to teach effectively the courses offered in the first two, preclinical, years and also to conduct a successful research program, including mentoring and training of graduate students and postdoctoral fellows. Thus this group is much like other tenured university faculty in biology, chemistry, or physics departments in both patterns of duties and compensation. Success in research is measured by the production of research papers, presentations at meetings and symposia, the organization of conferences, and, not least important, the acquisition of substantial grant funds. These external funds signal peer approval and allow for the recruitment of research fellows, research faculty, and graduate students who produce more research and more research proposals and hence compete more effectively for funds in an ever-shrinking pool of support.

18. Many tenured clinical faculty members were released as a result of the events herein discussed. One of them, Dr. Stephen Bulova, appealed to the Association for assistance in December 1998, after he had been discharged with two weeks of notice. Dr. Bulova worked in the Department of Medicine, managed the blood bank, and performed other tasks in certain laboratories, with no patient-generated income. He argued that he should have been considered in the same category as his Ph.D. counterparts who had tenure. He was not so treated when the severance pay of tenured basic-science faculty was extended from two weeks to nearly eight months.

19. Indeed, a department such as biochemistry or cell biology may be found in a College of Agriculture or a College of Arts and Sciences, and such departments exist in universities that have no attached medical school.

While tuition revenue and general university funds underwrite the expected costs of retaining such faculty members, it is clear that the medical schools welcome (and indeed may come to expect) the revenue that is generated, both directly and through indirect costs, from external research grants. Administrators and colleagues may regard tenured professors who do not provide more than half of their own salary from grant support as a disappointment and as not living up to expectations. Such persons may lose prestige and salary increases. The recent wave of post-tenure reviews in medical schools is motivated to a significant degree by the growing number of these persons. What tenure means in this environment is unclear.

Whether institutions go further, and demand external funding as a condition of continued appointment, and if so, to what extent, varies among medical schools. Indeed, formal arrangements contemplating "fractional tenure"—that is, tenure guarantees of a specified dollar amount that is only a fraction of the person's salary—have become increasingly common. In the past, because surpluses were generated by hospital and clinical services, subsidies between components of the medical center were common; loss of grant support did not generally lead to termination of appointment or loss of salary, but rather to adjustments in designated workload, and probably to smaller salary increases. Today there is almost always an (implicitly or explicitly) expected contribution from external funds to salary. Annual faculty evaluations by chairs address this subject, usually under the rubric of "productivity," which has become a major criterion in medical schools for assessing an individual faculty member's contributions to the institution. The investigating committee considers this growing emphasis on successful grantsmanship as a criterion for retention to be an ominous development, a threat to principles of academic freedom and tenure.

Tenured Faculty at MCP Hahnemann Medical School. At the time of the merger of MCP and Hahnemann, the medical school had tenured faculty members in all three classes of appointment discussed above. As a result of the blanket award of tenure to Hahnemann faculty based only on their having a professorial title, no common understanding appears to have existed as to what tenure precisely implied for each of those who were so tenured. Although silent on some matters, the regulations of AUHS spelled out many correlates of tenure—particularly how individuals whose appointments were to be terminated for reasons of financial exigency were to be identified and the procedural steps to be followed. On the questions, however, of security of employment and the general obligation to fund all or a portion of the salary of professors whose external funding was judged to be inadequate, the regulations were silent. Therein lies a substantial source of the present controversy at MCP Hahnemann. Many faculty members who might otherwise have been called clinical professors, or research professors, and not considered by the administration to be eligible for tenure, were nonetheless granted tenure. An adminis-

tration that regarded these designations as unwise or mistaken could easily shift to a view that there should be no tenured appointments. (Of the released tenured faculty members who are the focus of this report, roughly half were in clinical departments and half in basic-science departments.)

MCP, as noted earlier, had a conventional tenure system for its faculty, and many of them had achieved tenure, which AUHS agreed to recognize and continue. It also agreed to accept the regulations that governed the treatment of tenured faculty. Hahnemann faculty members—including clinical and research professors—had been awarded tenure solely by reference to their professorial titles, and that tenure, too, was recognized by AUHS.

An examination of the 1994 merger documents and the post-merger bylaws of AUHS leads to the conclusion that tenure existed, that it was recognized at the institution, and that it should have been protected both substantively and procedurally from much of what was to occur a few years later. Evidently, the administration of the merged medical schools had a different view. Almost immediately after the merger, the Allegheny University administration proposed, as described above, to institute an annual review of all faculty, with assignment of "goals and objectives" and the explicit threat of termination of appointment if the department chair deemed the faculty member, whether or not tenured, not to have achieved them. Many tenured faculty members saw this proposal as a clear assault on tenure, and twelve of them, all Ph.D.'s, filed a grievance in July 1994. The final settlement of the grievance that December, a settlement that was taken to apply to the faculty generally, appeared to have eliminated the threat. It included the following provisions:

NOW, THEREFORE, intending to be legally bound hereby, and in consideration of the mutual promises stated herein, the University and the Undersigned Faculty Members agree as follows.

1. . . . For faculty members whose goals include the submission of research grant proposals, the quality of the proposals as judged by extramural agencies may be used as part of the faculty member's annual evaluation. However, failure to obtain extramural research funding shall not be used as a criterion for termination of employment.

All such goals and objectives shall be realistic, attainable, and comparable to what is required of other faculty in the department of the same rank. Goals and objectives shall be developed with the full participation of the faculty members involved. . . .

2. The financial commitment to tenure shall be honored in the following manner: The "Academic Base" of tenured faculty members who are in good standing and who devote the time, energy, and attention to the performance of their duties as may be required by the chairs of their respective departments will be supported by the University. This Academic Base amount shall not exceed the lesser of the 50th percentile

of the relevant rank for the Basic Sciences, as reported in the most current issue of the AAMC report on medical school faculty salaries. . . .

3. . . . All faculty members will be included in the operational program budgets of their respective Departments, Centers, or Institutes.

4. Any reduction in faculty may be accomplished by attrition, with due consideration given to tenure and years of service and by termination where there is no other option available, consistent with commitments made by the University Board of Trustees. The University shall not fill the released faculty member's place within a period of two years following his or her departure, unless the released faculty member has been offered reappointment and has declined. . . . Overall reductions in faculty positions shall be accompanied by equal or greater overall reductions in University administrative and staff positions and consultants and university contracted services to provide the necessary reduction in overall academic costs.

5. In order to provide for an orderly reduction of the faculty and to provide fair treatment to all those who have served the institution for many years, a strong incentive plan for early retirement shall be developed and offered to all eligible members of the faculty. . . .

6. There shall be no decreases in the current academic base compensation of individual basic-science faculty members. Changes in faculty compensation or benefits in connection with a declared financial exigency shall be made by the University Board of Trustees only after consultation with duly elected faculty governance bodies in accordance with University Bylaws.

While paragraph 2 of this agreement provides something less than full salary support, and thus a form of partial tenure, paragraph 6 seems to ensure a continuation of the status quo ante. In any event, the faculty saw this agreement as a victory and a reaffirmation of tenure. The victory, if such it was, was not to be long lived.

On October 8, 1998, AUHS's then-provost (Leonard Ross) notified various faculty members that a motion would be filed with the bankruptcy court seeking its "approval of the termination of the employment of faculty members whose contributions are not consistent with the needs of the University's programs after restructuring." He further advised these faculty members, several of them tenured, that "your employment agreement has been determined to be one of those that the University will request the bankruptcy court's approval to reject which will result in the termination of your employment." These determinations were not made in a manner consistent with the AUHS regulations, nor were they consistent with the December 1994 agreement cited above.

The events in November 1998, and, indeed, in the period of widespread rehiring that has followed, indicate no adherence at all

to any of the usual meanings of tenure for those faculty members whose appointments were terminated.

Status of Tenure at the MCP Hahnemann School of Medicine. But what of the future? If there is any meaning to the concept of "tenure," however qualified, it must imply that faculty members with tenure are entitled to treatment different from that of faculty members without tenure, and (indeed) from nonfaculty employees. The protections of tenure are not limited to a commitment to continuous appointment and salary support. Standards relating to notice, rights to a hearing, procedures to be followed if termination is to be sought, severance pay, and priority consideration in either layoffs or rehiring are all relevant. These matters are specified not merely in AAUP documents; they were also specified in the regulations of AUHS. Respect for these procedural standards was nowhere in evidence in the administration's treatment of those faculty members issued notice of termination on November 9, 1998.

These actions did more than abrogate the tenure of those whose appointments were terminated. They did so as well for the faculty retained ("rehired" in the view of the PHEC-Drexel administration). Tenure henceforth became tenure in title only, with a zero-based financial commitment. The applicable regulations of AUHS were suspended and remain so under the current management pending the adoption of new regulations. When the investigating committee asked Provost Astro about the probable future tenure arrangements in the medical school, should the final merger of PHEC with Drexel University (whose faculty do have the normal full-salary sort of tenure arrangements) be achieved, he said that the matter was under study by a task force he had appointed. As of this writing, the task force has yet to issue a report. Whether any meaningful form of tenure will eventually be restored at MCP Hahnemann remains to be seen, and may be a major issue in the possible full integration of MCP Hahnemann into Drexel.

Perhaps as disturbing as a preview of the future as the actions taken (and not taken) during the crisis of 1998, and the apparent unwillingness so far to restore meaningful tenure to the retained, previously tenured, faculty, is the apparent lack of recognition by the present administration of tenure's importance. When the investigating committee discussed with Provost Astro the possibilities of taking corrective action, including priority in reinstatement, he indicated that he did not see any differences between the claims of the dismissed basic-science faculty who had held appointments with tenure, and the claims of others among the two thousand former employees of AHERF who were discharged. He did not see, he said, how he could reinstate one of the released professors without doing the same for a released elevator operator.

The investigating committee finds that tenure as it existed in fall 1998 was abrogated in November of that year, and, as of this writing does not exist in the "new" PHEC-Drexel medical school.

IV. Conclusions

1. Allegheny University of the Health Sciences was in a state of financial exigency in fall 1998, when the administration determined that the termination of tenured faculty appointments in the MCP Hahnemann School of Medicine should occur. That determination, and other unilateral decisions subsequently made by the AUHS administration, evidenced a disregard for the critically important role of the faculty in dealing with compelling problems of faculty status. Despite well-established channels within the medical school for such participation by faculty bodies, and several requests to be involved, no such participation was permitted. No faculty body had an opportunity to contribute to decisions on whether terminations of tenured appointments were warranted, where within the overall academic program terminations should occur, or which criteria should be used to identify particular individuals for release. The faculty was deprived of the role provided for it in the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure*.

2. The Allegheny University administration, in designating some tenured basic-science faculty members for release while at the same time retaining nontenured faculty colleagues in the same department, failed to demonstrate the basis or the necessity for the release of the former or the retention of the latter, thereby acting in violation of the 1940 *Statement of Principles on Academic Freedom and Tenure* and in disregard of the *Recommended Institutional Regulations*.

3. The Drexel University administration, having assumed the management of Allegheny University, and having participated directly in the decision-making processes that led to the actions taken against the tenured faculty members, thereby also assumed the responsibility for those actions. In assuming its managerial role, the Drexel administration should have assumed attendant responsibilities for dealing fairly and equitably with the released faculty members and for respecting their rights under tenure. The administration failed to meet its obligations under the *Recommended Institutional Regulations* in this regard. It did not offer them other suitable work at the medical school for which they were potentially qualified or reinstate them to their positions when vacancies were advertised in their specialties and were filled in most cases by new appointees. Acting at odds with the 1940 *Statement of Principles*, it made the continuation of those tenured faculty members it retained contingent upon their securing sufficient extramural funding to cover their salary, fringe benefits, and research expenses.

4. The affected faculty members, as a condition of receiving more than two weeks of severance salary and of retaining access to their offices and laboratories, were required to waive their right to a hearing assured them under the applicable AUHS regulations then in force and as called for under the 1940 *Statement of Principles*. Those faculty members thus lost any opportunity to contest the criteria for the termination of their appointments or to chal-

lenge why they in particular were singled out for release. They were also denied the severance salary called for in the Association's *Recommended Institutional Regulations*, even after MCP Hahnemann's financial picture had dramatically improved.

5. Neither the present nor the prior administrations sought to redress the injury done to the released faculty members, despite the emergence from the condition of financial exigency that was invoked to justify the actions taken. The use of the journey into bankruptcy court first to authorize and then to justify the abrupt terminations of faculty appointments was inimical to sound academic practice and warrants condemnation. ✍

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Investigating Committee

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

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

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