

"The following letter was recently sent from the Association's Washington office to President Cowen and Board Chair Pierson in response to their letter of February 7, concerning actions taken at Tulane in the aftermath of Hurricane Katrina. The national office has granted us permission to post this letter because of the continuing manifest seriousness of the issues it addresses and because of their general interest to the Tulane community."

VIA FACSIMILE (504-865-5202)

March 14, 2006

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President
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New Orleans, Louisiana 70118

Ms. Catherine D. Pierson
Chair, Board of Administrators
Tulane University
6823 St. Charles Avenue
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Dear President Cowen and Chair Pierson:

Since we last wrote to you on February 15, we have continued to hear from numerous faculty members at Tulane who have provided comments on your February 7 letter to us along with additional documents relating to their particular situations. The information and papers we have received, including the report dated February 22 that was prepared by the Faculty Tenure, Freedom, and Responsibility Committee (FTFR) in response both to our letter of January 26 and to yours of February 7, do not allay the concerns we conveyed to you previously. Many of those concerns relate to what has been reported to us about the faculty role in the decision-making processes that were followed by the administration and board. Other concerns arise from reports that we have received regarding the specific decisions.

We begin with the issue of financial exigency. In your letter you state that "every member of the President's Faculty Advisory Committee [PFAC] volunteered, without being requested by the administration or the Board, to sign a declaration of financial exigency." The FTFR's February 22 report states, however, that "[t]his characterization of the PFAC action may be misleading. According to some PFAC members, what they each signed was a statement that, given the information provided to it by the administration on December 3, 2005, Tulane was in a state of financial exigency." One PFAC member has written to us that the committee was afforded "no opportunities for meaningful discussion of the finances of the university." While there seems no doubt that the university was seen in the fall as having suffered a massive financial blow, faculty members continue to question whether it was so severe, and whether it remains so severe, as to justify all of the notifications of termination that have been issued.

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Whatever the extent of the condition of financial exigency as of this past fall, faculty members have asserted that the university's current and projected financial condition may not be so parlous. As you state in your letter, it is "impossible to predict with certainty what the financial footing of the university will be in coming years." Faculty members, however, have noted that Tulane has both property and business-interruption insurance and is the recipient of substantial funds from the Federal Emergency Management Agency, other federal granting agencies, and the Bush-Clinton relief effort. They contend that at some point the university is expected to recoup much of its losses. According to the FTFR report,

The administration was required to make decisions in challenging circumstances, with the information available at the time. In the opinion of the FTFR committee, the existence and extent of a state of financial exigency and the measures required to survive such a conditions are issues that cannot be resolved without the overview of impartial outside experts. The answers to these questions reside only within the detail of the financial information available to the administration and until it is examined, the existence and extent of, and remedial action required for, a state of financial exigency at Tulane University will remain a dispute that cannot be resolved.

We hope that the administration and board will provide the appropriate faculty bodies with detailed information concerning the university's current financial condition and agree to involve the faculty promptly in a review of these important matters.

We turn next to the issue of the role of faculty in deciding where within the university's academic programs terminations would occur, in determining the criteria for identifying the individuals whose appointments were to be terminated, and in identifying individual faculty members who were to be released. You state that you "strongly disagree with the suggestion [in our letter] that faculty interests were not appropriately accounted for in the decision-making processes." You go on to state that "no major decision was made without close faculty involvement. . . . Throughout the process, there was frequent and substantive consultation with the . . . PFAC."

According to the February 22 report of the FTFR, however,

It does not appear that the level of consultation with the PFAC meets the level of faculty involvement in dismissal decisions suggested in AAUP guidelines. It is clear that the PFAC was the committee established to consult with the President in situations requiring immediate consultation and was therefore the logical choice to meet with. It is not, however, a committee designated or approved by the faculty to determine criteria for or having the responsibility for identifying individuals to be terminated as AAUP guidelines call for. In any event, some members of the PFAC report that they were not asked to determine such criteria or to participate in the identification of individuals to be terminated.

We remain troubled if indeed there was scant faculty involvement in these crucial aspects of the decision-making process, and if, as a consequence, these decisions, affecting the careers of scores of faculty members, were made exclusively or primarily by various administrative officers.

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With regard to the "Plan for Renewal" and its major reorganization of the university's academic structure, we noted in our January 26 letter that issuing the plan in December served to "foreclose the opportunity for meaningful faculty participation in commenting on a proposed restructuring framework." Commenting after the issuance of the plan, faculty members have asserted that many of the curricular and organizational changes contained in the plan closely resemble restructuring efforts and proposals long advocated by the administration but consistently opposed by the faculty. They wonder why, if the plan was presented in December, it could not have been brought to the faculty in January. You have pointed out to us that the PFAC was consulted in the adoption of the renewal plan, but it seems to us that the issue of consultation with faculty goes beyond the role that the PFAC may have played in the fall.

Our Association's *Statement on Government of Colleges and Universities*, which embodies standards widely upheld in American higher education, rests on the premise of appropriately shared responsibility and cooperative action among governing board, administration, and faculty in determining educational policy and in resolving educational problems within the academic institution. It refers to "an inescapable interdependence" in this relationship which requires "adequate communication among these components, and full opportunity for appropriate joint planning and effort." It further asserts that "the interests of all are coordinate and related, and unilateral effort can lead to confusion or conflict."

As one facet of the "interdependence" called for under the *Statement on Government*, Section II of the document provides that "[s]uch matters as major changes in . . . the relative emphasis to be given to the various elements of the educational and research program should involve participation of governing board, administration, and faculty prior to final decision." Section V of that statement emphasizes the faculty's central role and primary authority in academic and educational matters, with the implicit expectation that the faculty should play a fundamental role in any decision involving a significant change in an institution's academic structure that would change the basic character and purpose of the institution. Whatever the merits of a particular reorganization plan, it seems to us inimical to sound principles of academic government for an administration and governing board to develop, announce, and implement a plan for a major academic reorganization of the institution without the significant involvement of the faculty, through its appropriate bodies, in the planning and decision-making processes. This would seem especially so in a restructuring of such magnitude as to be characterized by President Cowen, in an article published in the January-February 2006 issue of *Trusteeship*, as involving the "reinvention" of Tulane University.

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Another issue raised in our initial letter to you of January 26 but not addressed in your February 7 response concerns complaints from faculty members in business, engineering, and the medical school that tenured professors were released while nontenured faculty colleagues were retained, that no explanation was given for designating particular individuals for retention and others for release, and that little or no effort was made to assign affected individuals to other suitable positions for which they were qualified, even where such positions, in some cases involving teaching courses required in the newly configured programs or departments, are available. Each of

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these matters presents potentially troubling concerns under Association-supported standards of academic due process, and we hope to have your comments on them.

With regard to the affordance of opportunity for an on-the-record, adjudicative hearing in which the affected professors could contest the actions being taken against them, your letter states that "no faculty member that we know of has been denied an opportunity to initiate a formal appeal." In its report of February 22, however, PFAC commented as follows:

The AAUP questions whether a hearing process was in place following the faculty terminations, and the University responds that all normal appeals procedures are functioning. A terminated faculty member might become frustrated when (in the case of medical faculty) the letter of dismissal was received in early December with a dismissal date of January 31 and the appropriate appellate bodies would not be reconstituted until the middle of January at the earliest.

Given the timing of the notices issued in the medical school, many affected professors who might have wished to contest the administration's actions seem to have had no real opportunity for a hearing after the notices were issued but before the effective date of separation. We appreciate that affected professors in business and engineering were given eighteen months' notice of termination rather than, as was the practice in the medical school, immediate termination of appointment accompanied by severance pay, and that for these uptown faculty that should permit normal grievance proceedings to occur. We understand that several faculty members have initiated individual or group appeals of the actions in their cases.

Last but not least among our concerns, President Cowen is reported as having stated at the February 6 meeting of the Faculty Senate that the decisions to terminate particular appointments, including those held by tenured professors, were motivated by both "financial and strategic" considerations. Elsewhere, the president is quoted as having stated that "underperforming departments" were to be eliminated. And an article in the December 9, 2005 issue of the *Chronicle of Higher Education* reported as follows: "We basically cut the programs that were not the strongest," he [Cowen] said. In a way, the hurricane prompted the university to make decisions it could not make before the storm hit. 'Under the current way universities operate, you can't make these decisions under normal circumstances,' he [Cowen] said. 'It takes an event like this.'" In our letter to you of January 26, we wrote that, "[a]dding to our concerns" about the lack of pretermination hearings afforded to faculty members being released

are documents we have received and media accounts we have read which appear to indicate that the appointments of some of these individuals are being terminated because the administration has arrived at unilateral judgments on their relative merit. We see terminating tenure on grounds of fitness of performance to be tantamount to dismissal for cause, to be pursued under different procedures.

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In your February 7 response you state that we were "incorrect" in our "suggestion that decisions to terminate faculty were somehow terminations 'for cause.'" And yet, as we have stated in one of our published reports, "An administration's judgment that faculty members who comprise a particular program are less meritorious than their colleagues in other programs to continue at the institution suggests a commentary, intended or not, on the fitness of the particular faculty members who are affected." To the extent that the administration of Tulane University relied on considerations of relative merit in terminating the appointments of faculty members in the schools of business or engineering, we believe that it is obliged to afford them opportunity for a hearing in which it bears the burden of proving adequacy of cause.

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We urge that you give further consideration to the areas of concern that we have identified. We shall doubtless be writing again as additional developments unfold.

Sincerely,

B. Robert Kreiser
Associate Secretary

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