

Statement of Tulane University Regarding “Hurricane Katrina and New Orleans Universities, Report of an AAUP Special Committee”

Tulane University provides these comments on the May 15, 2007 report by the American Association of University Professors (AAUP) Special Committee on Hurricane Katrina and New Orleans Universities (Report), insofar as the Report relates to Tulane.

Two issues warrant attention at the outset. First, in response to a draft of the Report, Tulane provided 13 single-spaced pages of comments, which can be found at <http://www.tulane.edu/aaup>. Tulane’s comments showed that the draft report was seriously flawed and contained numerous errors of fact, omission and interpretation. Although the final version of the Report acknowledges (mostly in footnotes) some of the corrections Tulane offered, errors and meritless conclusions remain in the final version.

Second, as even a cursory reading of the Report will show, the AAUP committee brought an advocacy interest, not intellectual detachment, to its task. The AAUP as an organization represents asserted faculty interests. For example, it assists in local organizing, collective bargaining, and handling faculty members’ grievances. AAUP’s website cites acts of “civil disobedience” by its leaders “in the struggle for employee rights.” In short, AAUP is not an independent, unbiased investigator. Tulane’s comments on the draft report pointed out 11 of the instances in which the draft conflated AAUP’s conflicting roles of (a) purported judge and (b) actual advocate. Yet the Report does not redress this problem. For example, in many places the Report accepts as fact assertions, set out in the text, by unnamed faculty members who were affected by the University’s Renewal Plan, whereas it sets out in quotation marks statements (which it typically relegates to a footnote) by the administration -- a usage that in context implies skepticism or worse. In light of AAUP’s role as an advocate for asserted faculty interests, the Report should be read as the kind of argumentation characteristic of a courtroom lawyer, rather than as the findings of a dispassionate, unbiased judge. The AAUP committee failed to acknowledge in the Report this predisposition, but merely footnoted without comment Tulane’s expressed concern on the point. Such dismissive treatment is neither fair-minded nor consistent with reliability. In sum, the Report, like the draft on which it is based, is deeply flawed. Its conclusions as to Tulane are wrong as a matter of fact, are unsupported by AAUP’s own doctrine, and deserve the values for which AAUP claims to stand.

A reader of the Report may have a number of questions about it, some of which are addressed below.

**DO THE REPORT’S FINDINGS SUPPORT ITS CONCLUSIONS?**

Many of the Report’s findings are at odds with the Report’s conclusions. For example, the Report concludes that Tulane acted in a manner inconsistent with AAUP policy and that Tulane “demonstrated a view fundamentally inimical to the system of academic tenure” (Report, p. 118); yet the Report (at page 65) finds that Tulane followed

its faculty handbook and that Tulane's policies and procedures "largely but not entirely track AAUP-recommended standards in key respects." Tulane's comments on the draft report identified 23 findings, which remain in the final version, that conflict with the Report's conclusions. A few examples of findings in the Report that conflict with conclusions of the Report follow:

- "As return to New Orleans became possible, President Cowen convened several meetings of the President's Faculty Advisory Committee (PFAC), a body elected by the Tulane University Senate for the purpose of serving as a consultative instrument and a sounding board for both faculty and administrative concerns." (Report, p. 102)
- "... there was a sense that the views of the committee were generally listened to and taken into account." (Report, p. 102)
- "President Cowen felt, the Special Committee believes with some justification, that the extraordinary events of 2005 placed the relationship of the advisory committee and the president on the kind of emergency footing envisioned in the senate constitution." (Report, p. 103)
- "The committee as a whole, according to members who met with the Special Committee, did feel that based on the evidence presented, which included some preliminary disclosure of plans for cutbacks in the schools of engineering, business, and medicine, there was no alternative to the declaration [of financial exigency], which PFAC was specifically asked to endorse and did in the event endorse." (Report, p. 103)
- "[...] The medical school grievance committee supported the administration's contention that a condition of financial exigency existed, that the Association's Recommended Institutional Regulation 4(c) (which the complainant had adduced in support of his case) was not binding on the Tulane administration, and that it was 'beyond the scope of an Article V review [under the Tulane faculty handbook] to evaluate the establishment and implementation of criteria for dismissal of programs or faculty.'" (Report, p. 107)
- "By contrast [with a provision not applicable under financial exigency that calls for a full hearing], Article V of Tulane's faculty handbook states only that the faculty member has the right to have the issues reviewed by the divisional faculty and the FTFR Committee." (Report, p. 107)
- The medical school grievance committee "found that the vice presidents who had appeared before the committee 'did make a plausible case that the University was facing a severe financial problem in the form of a likely large recurring operating deficit,' [...]" (Report, p. 111)

## **DO THE FACTS SUPPORT THE REPORT'S CONCLUSIONS?**

The erroneous conclusions of the draft report are no less erroneous in the final version. The draft report's conclusions were based on certain key findings, many of which Tulane's comments on the draft showed were erroneous. (See in this connection the points made at pages 2, 3, 4, 5,6, 8, 11 and 12 of Tulane's comments on the draft report.) Tulane's comments on the draft included a seven-page single-spaced appendix that identified, simply by way of example, 25 errors and omissions and 11 instances of unsupported or misleading rhetoric. The final Report leaves many of these uncorrected. In 15 instances, the final Report entirely fails to address Tulane's correction, or merely quotes the correction in a footnote without comment. To cite just a few examples:

- The Report is incorrect to the extent it implies that positions of terminated faculty members in the medical school have been filled. Any mission-critical duties have been taken over by other faculty members or met in appropriate ad hoc ways.
- The Report endorses a "conservator's approach" that would require a university in financial exigency to retain every academic unit unless that unit was losing money. Neither legal precedent nor common sense is consistent with that view. One reason is that a paramount fiduciary duty of those responsible for the institution, including faculty as well as administrators and trustees, is to preserve its mission. Selecting units to close based solely on their financial condition would be inconsistent with the University's mission of service to students and compliance with applicable standards of educational quality.
- The Report's characterization of the PFAC's role as not meaningful is erroneous and conflicts with other statements in the Report. Among several other examples of its role, PFAC representatives were invited to attend, did attend, and had an opportunity to address the Board at the December 2005 meeting in which the Board considered and ultimately adopted the declaration of financial exigency and the Renewal Plan.

In 21 instances, the AAUP committee made changes in the final Report that at least partially addressed Tulane's corrections; but even then, the related conclusions, which were apparently based on the erroneous findings, remain almost entirely unchanged. For example:

- The draft report stated that "the degree of flood damage to Tulane's uptown campus was moderate" (Draft, p.70). After the University pointed out that the Uptown campus sustained \$137 million in property damage, the final Report changed "moderate" to "substantial". This was but one example that may lead readers who live and work in the Gulf region to question whether the AAUP committee has ever comprehended the impact of Hurricane Katrina on Tulane and other New Orleans-based institutions. That perception was reinforced when the AAUP committee scheduled its visit to New Orleans on the anniversary of the storm and then wondered why several universities could not meet with it.

- The draft report asserted that terminated faculty had no opportunity to review financial information pertinent to Tulane's financial exigency, or to question Tulane administrators during the review process. The University pointed out the errors in these assertions. The final Report acknowledges Tulane's correction of these errors (Report, p. 110, n. 42), but does not acknowledge that the facts as corrected negate one of the Report's main conclusions -- that the AAUP committee believed the grievance process to be defective based on the committee's erroneous assertion that these opportunities were denied (p. 117).
- The draft report implied that the University should not have terminated tenured faculty in a department in which untenured faculty were retained. (Draft, p. 80.) The University pointed out that in many cases tenured faculty members were performing duties not critical to the University's mission, whereas some untenured faculty were performing such duties. Although the final Report in a footnote acknowledges this comment, the Report does not otherwise address the University's explanation.
- The draft report omitted information inconsistent with its conclusions. For example, it failed to relate that the Faculty Tenure, Freedom and Responsibility committee (FTFR) upheld the University's termination decision in the only appeal by a medical school faculty member as of the writing of the draft report. The final Report corrected this omission, but again did not explain why FTFR's decision does not undermine the committee's conclusions.

Despite these and numerous other errors and omissions in the draft report, AAUP's committee in the final Report kept nearly all of the draft's conclusions, and failed to explain why Tulane's corrections so little influenced the committee.

### **WHAT IS THE AAUP COMMITTEE'S COMPLAINT WITH TULANE'S PROCEDURES?**

Notwithstanding its factual findings, the Report's central conclusion seems to be that Tulane's procedures, which as adopted in the faculty handbook were approved by the University Senate, differed in some respects from procedures AAUP's committee would like Tulane to have had in place. Yet although the Report concludes that Tulane "disregarded" AAUP's 1940 Statement of Principles, the Report points to no specific, supposedly violated provision of the 1940 Statement. That is unsurprising, as the 1940 Statement does not address in any pertinent respect terminations under financial exigency, except to say that "[t]ermination of a continuous appointment because of financial exigency should be demonstrably bona fide." 1940 AAUP Statement, p. 4. The Report does not conclude that any termination at Tulane was other than bona fide.

The Report does assert that the University should have provided yet more evidence and more extensive process in the reviews conducted by faculty grievance bodies. But neither the 1940 Statement nor AAUP's Recommended Institutional

Regulations on Academic Freedom and Tenure provides clear guidance on just how much AAUP contends is enough.

Moreover, a conscientious adherence to the tenets of academic freedom is not tantamount to endorsement of every single procedure AAUP advocates. AAUP itself acknowledges this. As its compendium of recommended policies makes plain, "[a]doption [by a college or university] of or reference to the 1940 Statement does not necessarily entail a commitment to the many AAUP policy statements that the Association has derived from the 1940 Statement and from its own evolving ideas of good practice. . . . Surely no one would contend that adherence in 1950 to the 1940 Statement, without more, 'binds' an institution to AAUP interpretations of 2006, in the sense that the later interpretations become an amendment to the institution's regulations. Similarly, if a college incorporates part of the Recommended Institutional Regulations in its own regulations, later revision by AAUP will not alter what the institution has adopted, except on those few occasions when the college's rules express an intent to submit to AAUP revisions, sight unseen." AAUP, Policy Documents & Reports (10<sup>th</sup> ed. 2006), p. xi. Thus, although AAUP's committee suggests that Tulane's procedures are inadequate, the committee neither specifies the supposed defect nor demonstrates how the supposed defect was inconsistent with AAUP policy; nor, even had such inconsistency been demonstrated, would such inconsistency have amounted to a defect.

### **IS THE AAUP COMMITTEE'S CHARACTERIZATION OF TULANE, AS BEING INDIFFERENT TO FACULTY CONCERNS, WARRANTED?**

The facts are irreconcilable with the Report's characterization of Tulane's approach to faculty concerns. The University carefully and consistently followed its faculty handbook, including the rules respecting termination of faculty in a time of financial exigency. Indeed, the University provided faculty more rights and benefits than those the handbook required. For example, the University continued to pay and provide full benefits to faculty members throughout the period after Katrina when the University was closed, and the University provided more notice and more severance in many cases than the handbook required.

### **WHAT IS THE OVERALL SIGNIFICANCE OF THE REPORT?**

Readers aware of missteps and distortions such as those identified above may ask, "Does it really matter if an AAUP committee issues a flawed report?" It does matter. Higher education depends on the trust students, parents, colleagues, and members of the public have in professors. A committee of the principal national association of professors should not issue a report that fails to acknowledge or to correct identified errors. It should not issue a report that treats information supplied by the University differently than it treats like information supposedly supplied by some faculty. It should not issue a report that lacks internal consistency, that reaches conclusions unhinged to facts, and that amounts to advocacy costumed as adjudication. A report of that kind tends to undermine trust in the professoriate, and thus tends to undermine trust in professors. We should expect more from those who profess to teach us and whose example is supposed to guide

us. A lowered expectation will tend to result in lower standards of academic performance, of which the Report here addressed gives evidence. The AAUP Committee's Report is analytically unsound, rests on erroneous premises, is unfair to Tulane, its faculty, staff and students, and does not do credit or honor to the AAUP as an asserted voice of the national professoriate.