

February 22, 2006

*Report of the Faculty Tenure, Freedom and Responsibility Committee regarding the letter from the AAUP dated January 26, 2006 and the response from Tulane dated February 7, 2006*

At the last faculty meeting a resolution was passed that asked the FTFR Committee to review the letter from the AAUP dated January 26, 2006, and make recommendations regarding its content. Since that time, the University has responded to that letter in correspondence dated February 7, 2006, and the committee has reviewed this as well.

First and foremost, the committee recommends that each Senator (and each faculty member) familiarize themselves with the Faculty Handbook (<http://www.tulane.edu/~fachand/index.html>) and with the pertinent policies (and findings) of the AAUP with regard to procedures surrounding situations of financial exigency (<http://www.aaup.org/statements/REPORTS/Financial.htm>). The Tulane University Faculty Handbook contains a subset of the AAUP guidelines, but not all of them; this makes navigation between Handbook requirements and AAUP guidelines problematical, although the University suggests a willingness to follow AAUP guidelines as well as the Faculty Handbook (Cowen/Pierson letter, p. 1).

The first substantive issue brought by the AAUP letter is the issue of "meaningful faculty involvement." This is augmented by reference to "a primary faculty role in determining the criteria for identifying the individuals who are to receive notice of termination" and placing responsibility for identifying the individuals to be terminated in a person or group designated or approved by the faculty.

The University's response is that "frequent and substantive consultation" was made with the President's Faculty Advisory Committee. According to several PFAC members, four meetings of the PFAC were held between October and December, 2005, for a total of some twelve hours. The meetings consisted of the administration presenting the then-current condition of the plans to cut the budget and the plan for renewal, and the committee providing feedback on those presentations. The committee met by itself only at the end of the last meeting to draft a statement; they did not meet separately to discuss the issues presented at the meetings with the administration.

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 they were not asked to determine such criteria or to participate in the identification of individuals to be terminated.

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<sup>st</sup> and the appropriate appellate bodies would not be reconstituted until the middle of January at the earliest. An issue of timely access to an appeal process could be raised.

To the extent that the AAUP letter raises issues of individual cases, the reassignment of tenured faculty to other duties they are qualified to undertake, and retention of untenured faculty while dismissing tenured faculty, these issues must be addressed on an individual (or specific group) basis and are best brought as individual or group complaints to the appropriate appellate group. The University has stated that it "believes that the termination decisions were taken in full compliance with the Faculty Handbook."

Similarly, the question of whether a genuine state of financial exigency existed, or whether it was sufficiently grave to require all of the terminations that were made, is one that is difficult to resolve even now. Uncertainty is a centerpiece of the declaration of financial exigency: What percent of the students would return? What faculty and staff would return? What would the city's infrastructure be able to support? Would a viable city population return to provide the case load necessary for the hospital? Will sufficient numbers of high-quality students apply to Tulane in the future? As time moves forward, experience replaces uncertainty and what looked bleak becomes merely lackluster, what looked optimistic becomes attainable.

The University's letter states that "every member of PFAC volunteered, without being requested by the administration or the Board, to sign the declaration of financial exigency." This 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<sup>rd</sup>, 2005, Tulane was in a state of financial exigency. A version of that statement was originally drafted by the University counsel but was radically altered by the committee before it was adopted. It originated with a question from a single PFAC member about whether such a statement would be helpful to the President, and the President made it clear that it would be welcomed on the part of the administration. Thus, as University's letter states, the statement was not signed as the result of a request from the administration or the Board; however, the President did encourage the committee to undertake this initiative. While every member of the committee signed the committee's resolution, the committee's resolution was not an unqualified declaration of financial exigency, but only a declaration of it given the financial data provided by the administration.

The University letter calls attention to the unprecedented conditions that existed in New Orleans and at Tulane following Hurricane Katrina. AAUP policies and guidelines, and the Tulane Faculty Handbook, were not prepared with a view towards these conditions. In the aftermath of Katrina, Tulane operated in an environment for which no manuals exist and in extreme uncertainty. 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 condition 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.

For the Committee:

Edward C. Strong, Chair