

R E P O R T

ACADEMIC FREEDOM AND TENURE: BETHUNE-COOKMAN UNIVERSITY (FLORIDA)¹

I. Introduction

The subject of this report is the dismissal in 2009 of seven faculty members at Bethune-Cookman University. Two of these professors had been granted tenure; four others were untenured but with at least seven years of full-time service. Four of them were undisputed cases of dismissal for cause; the actions in the three other cases were tantamount to dismissals. The stated reasons for the dismissals ranged from charges of sexual harassment of students to insufficient academic credentials to a necessity to reduce the size of the faculty for financial reasons.

Bethune-Cookman University is a historically black institution located in Daytona Beach, Florida. It was founded in 1904 by Dr. Mary McLeod Bethune, a renowned educator and civil and women's rights leader who was its first president. She remained in that position until her retirement in 1942. The institution began as the Daytona Educational and Industrial Training School for Negro Girls. Following a 1921 merger with the Cookman Institute in nearby Jacksonville and a 1931 affiliation with the United Methodist Church, the school became a junior college known as Bethune-Cookman College. In 1941, it was accredited by the

Commission on Colleges of the Southern Association of Colleges and Schools (SACS) as a four-year baccalaureate-degree-granting institution offering a liberal arts and teacher-education curriculum. With the establishment of its first master's-level program in 2007, the board of trustees approved a change of name to the current Bethune-Cookman University.

According to B-CU's Web site, the university's mission "is to serve in the Christian tradition the diverse educational, social, and cultural needs of its students and to develop in them the desire and capacity for continuous intellectual and professional growth, leadership, and service to others." The university enrolls approximately 3,400 undergraduate and graduate students taught, before the 2009 layoffs, by some 200 full-time faculty members.

Dr. Trudie Kibbe Reed, the institution's fourth president, has served in that position since 2004. Immediately prior to her appointment at Bethune-Cookman, she had been president of Philander Smith College in Arkansas.

II. The Cases of Four Faculty Members in the School of Social Sciences: Professors Mootry, Negrón, Uhakheme, and Ukawuilulu

Professor Russell Mootry, an alumnus of Bethune-Cookman College, received his PhD in sociology from Howard University in 1983. He was appointed to the Bethune-Cookman faculty in 1977, received tenure in 1995, and, following a year as interim dean, became dean of the School of Social Sciences in 2006, in which capacity he served until three months before his 2009 dismissal from the faculty. Professor Trebor Negrón, also an alumnus of Bethune-Cookman, was appointed as an instructor in the political science department in 2006, following five years at the institution as a research associate in gerontology. He is currently a PhD candidate in conflict analysis and resolution at Nova Southeastern University. Professor Smart Uhakheme

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 investigation was conducted, to the administration of Bethune-Cookman University, and to other persons directly concerned in the report. In light of the responses received and with the editorial assistance of the staff, this final report has been prepared for publication.

received his PhD in political science from Atlanta University in 1985 and joined the faculty of Bethune-Cookman as an assistant professor of political science in 1989. He was promoted to the rank of associate professor in 2000 without officially being granted tenure. He served as assistant dean in the School of Social Sciences from 2006 until two weeks before his dismissal.

Professor John Ukawuilulu received his PhD in sociology from Howard University in 1991. He joined the Bethune-Cookman faculty as an assistant professor of sociology in 1993, was promoted to associate professor with tenure in 2000, and was named a full professor in 2008, the same year he was appointed associate dean in the School of Social Sciences.

On February 25, 2009, Dean Mootry was called to the office of Dr. Castell Bryant, interim vice president for academic affairs, who handed him a letter stating that, “[e]ffective immediately, you are being relieved of your duties as Dean of the School of Social Sciences and placed on sabbatical.” The letter gave no reason for the action, nor was any offered by Vice President Bryant.² A security guard escorted Dr. Mootry from there to his office, where he was told to remove his personal belongings and turn in his keys; his e-mail account was disabled, and his campus mail service was cancelled.

On Friday, May 15, Professors Negron, Uhakheme, and Ukawuilulu were individually called out of a workshop they were attending on campus by an armed security guard and met by additional guards. Each of them was handed an unsealed envelope containing a letter signed by President Reed, informing him that he had been suspended without pay and stating, “This decision is based on allegations made against you related to improper conduct with female students at the University.” They were required to turn in their keys and leave the campus without being allowed to collect their personal belongings. Professor Mootry received a virtually identical letter that same day.

2. A “Summary Report” dated February 1, 2010, prepared for the undersigned investigating committee by the university’s general counsel, Pamela Browne, states that “Dr. Mootry was on administrative leave . . . for failure to adequately supervise faculty and perform his other duties as Dean.” President Reed, in a subsequent meeting with AAUP staff members in Washington, confirmed that the February suspension of Dr. Mootry resulted from concern about his administrative shortcomings and that the concerns which were the cause of his dismissal surfaced afterwards.

The letters required the four to attend meetings separately with an outside investigator, Mr. Bo Brewer, owner of The People Business, a human resources consulting firm. These meetings, the letters stated, would be held three days later, the following Monday, May 18, at the office of the university’s retained attorneys. Each letter stated, “During the course of the investigation, you will be provided with the details of the allegations and given an opportunity to respond to them.” The letters further stated that they were barred from campus and should “not have contact with anyone at or from the University, including faculty, staff, administration, employees, alumni, trustees, donors, or any members of the student body.”

On May 18, the four professors attended their separate meetings with the investigator, accompanied by their attorney, Mr. David Glasser. At those meetings they were informed orally of anonymous students’ allegations of sexual harassment. At the meeting and subsequently, the four professors denied all allegations. According to their accounts of these interviews, the questioning dealt in generalities, and, notwithstanding requests from Mr. Glasser, none of the accusations was presented to them in writing, as called for by university procedures dealing with charges of sexual harassment.

The B-CU faculty handbook specifies that “[t]he University will promptly establish a Committee to investigate any complaint of sexual harassment.”³ No such campus committee was established. More precisely, no one interviewed by the AAUP investigating committee identified such a committee, and no committee report was provided to the accused, as required by the handbook, or to the investigating committee.⁴

3. B-CU faculty handbook, 21st ed., 53.

4. In a June 28, 2010, response on behalf of the Bethune-Cookman administration to a prepublication draft of this report, outside attorney Andrea Kurak wrote that the report “does not recognize a university’s responsibility to protect the safety, health and well-being of its students and staff. B-CU had a duty to take swift and remedial action and terminate the four professors. . . . The initial investigation, launched by the university, resulted from the faculty interviews conducted by the consultant and the anonymous student survey; therefore, the Faculty Handbook provisions which would have required the formation of a faculty committee upon receipt of a complaint of sexual harassment were not triggered.” In an additional September 23 response, Ms. Kurak stated that a sexual-harassment complaint committee was not established because a formal student complaint had not been filed.

On May 29, each of the professors received a letter from another B-CU outside attorney, Ms. Kelly Parsons, notifying him that his “employment with Bethune-Cookman University ha[d] been terminated for cause, effective immediately.” Professors Mootry and Ukawuilulu were additionally informed that their tenure was revoked. According to Ms. Parsons’s letters, each faculty member had been the subject of an “independent investigation,” which concluded that each had been “involved in sexual misconduct with female students at the University. As such, the reason for . . . termination is moral turpitude”—grounds that the faculty members sharply dispute. The letters stated further that their conduct was in “violation of the University’s policies regarding harassment, violation of the ethical code, conduct in violation of commonly accepted standards of morality, and failure to cooperate within the bounds of accepted standards.”

By letter of June 11 from attorney Parsons, the administration offered a separation agreement to the four professors. The proposed agreement would have compensated them for the remainder of their 2008–09 academic-year appointments, including accrued leave, and would have provided for an additional “consideration” of \$500 each. The four professors rejected the offer because they believed the damage to their careers far outweighed the monies offered, most of which they asserted were owed to them under the terms of their appointments.⁵

On June 16, the four faculty members filed a formal request for a “Faculty Administrative Hearing.” According to the B-CU faculty handbook (p. 29), such a hearing is to be conducted by a committee of five faculty members, three of whom, including the chair, are appointed by the president, with two selected by the appealing professors. The procedures place the burden of proof on the professors to demonstrate why they should not have been dismissed. The hearings were scheduled for July 9 and 10. The professors’ attorney requested a continuance on grounds that they had not been given adequate notice to prepare for the hearing. Also, they were experiencing difficulty locating their two faculty representatives to serve on the hearing panel because the university

was closed for the summer. By letters of July 6, they were informed that their request for a continuance was denied, although they were given an extension, until noon the following day, to identify faculty members to serve on the committee.

On July 7, attorney Parsons wrote to attorney Glasser informing him that, “[b]ecause this is an internal University matter, you will not be allowed to attend the appeals proceedings.” The same letter indicated that this “internal University matter” would be conducted off campus at the law offices of the outside attorneys. The professors responded jointly by letter the next day, objecting to the lack of due process in the hearing procedures, especially not allowing the presence of their attorney at the proceedings, holding them at the university counsel’s offices, and refusing to grant them the requested continuance. Despite the protest, the hearings proceeded as scheduled. Of the two faculty members the accused professors had chosen to serve on the panel, one declined to participate, and the other did not appear at the hearing for unexplained reasons. According to the B-CU faculty handbook, in this situation the committee is to proceed with only three members.

Professor Negrón’s hearing was the first scheduled. When he appeared, he found that the panel, having been augmented by two additional administration appointees, consisted of five faculty members. When he protested, citing the handbook provision, a call was made to President Reed, the two additional members were excused, and all four appeals were heard by the three-member panel. The affected professors were allowed no legal representation, were not provided with a statement of specific charges, and could not call witnesses. The members of the hearing committee had copies of the charges that had reportedly been made by unnamed students, but these documents were not provided to the professors. By letter of July 13, committee chair Professor Claudette McFadden (currently vice president for student affairs) informed the professors of the committee’s unanimous decision to uphold the administration’s action to dismiss them on grounds of sexual misconduct.

Professors Mootry, Uhakheme, and Ukawuilulu subsequently filed claims for unemployment compensation with Florida’s Agency for Workforce Innovation, claims that the university administration challenged on grounds that their dismissals were for cause. In support of its challenge, the administration provided the state agency with a copy of the outside investigator’s report—an undated, unsigned document titled “Bethune-Cookman University Social Sciences Investigation”—and the

5. The AAUP staff subsequently asked President Reed how, given her firm statements that the conduct of the four professors constituted moral turpitude, she could justify offering them payment as part of a separation agreement. She replied that she was not aware of the offer and that, had she known, she certainly would not have allowed it.

agency subsequently provided the professors with copies of that report, a document they had not previously seen. Prepared by The People Business at the request of President Reed and the university's counsel, the report states that the investigation was undertaken following faculty disclosures of "concerns about inappropriate behavior of certain male faculty towards female students." These disclosures had been made to a People Business consultant who was conducting an unrelated survey. The report cited allegations against each of the professors; stated that the consultant met with an unspecified number of faculty and students, most of whom wished to remain anonymous; and narrated several instances of reported inappropriate behavior, some first-hand, others hearsay, but all without names or dates. The report stated that each of the professors, when interviewed, denied the alleged behaviors—denials that they reiterated to the investigating committee. The report offered no conclusion on the accuracy of any of the allegations but stated that the "*perception of guilt* of the accused is insurmountable" (emphasis added) and recommended that the university terminate the services of all four.

The Florida unemployment agency conducted hearings on the cases in mid-September 2009, receiving testimony from the claimants (the professors) and from the appellant employer (the university). The written decision of the appeals referee found that the facts supported the (undisputed) claim that the professors had been discharged for alleged misconduct and cited the standard for supporting the appeal: "The burden of proving misconduct is on the employer[, and] the proof must be by a preponderance of competent substantial evidence." The referee went on to note that "[t]he employer presented hearsay evidence to support these allegations" and concluded that "the allegations of misconduct connected with work have not been substantiated with a preponderance of competent substantial evidence. Accordingly the claimant should not be disqualified from the receipt of unemployment benefits." The decision identified the presentation of conflicting testimony, cited the factors weighed by the referee in his attempt to resolve the contradictions, and concluded by stating, "[T]he hearing officer finds the testimony of the claimant to be more credible."

The four professors allege that in the course of carrying out their normal academic duties they appear to have incurred President Reed's displeasure and that the actions taken against them were in retaliation for their public questioning of administration policies and procedures. All four were active in the B-CU faculty association, and Professor Ukawuilulu had served two terms as

its president, from 2005 to 2007. He had also served on the B-CU board of trustees' college advancement, education, and finance committees. The professors report having criticized President Reed's conduct with regard to several issues, including the closure of social science programs and the alleged financial mismanagement of university assets.

The four state that, following President Reed's arrival on campus in 2004, they worked closely with her for several years. They say that at her request in 2007 they surveyed the physical condition of several campus buildings, including the social sciences building, which they informed her was in serious need of repairs and was environmentally unsafe. In addition, they conveyed to her their observations regarding corruption at the university, including mismanagement of funds, kick-backs from vendors, and the unauthorized sale of university property. They report that President Reed initially acknowledged the existence of some of these problems and identified individuals in the administration who might be involved.

They speculate that their relationship with the president changed when she began to suspect them of disloyalty following several events. They describe an occasion in February 2009 when they declined to accede to her request that they meet with a now-retired faculty member—and that they even offer her payment—to dissuade her from issuing a statement to the faculty at large regarding the unsatisfactory state of faculty governance. The president of the faculty association, a close ally of President Reed, prevented the retired professor from reading the statement. Professors Mootry, Uhakheme, and Ukawuilulu report that during a meeting with them the next day President Reed accused Professor Negron of polling faculty members to determine their support for a vote of no confidence in her administration. Professor Negron subsequently denied the allegations. Shortly thereafter, the four professors recount, they met with a visiting faculty member in the School of Social Sciences who introduced the idea of pursuing a vote of no confidence in President Reed, telling them that the then-incoming chair of the board of trustees, Mr. Larry Hanfield, would welcome the vote and volunteering to arrange a meeting with him. According to the professors, the faculty visitor immediately reported the meeting to President Reed.

With regard to the AAUP investigation, shortly before the committee's arrival in Daytona Beach, the administration asked for a block of time to have several members of the faculty and administration meet with the committee members. At these meetings, university

general counsel Browne provided the committee members with a considerable set of documents entitled “Summary Report: Response to AAUP Complaints, Redacted,” which laid out the university’s position regarding each of the seven professors who had requested the AAUP’s assistance. According to this report, in April 2009 President Reed contracted with the human-resources consultant, The People Business, to conduct university-wide interviews regarding the selection of a new vice president for academic affairs. As a result of these interviews, the consultant reported having heard numerous allegations about sexual harassment in the School of Social Sciences, all implicating the four professors. At the same time, a student is said to have questioned the president in an e-mail message about what was going to be done concerning inappropriate behavior by some faculty members.⁶ President Reed requested particulars or evidence but received no response. Nevertheless, the president, said to have been acting out of concern about the remarks in the student’s e-mail, directed the university’s vice president for assessment to conduct a survey of the students in the School of Social Sciences, which “revealed that the students felt there was a problem with sexual harassment.” The summary report also cites a specific oral complaint by a student against Professor Negron, reportedly heard by several administrators, which led to calling in the local police and to an aborted attempt to record a future meeting between the student and Professor Negron. In addition, the summary report cites the testimony of a visiting faculty member who claimed to have gone to the administration with allegations that the four professors regularly engaged in inappropriate sexual activities with students and had invited him to join their group.

The summary report states that investigations indicated a “history and pattern of this behavior,” and it cited a hearing under the prior administration involving Professors Ukawuilulu and Uhakheme as well as two complaints filed against Professor Negron. According to Professor Uhakheme, a complaint filed in 1998 did result in a hearing and the placement of a letter of reprimand in his file with a stipulation that it would be removed in five years if there were no further complaints. The letter had in fact been removed, suggesting

6. The citation from the student included with the documentation includes no names. It does not assert that the student was the subject of harassment, but it does express concern about “complaints about the professor . . . who is having inappropriate relations with students.”

no repetition of the behavior, and the administration appointed him assistant dean in 2006. Professor Ukawuilulu could not identify any prior complaints, while Professor Negron could identify only one incident that had resulted in a complaint. In 2005, a student complained that she found comments made by him to be offensive. The student ombudsperson, Ms. Cynthia Hawkins, interviewed the student and Professor Negron, who acknowledged the conversation with the student but presented the context in which it had occurred and argued that the student had misunderstood. Ultimately, the student declined to pursue the matter, and the administration treated it as a misunderstanding.

The summary report contains numerous other accounts of hearsay evidence of sexual harassment on the part of one or more of the four professors. The investigating committee sees the allegations presented in the document as cumulatively providing the administration with grounds for suspicion. But nowhere is there evidence of a written complaint from any student. No committee was formed to hear evidence from both sides prior to the action to dismiss the professors. In the post-termination hearing, the administration-appointed hearing committee had access to some, if not all, of these materials, but the accused professors did not. The four were accused, suspended, and dismissed without having received specific written charges and without having been afforded an opportunity to confront and cross-examine witnesses against them.⁷

Meanwhile, in June 2009, the administration contacted a number of outside agencies, informing them of the actions taken against the four professors. Among these agencies were the university’s accrediting body, the Southern Association of Colleges and Schools, and the U.S. Department of Education.

7. In her June 28 response, attorney Kurak writes as follows:

In its handling of the sexual misconduct issues, the draft report contains not a word of consideration for the health and safety of students nor even an acknowledgment, much less an evaluation, of the appropriateness of the University’s decision to act very quickly to investigate and resolve the matter. Further, in its insistence on the cross-examining and inevitable shaming of those victimized by sexual misconduct, the AAUP has placed itself squarely on the side of those who use intimidation and fear to prevent women from reporting and obtaining redress in cases of sexual harassment.

III. The Cases of Professors Kashif, Comabella, and Miller

Professor Annette Kashif received her PhD in linguistics from Howard University in 1991 after having received a BA from the University of Florida and an MA in education (reading) from Atlanta University. She describes herself as a linguist with a specialty in Africana studies. She began her service at Bethune-Cookman College in 1977 as a tenure-track instructor in humanities. She concurrently served from 1978 to 1983 in a non-faculty position (as international student advisor, Black History Month coordinator, and editor of *The Humanities Division Newsletter*) until she was granted leave to pursue her doctorate, then returned in 2002 as an associate professor. In the intervening years, she held faculty appointments at several other institutions, including Albany State University in Georgia, Florida Memorial College, Howard University, and Florida Southern College.

Professor Luis F. Comabella received his PhD in Hispanic languages and literatures from UCLA, after having receiving a BA in modern languages from Saint Mary's University of Minnesota and an MA in Spanish studies from the University of Wisconsin-Madison. He was in his first year of service at B-CU but had taught previously over many years at numerous institutions, including Miami Dade College, Broward Community College, Loyola Marymount University, Santa Monica College, and California State University, Fresno.

Professor Daniel Miller received his PhD in criminal-justice administration from Walden University after having received a BA in political science from St. John's University in New York and an MA in criminology from Goddard College. He was in his eleventh year at B-CU as an untenured assistant professor of criminal justice. Professor Miller has operated his own security and personnel consultancy for more than twenty years, and he operates two academies for training security officers.

On May 15, 2009, Professors Kashif and Comabella were notified, along with thirty-two other faculty and staff members, that their positions were terminated, effective immediately, as a result of “a recent mandate by the Board of Trustees of Bethune-Cookman University (B-CU), to drastically reduce our expenses and overhead in light of the recent economic downturn.”⁸ Both faculty

members received payment only through June 30. The reason given for this program of dismissals was “right-sizing,” although the stated basis was also “financial exigency.”⁹ On July 28, Interim Vice President Bryant informed Professor Miller of his removal “from the list of eligible faculty for 2009-10” on grounds that his graduate coursework did not satisfy SACS accreditation standards, an assertion that Professor Miller disputes. All three of these professors maintain that the real reasons for the termination of their services can be traced to underlying conflicts with the administration, real or perceived, and assert that they were victims of retaliation by the administration for legitimate, even commendable, actions.

A. PROFESSOR ANNETTE KASHIF

Professor Kashif has stated (both to the investigating committee during her interview and in a complaint submitted to the U.S. Equal Employment Opportunity Commission on April 9, 2009) that as early as 2006 she was confronted with hostile action and sexual harassment by Dr. James Brooks, then the interim dean and, as of 2007, dean of the School of Arts and Humanities. According to Professor Kashif, the dean's actions included violating her personal space and using his office to waylay or dead-letter opportunities she sought—for tenure and promotion and for a major fellowship application—that he needed to forward or approve ex officio. In May 2007, following informal attempts to resolve her problems with Dean Brooks, Professor Kashif filed a complaint under the campus code of conduct with the B-CU human resources hotline, citing harassment, the creation of a hostile work environment, abuse of power, and retaliation.

Professor Kashif asserts that in fall 2007, subsequent to the filing of her complaint, Dean Brooks effectively scuttled her application for tenure and promotion by a series of actions, including his creating difficulties in arranging a meeting with him as her dean, his informing her belatedly about technicalities in submitting her application, and his secretary's office closing early on the final day when documents could be submitted, resulting in Professor Kashif's missing the deadline. Her file was never considered. In his meeting with the investigating committee, Dean Brooks attributed this lack of consideration to a decision by the board of trustees “not to look at twenty submitted applications for tenure.”

8. The notifications were sent by General Counsel Pamela Browne. Attorney Kurak stated in her June 28 letter that a committee including Interim Vice President Bryant and a tenured professor “determined the faculty and staff positions that would be eliminated.”

9. “Summary Report: Response to AAUP Complaints, Redacted,” 9.

For eighteen months Professor Kashif received no response from B-CU's human-resources hotline to her harassment complaint. She did not receive acknowledgment until November 13, 2008, followed on November 24 with notification that the case had been closed for lack of additional information, although none had been requested. In an e-mail message of December 12, Professor Kashif communicated her concerns about the mishandling of her complaint to President Reed as well as to the human-resources director. On December 15, she received a letter from outside attorney Kelly Parsons asserting that her correspondence "was unprofessional and deemed harassment by the University." Ms. Parsons went on to demand that Professor Kashif "immediately cease and desist any and all correspondence and communication to Dr. Reed or other faculty and administration at the University regarding any aspect of your employment. Further, due to your actions and by not following the proper chain of command at the University, you have breached the University's trust." The new "chain of command" specified for Professor Kashif was to direct all future communication regarding her employment to Ms. Parsons. The letter also threatened dismissal, with no further warning, for violating this directive. Professor Kashif retained an attorney, who responded on December 31, 2008, challenging the university's characterization of her e-mail message to the president as "harassment." Encouraged by President Reed's public statements in spring 2009 expressing concern about sexual-harassment allegations by students against faculty, Professor Kashif's attorney again communicated with the president by letter to Ms. Parsons on March 29, 2009. Professor Kashif affirmed her commitment to the university, sought to correct any misinterpretations of her actions, reiterated her allegations against Dean Brooks, and sought redress. The president did not respond.

On April 1, 2009, Professor Kashif received from Dean Brooks her schedule of five courses for fall term 2009. It consisted entirely of basic reading courses. She was told that her Africana Studies Program in the School of Arts and Humanities was being eliminated and that what Dean Brooks called "a parallel program" was being established in the School of Social Sciences under another director. Professor Kashif was not offered the opportunity to teach in this program, or to teach any other general humanities courses in the School of Arts and Humanities, on grounds that she lacked eighteen graduate-credit hours required, and the administration was apparently unwilling to make the case for her qualifications being suitable for any other program beyond

basic reading, as allowed by SACS. Professor Kashif considered the assignment of five basic reading courses, with no opportunity to teach courses in her specialty or in general humanities, to be punitive. She accepted the courses in a March 23 letter to Dean Brooks but noted her preference to be assigned courses in her field. Less than two months later, on May 15, she was notified that her position was being terminated because of "right-sizing."¹⁰

In a required evaluation of Professor Kashif's work dated April 7, 2007, Dean Brooks had judged her performance as being "above standard" in every category and urged her to "build a portfolio for future promotion." In addition, she received the award for Outstanding Faculty Member of the School of Arts and Humanities in 2005–06 and the Outstanding Achievement Award of the School of Arts and Humanities in 2007–08. Since a program similar to the one she founded in Africana studies was relocated to the School of Social Sciences, the investigating committee does not see how eliminating her program and not offering her the opportunity to teach in the "parallel program" can be considered "right-sizing."

Dean Brooks stated to the investigating committee that Professor Kashif was a good teacher "but when she doesn't get what she wants, she can be chaotic" and that she "doesn't follow the chain of command." Such comments are especially troubling for several reasons: first, because the B-CU faculty handbook includes among the causes for dismissal "failure to cooperate within the bounds of accepted standards," "insubordination," and "any other cause substantially prejudicing the effective performance of the duties of the person" (28) and second, because faculty contracts state that appointments may be terminated at any time for "malfeasance, inefficiency, neglect of duty, or contumacious conduct." Without further definition of these infractions or appropriate procedures to test them, presumably the administration by itself is to decide what constitutes "failure to cooperate," "insubordination," or "contumacious conduct."

B. PROFESSOR LUIS COMABELLA

Professor Comabella was in his first year at B-CU, appointed at the rank of assistant professor presumably in recognition of his prior experience teaching Spanish.

10. Dean Brooks stated to the investigating committee his belief that Professor Kashif's separation from B-CU was of her own doing, lamenting that she "could be working now" had she agreed to teach five basic reading courses each term in 2009–10.

Although the administration cited “right-sizing” as the reason for issuing him notice of termination in May 2009, an advertisement for an assistant professor of Spanish was posted on the university’s Web site at the beginning of August. Professor Comabella alleges that the real reason for his being selected for termination was his public questioning of administration policies and procedures and his refusal to capitulate to administrative pressure. In particular, he cites a dispute over what he deemed a heavy-handed intrusion by the administration to change the grades of three seniors in one of his classes, contrary to the grade-appeals procedure stipulated in the faculty handbook and over his strong objections. He had given two of the students a failing grade and the third a D; they needed a C or better in order to satisfy the language requirement and graduate. Professor Comabella’s testimony that the administration exerted strong pressure to maintain a high rate of graduation was corroborated by several other faculty members interviewed by the investigating committee.

On May 1, 2009, Professor Comabella reports, he was called to a “surprise meeting” in the office of Dean Brooks. Present were the dean; Dr. Connie Curtis, the chair of the Department of Modern Languages; and two of the students seeking to have their grades changed. According to Professor Comabella, an assertion by one of the students about the conditions for testing (which Professor Comabella subsequently clarified as inaccurate) caused Dean Brooks to become extremely angry with Dr. Comabella, to the extent that Dean Brooks raised his voice and “scold[ed] [him] like a child.” Professor Comabella’s request that the dean lower his voice led to even greater outrage, prompting Professor Comabella to leave the meeting. He stated that as he left, the dean “screamed” at him and slammed the door after him. On returning to his office, he called the office of the vice president for academic affairs, Dr. Bryant, to make an appointment to protest the dean’s conduct. An e-mail message Professor Comabella sent to Dr. Bryant at the same time cited this issue and indicated his intent to “file an official complaint concerning [the dean’s] treatment of [him] since the beginning of the semester.”

The grade-appeals process for B-CU stipulates that a complaining student must submit a written statement to the dean setting forth the complaint with supporting evidence and that a copy is to be provided to the professor.¹¹ Professor Comabella reports that he received no

such written complaint from any of the three students. The process further stipulates that “both the student and the professor shall each receive reasonable notice of the hearing before the faculty committee and be permitted to be present at the hearing.” On the same afternoon as the explosive meeting with Dean Brooks, Professor Clanton Dawson, a faculty member in the Department of Religion and Philosophy, came to Professor Comabella’s class and asked to meet with him after that class was over. Only when he did so did Professor Comabella learn that the meeting was actually an appeals committee meeting to consider appeals by two of the students; he and the students did not appear before the committee at the same time. Relative to the third complaining student, Professor Comabella states that he was unaware until afterward that the appeals committee had met on May 5 to hear this student’s complaint. When he received an e-mail report on the latter meeting, he immediately replied, responding to the student’s testimony and presenting his justification of the grade assigned.

The B-CU grade-appeals process calls for the appeals committee to make a recommendation to the dean, whose decision is then to be communicated immediately in writing to the student, the professor, and the committee. The dean sent no such communication to Professor Comabella. On May 4, however, modern languages chair Curtis sent Professor Comabella an e-mail message stating that, at the request of Dean Brooks, she was preparing an examination for the students involved and asked that he join her in proctoring the test. Professor Comabella responded that he did not agree with the examination as described, asserted that the material to be tested was not comparable to what was covered in the course, and declared that he would not sign off on it. Professor Curtis made changes in the exam, but Professor Comabella maintained that it was still inadequate. The test was administered, all the students passed with perfect scores, and all their grades were changed to Cs, over the strong objections of Professor Comabella.

On May 15, Professor Comabella filed a grievance against Dean Brooks, Dr. Curtis, and the grade-appeals committee “for their alleged actions, inactions, and misconduct, which in my opinion, are forms of academic misconduct and breaches of academic honesty, integrity, and freedom.” As with Professor Kashif, however, he had no opportunity at B-CU to challenge the notification issued to him that same day of the decision to dismiss him.

C. PROFESSOR DANIEL MILLER

The stated reason for the dismissal of Professor Miller was that his graduate credentials purportedly did not

meet the requirements for accreditation by SACS (although this had apparently not been a problem in the previous SACS accreditation, when Professor Miller was already a member of the faculty). In a June 25, 2009, letter to him, Interim Vice President Bryant stated that a review of files in his office found no evidence of “specific course work information at the Master’s and Doctorate levels” and noted that the eligibility requirement for SACS accreditation is “at least eighteen (18) graduate credits specially related to courses you teach.” The letter asked Professor Miller to submit certified transcripts by July 24.

Professor Miller communicated with Goddard College, his master’s-degree-granting institution, and its registrar replied on July 13 to Dr. Bryant with a copy of Professor Miller’s transcript and a cover letter stating, among other things, “that Dr. Miller does, indeed, have the specified eighteen credits of graduate work in the field of Criminology.” The letter explained that Goddard follows a curriculum of “faculty-supervised graduate semesters . . . based on the Oxford University model of tutorial study. . . . As such Dr. Miller’s transcript does not have a list of completed courses but instead has a (more detailed) narrative assessment of Dr. Miller’s program of study. A review of Dr. Miller’s transcript clearly shows he has more than the equivalent of eighteen credits in Criminology; in fact, my assessment is that Dr. Miller’s entire thirty-credit degree program was in the field.” The registrar stated further that he had examined the SACS Faculty Credential Guidelines and that, in his opinion, “Dr. Miller, without question, meets this standard.”

On July 28, Dr. Bryant wrote to Professor Miller, including a copy of his Goddard transcript, noting that “this information lacks the actual courses you completed at Goddard College that meet the required SACS accreditation standards” and informing him that he was no longer a member of the faculty at Bethune-Cookman University. The statement quoted was, of course, technically accurate; a transcript from a school offering a curriculum not based on a specific set of courses will not show that specific set of courses. But in light of the explanatory letter from the Goddard registrar, it appears to the investigating committee to be an unreasonable basis upon which to dismiss a faculty member with eleven years of unquestioned exemplary service in a very popular program and thus a makeweight explanation for some other basis.

Professor Miller requested an administrative hearing in order to present his case and challenge the dismissal. On August 6, outside attorney Parsons replied. She too cited the transcript, noting that “[w]e have no way of properly verifying that the courses from Goddard College

fit the SACS requirements,” and she asserted that he was not eligible for such a hearing, as it was “reserved for terminations and suspensions.” Thus the reason she offered for denying Professor Miller a post-termination hearing was that Bethune-Cookman was not responsible for terminating his services. Rather, the culprit was some intransigent information on paper—SACS requirements and his transcripts—and the interpretation the administration chose to give to it. At no point did any B-CU administrative officer acknowledge the existence of, much less argue against, the position communicated to them by the Goddard College registrar that the courses Professor Miller had taken there *did* satisfy the SACS requirements.¹²

When the investigating committee questioned Professor Miller regarding other possible reasons for his dismissal, he speculated that a late April 2009 incident at a student dormitory might have been instrumental in the decision. According to reports in the media, this incident, which was caught on security cameras, involved a student who was seen to drop a handgun, then pick it up and proceed into the building. A security guard present, who presumably saw the incident, did not stop the student. Although university officials were notified, city police were not informed until some time later. This series of events resulted in a period of strained relations between university officials and the local police as well as in some bad press for the university. Professor Miller stated to the investigating committee that he had heard from colleagues that the president suspected that he was the person who had informed the police and that she was extremely angry.¹³ Professor Miller told the investigating committee that, in fact, he was not the one who

12. According to attorney Kurak in her June 28 response, “it was reasonable for the University to require a terminal degree from an accredited regional institution recognized by SACS.”

13. Professor Ukawuilulu, in an affidavit dated September 3, 2009, testified that on or about May 7, 2009, he had been told by Dr. Dorcas McCoy, interim dean of the School of Social Sciences, that President Reed believed Professor Miller was anonymously writing letters critical of her and that Dr. Reed said that “she knew that Dr. Miller reported the recent cover-up of crimes at B-CU to the Daytona Beach Police Department.” Dean McCoy asked Professor Ukawuilulu if he thought the administration could “control Dr. Miller.” Attorney Kurak states in a response to this report that no “cover up of crimes” existed and that the “second hand hearsay” in the affidavit is false.

reported the incident, nor does he know who did. However, he stated that had he known about this when it occurred, he would have been obligated to report it to the police in his capacity as a licensed private investigator because possession of a gun on campus is a crime. He stated further that on several occasions during his years at B-CU he had resisted pressure from administrators to lower his grading standards. He expressed his belief that he was indeed targeted by President Reed because he “could not be controlled.”

IV. Issues of Concern

Summarized here are what appear to the investigating committee to be the central issues raised as a result of the actions taken by the administration of Bethune-Cookman University in effecting the dismissals of the seven subject faculty members.

A. TENURE

The joint 1940 *Statement of Principles on Academic Freedom and Tenure* calls for a maximum period of probation not to exceed seven years of full-time service, irrespective of academic rank, with service beyond the probationary period constituting permanent or continuous tenure. In amplification of this provision, the Association’s derivative *Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments* states that, “[e]xcept for special appointments designated at the outset as involving only a brief association with the institution, all full-time faculty appointments are either with continuous tenure or probationary for tenure.” Thus, upon continuance of full-time service beyond the maximum probationary period, faculty members who so serve are entitled under Association-supported standards to the protections of academic due process that accrue with tenure. According to B-CU’s faculty handbook, faculty members who hold the rank of assistant, associate, or full professor “are eligible for consideration for tenure,” and they “will generally be considered for tenure during their fifth year of full-time employment at academic rank” (45).

Professors Mootry and Ukawuilulu were tenured full professors at the time they were notified that their appointments had been terminated for cause. Professor Uhakheme was an associate professor and assistant dean with twenty years of service, but had not been granted tenure, when he was notified of the termination of his appointment for cause. Professor Negron, having served at Bethune-Cookman as a research associate and a lecturer, was in his eighth year of full-time faculty service without having been granted tenure when he

was notified of the termination of his appointment for cause. That these four professors were dismissed for cause is not disputed. While two of them had not been recognized at B-CU as having tenure, the 1940 *Statement’s* procedural safeguards against dismissal apply equally to those with tenure and those dismissed prior to the expiration of a term appointment, yet in all four cases these safeguards were not afforded.

Professor Kashif had just completed her seventh year of full-time faculty service as an associate professor and had been assigned teaching duties for the following year when her position was eliminated owing to “right-sizing.” Professor Miller had completed eleven years of full-time service as a nontenured assistant professor at Bethune-Cookman when he was released on grounds that he had not provided sufficient information regarding his graduate transcripts. With seven years having been respectively committed and completed in these two cases, the investigating committee finds that Professors Kashif and Miller also were entitled under Association-supported standards to the protections of academic due process that accrue with tenure.

The B-CU faculty handbook suggests an understanding of tenure and academic freedom at variance with the AAUP’s understanding. On the one hand, its provisions on academic freedom end by stating that “[i]n defining academic freedom, Bethune-Cookman University adheres to the benchmark 1940 statement on academic freedom of the American Association of University Professors” (15). It further asserts that “[a]t Bethune-Cookman University tenure is recognized as the most reliable instrument in higher education for incorporating academic freedom into the life of a University” (36), and it defines tenure as “continuous appointment on the faculty of Bethune-Cookman University [that] . . . will not be terminated except for adequate cause” or as a result of financial exigency (44). The paragraph, however, continues: “Notwithstanding the foregoing, nothing contained herein shall be construed so as to amend or modify [any] tenured faculty member’s contract, which contract shall control over the provisions contained herein.” The paragraph also refers to a section on post-tenure review, where one learns that “tenured faculty undergo the same process of evaluation used to evaluate the effectiveness of all faculty at the University. Along with all full-time teaching faculty, tenured faculty will have evaluations by students of all classes they teach each semester, as well as one peer evaluation and Department Head’s evaluation per semester, and an annual Dean’s evaluation. When the Dean’s evaluation . . . results in an unsuccessful

evaluation for a tenured faculty member,” a committee of tenured faculty is established to work with the faculty member to “formulate a plan for remediation of the faculty member’s performance,” a process which will be repeated if “another unsuccessful review occurs.” And “[t]hree consecutive years of an unsuccessful evaluation of a tenured professor shall be the basis for removal of the tenure status” (37).

In short, “tenured” service at Bethune-Cookman University is more tenuous than continuous, as normally understood within the academic community. It grants a faculty member the right to a “continuous appointment,” which may be “discontinued” upon three consecutive unsuccessful dean’s evaluations and which is subject to any specific conditions in that individual’s contract. As noted earlier, a B-CU faculty contract also typically includes language stating that it may be terminated at any time for “malfeasance, inefficiency, neglect of duty, or contumacious conduct.”

Moreover, the distinction of holding tenure at B-CU (while one has it) appears to carry few of the protections normally associated with that status. For example, Regulation 8 of the Association’s *Recommended Institutional Regulations on Academic Freedom and Tenure* provides that at least one year of notice should be given to a tenured professor whose appointment is terminated. The B-CU handbook makes precisely that statement but modified with “[e]xcept as otherwise provided by the terms of such faculty member’s employment contracts.” It then goes on to state that “no notice, or more limited notice, will be required to be given in the event of death [sic], certain disability, and in the event of termination with cause” (48). So in some of the most contentious circumstances, when the protections of tenure are most needed, a tenured appointment may be terminated without notice. The due-process protections, or lack thereof, provided by tenure at B-CU in dealing with termination for cause will be discussed in more detail below.

B. CAUSE FOR THE DISMISSALS

Regulation 5 of the Association’s *Recommended Institutional Regulations* provides that “[a]dequate cause for a dismissal will be related, directly and substantially, to the fitness of faculty members in their professional capacities as teachers or researchers.” The B-CU handbook lists eleven grounds for dismissing a faculty member for cause, among which are moral turpitude and “violation of the University’s policies regarding sexual harassment, discrimination, or harassment” (28).

Professors Mootry, Negron, Uhakheme, and Ukawuilulu report having been informed by letter of May 15 of their suspension because of anonymous allegations of improper conduct with female students. They were then required to attend meetings with investigator Brewer at the offices of the university’s outside counsel, with no opportunity to review a written statement of charges or to respond in writing to those charges. At these meetings the professors were asked general questions and subjected to unsubstantiated accusations involving their activities and conduct with students. Notably absent from the exchanges were specific details regarding the identity of the complaining students or the dates and location of the alleged incidents of harassment; written complaints from students were not produced. Based on the report of the outside consultant, the administration dismissed them from the faculty effective May 29, 2009, on grounds of moral turpitude. Post-termination hearings followed before a panel of three faculty members appointed by the president, at which the administration presented allegations and documents attesting to hearsay reports of improper behavior, but it offered no direct evidence in the form of firsthand testimony or signed statements from students alleging that they had been victims of harassment. In neither setting were the accused professors given the opportunity to confront and cross-examine witnesses.

As noted earlier, apparently no record of the proceedings was kept, either in the consultant’s meetings with the four professors or in their post-termination hearings. The lack of specific information produced in those venues leaves the investigating committee with only strong allegations on the one hand and equally strong denials on the other, and an insufficient record upon which to make a judgment. At the same time, as noted above, the four professors identified a deterioration of faculty governance on campus and seriously strained relations with President Reed, and they suggested that the president was retaliating against them for their perceived participation in pursuing a no-confidence vote in the faculty association, among other matters over which they clashed with her. As stated above, the investigating committee finds that the administration’s accusations of sexual harassment by one or more of the four professors, if supported by evidence rather than repeated rumor, could provide credible grounds for moving to impose a sanction. The committee, however, finds no evidence that the administration met its burden of proof that such harassment actually occurred or, if it did occur, that it involved moral turpitude or that dismissal was the proper sanction. The investigating committee finds that the

four dismissals were in violation of the provisions for academic due process in the 1940 *Statement of Principles*.

As noted above, Professor Kashif had been scheduled for service beyond the maximum probationary period, and under AAUP-recommended standards she should have had the protections of academic due process that accrue with tenure through length of service. Given her documented history of clashes with the administration, together with the dubious basis for including her among the “right-sizing” group, the investigating committee views the termination of her services as a dismissal for cause with no opportunity for a hearing. Professor Kashif may not have understood that she had any claim to tenure’s protections, but an administration that “adheres to the benchmark 1940 statement on academic freedom of the American Association of University Professors” should have afforded those protections.

Professor Miller also had gained an entitlement to tenure’s procedural safeguards through his length of service. His position was not eliminated as a result of financial exigency or program discontinuance. The investigating committee finds that the administration, in terminating his services on grounds that his alleged lack of credentials rendered him unfit, effectively dismissed him for cause, even though it resisted calling the action a dismissal. The action should have been preceded by a pretermination hearing before a faculty body with the burden of proof on the administration. Even under B-CU’s flawed procedures, Professor Miller was entitled to a post-termination hearing. But despite plausible evidence that he was properly credentialed and arguably met the standards of the SACS Faculty Credential Guidelines, he was dismissed with no opportunity to argue the merits of his case before any body—faculty, administration, board, or SACS—either before or after he was released. The administration not only failed to recognize his rights in the matter; it also refused even to acknowledge that it had terminated his appointment.

C. ACADEMIC DUE PROCESS

The 1940 *Statement of Principles on Academic Freedom and Tenure* and the complementary joint 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings* set forth safeguards of academic due process in cases involving dismissal for cause. They place the burden on the administration to demonstrate adequacy of cause for dismissal in an adjudicative hearing of record before a body of faculty peers. Under these standards the affected faculty member against whom the administration proposes to take action should be

informed of the charges in writing before the hearing, should have the right to counsel, should have the right to confront and cross-examine adverse witnesses, and should have the opportunity to be heard by all bodies that pass judgment on the case. A record of the proceedings before the faculty hearing committee should be provided to the affected faculty member. The written findings of the hearing committee, whose members should be chosen by the faculty, should make explicit findings with respect to each charge, and such findings should be provided to the subject faculty member and to the president for transmittal to the governing board. The governing board should normally accept the faculty committee’s decision. If the board raises objections, the matter should be returned to the faculty committee with those objections specified so the committee can reconsider its recommendation before the board renders its final decision.

In the B-CU handbook, the entire content of the “Termination Proceedings” section is a requirement that the president

deliver to the faculty member a written statement, which shall:

1. Inform the faculty member of the reason for termination and the effective date of termination;
2. Advise the faculty member that he or she has 20 days to request in writing a Faculty Administrative Hearing; and
3. Advise the faculty member that unless the hearing is requested, he or she will be terminated at such time as may be set forth in the termination notice. (23)

The process at Bethune-Cookman University for terminating a faculty member for cause thus consists essentially of notifying the individual that the decision to terminate has been made—effective on a date that may be, as in the case of Professors Mootry, Negron, Uhakheme, and Ukawuilulu, the same as the date of the notification—together with notice that a post-termination hearing is available.

Like the B-CU termination process, the particulars of the faculty administrative hearing as delineated in the faculty handbook fail to comport in any significant way with those required under Association-supported standards. The committee consists of three faculty members appointed by the president, including the chair, possibly augmented by two faculty members chosen by the accused; but the accused has only two days to recruit these individuals, and failure successfully to do so is treated as a waiver of that right. The accused need not have received any written particulars of the charges. The

burden of proof is not borne by the administration. The accused cannot be represented by counsel. The accused may submit written materials and give oral testimony but has no right to confront and cross-examine adverse witnesses. The appointed committee is not required to produce a record of the proceedings. The accused has no right of appeal. Should the committee disagree with the administration's action, "any reinstatement or other recommended action shall not be binding on the University."¹⁴

In the cases of Professors Mootry, Negron, Uhakheme, and Ukawuilulu, the investigating committee finds that all of the numerous procedural shortcomings of B-CU's policies were evident. No hearing before a faculty committee was provided prior to the decisions to terminate their appointments. The report of the outside investigator, which was the stated basis for the decisions to terminate, was not made available to the professors until a month after their appointments had been terminated and then only following the administration's challenge to their unemployment benefits. The post-termination hearings took place in the office of the university's outside counsel before a panel consisting of three faculty members appointed by the administration. The affected faculty members received no statement of specific charges, were denied legal counsel, and were not permitted to confront any witnesses against them. No record of the proceedings appears to have been made, and no hearing committee report was given to them. They were informed of the hearing committee's finding in a July 13 letter from the committee chair, which stated only that the committee had voted unanimously to uphold the university's action "to terminate on grounds of sexual misconduct."

The investigating committee finds that the procedures used in terminating the services of Professors Mootry, Negron, Uhakheme, and Ukawuilulu denied them virtually all aspects of academic due process as called for in the 1940 *Statement*, the 1958 *Statement on Procedural Standards*, and other derivative Association-supported standards.

In the cases of Professors Kashif and Miller, the administration afforded no procedure at all, before or after terminating their appointments. The investigating committee hence finds that these were summary dismissals, devoid of academic due process under Association-supported standards.

D. FINANCIAL EXIGENCY

Regulation 4c of the Association's *Recommended Institutional Regulations* defines financial exigency as "an imminent financial crisis that threatens the survival of the institution as a whole and that cannot be alleviated by less drastic means" than termination of faculty appointments. It stipulates that "there should be a faculty body that participates in the decision that a condition of financial exigency exists or is imminent" and that "[j]udgments determining where within the overall academic program termination of appointments may occur . . . should . . . be the primary responsibility of the faculty or of an appropriate faculty body. The faculty or an appropriate faculty body should also exercise primary responsibility in determining the criteria for identifying the individuals whose appointments are to be terminated."

The B-CU faculty handbook identifies financial exigency as a basis for releasing tenured faculty members. It does not define what constitutes a financial exigency, however, nor does it specify any process for doing so or for determining which programs or positions should be affected. It is not clear that such a determination was ever made at B-CU in 2009, at least not one tested against a definition at all similar to the Association's. The mandate of the board of trustees that May to "drastically reduce" expenses may not have used the term, but General Counsel Browne and others stated that the mandate was "due to financial exigency." The reasons for financial exigency as reported to the faculty and staff included dwindling student enrollment. Executive Vice President of Finance and Administration E. Dean Montgomery denied these reasons, however, in his interview with the investigating committee. He stated that the student enrollment fall-to-fall remained consistent at 3,600. He identified a shrinking endowment and declining funds from the state of Florida as the reasons for the decision to terminate appointments.

Early in 2009, the board of trustees had approved a reduction in the budget and engaged a consulting firm to advise it on how to achieve savings. The firm reported back to the board in March with a series of possible cost-cutting actions. President Reed established a "right-sizing" committee to give her recommendations about which positions and programs to eliminate. The committee consisted of Interim Vice President Bryant, Vice President Montgomery, one faculty member, and one non-faculty staff member, all of whom were appointed by the president. Several faculty members interviewed by the investigating committee stated that they were unaware of the membership or activities of this committee. Suffice it to say that the faculty had no involvement as

14. The fact that the handbook language for "findings and recommendations" by the Faculty Administrative Hearing Committee refers to "reinstatement" indicates that its normal role is that of a post-termination hearing committee.

called for under Regulation 4c of the *Recommended Institutional Regulations*.

The Association's recommended regulation goes on to state that a faculty member notified of appointment termination on grounds of financial exigency "will have the right to a full hearing before a faculty committee." The hearing can test the validity of the claimed financial exigency, with the burden of proof on the administration; the validity of the criteria used to determine which programs or positions would be eliminated; and the proper application of those criteria. Professors Comabella and Kashif, whose positions were terminated under this rubric, were not offered any such hearing.

Regulation 4c further states that, "[i]f 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 in the academic program would otherwise result" and "[b]efore 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." As noted above, although the administration had established a program in the School of Social Sciences that was similar to Professor Kashif's Africana Studies Program that it was discontinuing, it did not offer her the opportunity to teach in that program. And within a few months of dismissing both Professor Kashif and Professor Comabella, the administration, without having offered them reinstatement, advertised positions in their departments for which they were well qualified.

E. ADEQUACY OF NOTICE OR SEVERANCE SALARY

The 1970 Interpretive Comment Number 7 on the 1940 *Statement*, which sets forth standards for notice of non-reappointment, provides that faculty members who have completed two or more years of full-time service at the institution are entitled to at least twelve months of notice before the expiration of their appointments, while those who are in their first year of service should be afforded notice not later than March 1.

The B-CU faculty handbook sets a much lower standard (48): "The University is *not* required to give prior notice to any non-tenured faculty member if it does not offer a new contract upon or prior to expiration of the old" (emphasis in original). It states further that "as a courtesy" the university "will attempt to notify faculty members in writing, not later than January 15, if the contract will not be renewed." As noted above, for tenured faculty the handbook specifies a twelve-month

notice requirement but then negates that provision in cases of termination for cause, allowing lesser notice or no notice. The investigating committee finds that the administration showed no "courtesy" in its notifications, that indeed it followed its own standard—of no notice—in each of the seven cases described here, disregarding applicable AAUP-supported standards.

Under the 1940 *Statement of Principles on Academic Freedom and Tenure*, "[t]eachers on continuous appointment who are dismissed for reasons not involving moral turpitude should receive their salaries for at least a year from the date of notification of dismissal whether or not they are continued in their duties at the institution."¹⁵ The investigating committee finds that Professor Miller, having served eleven years at B-CU and having been paid nothing following notification, was entitled under the 1940 *Statement* to payment of one year's severance salary.

F. SEXUAL HARASSMENT

Association-supported standards for academic due process relating to the imposition of a major sanction in a case of alleged sexual harassment by a member of the faculty are set forth in Regulations 7 and 5 of the AAUP's *Recommended Institutional Regulations* and in its report entitled *Sexual Harassment: Suggested Policy and Procedure for Handling Complaints*. If a grievance officer is unable to bring about an informal resolution of a complaint, the complaint is to be subject to review by a faculty committee. If the committee determines that the complaint warrants further review, the committee is to invite the parties to the dispute to appear before it and to confront adverse witnesses, to gather such information as deemed necessary, and to reach a determination on the merits of the complaint. If the faculty committee's findings do not lead to a mutually acceptable resolution and if the committee believes that reasonable cause exists for seeking sanctions against the accused faculty member, the matter is to be submitted to the chief administrative officer. That officer is then to follow the procedures for imposing a severe sanction up to and including dismissal, with the administration assuming the burden of demonstrating adequacy of cause in an adjudicative hearing of record before a faculty body. It should be noted that the foregoing elements of due process are essentially identical to those that would apply to the consideration of a severe sanction or dismissal of a faculty member charged with engaging in other kinds of personal or professional misconduct.

15. Academic Tenure section, paragraph 4.

According to the Bethune-Cookman University faculty handbook, upon receipt of a student complaint by the human-resources office, a five-member committee “having no independent knowledge of, or evidence regarding, the complaint” is to be established, selected, and chaired by the university’s equal employment opportunity officer (52–54). The committee may require complainants “to prepare and sign a written statement describing the harassment for submission to the Committee,” and those “with knowledge of the complaint may be asked to furnish oral or written statements to the Committee,” which “may also employ the service of an independent investigator to assist with its investigation.” The handbook is silent with respect to specific hearing procedures to be followed. Following its investigation, the committee is to report on its findings and recommendations to the president, who “shall make a final decision as to any actions or sanctions to be taken in response to the complaint.” The faculty member may appeal the president’s decision under the university’s grievance procedure.

As reported above, a 1998 complaint against Professor Uhakheme was apparently processed according to these or similar procedures, resulting in a temporary reprimand; and a 2006 complaint against Professor Negrón apparently was also handled according to these procedures and was dismissed as a misunderstanding after a meeting he had with the student ombudsperson. These instances suggest that the university was at one time able to deal adequately with allegations of sexual harassment.

Under its current administration, however, the university failed to deal appropriately with the allegations of sexual harassment against the four professors in 2009 that were cited as the basis for their dismissal. The investigating committee finds that the administration also failed to follow B-CU’s own policies, much less procedures that would comport with Association-supported standards. There were no written complaints from any student. There was no committee established as described in the B-CU handbook. No hearing was held for any of the professors with regard to any specific charge of sexual harassment. Instead, an outside consulting firm carried out an investigation that resulted in a report with no specific findings of harassment but rather dealt with generalities and ended with a finding of a “perception of guilt.” Contrary to Association-supported policies, there was no opportunity for the B-CU faculty to review the allegations against the professors, test their veracity, and make recommendations for appropriate action. Rather, the administration usurped this role, and it farmed out the responsibility for reviewing the charges to an outside

consulting firm that was apparently free to follow whatever procedures it wished. Members of the faculty were involved only after the fact, in the role of a post-termination review by a group of three faculty members appointed by the administration. The sole adjudicative action known to the investigating committee not under the control of the B-CU administration was the review of the professors’ unemployment claims, and there the result was a finding in favor of the professors.

In the case of Professor Kashif, who filed a complaint of sexual harassment against her dean, no adjudicative procedure was followed by the administration, either internal or external. Her complaint languished for eighteen months before even being acknowledged and then was dismissed, and she was castigated and threatened with dismissal for having raised the issue with President Reed.

Because inadequate procedures were followed in relation to these five complaints, the academic and the personal are here confused in ways genuinely harmful to the academic enterprise, such that the investigating committee can make no clear distinction between terminations based on sexual harassment or financial exigency and those based on possible retribution for “insubordination.” The committee finds that the procedures afforded Professors Mootry, Negrón, Uhakheme, and Ukawuilulu as defendants and Professor Kashif as a complainant were severely deficient when measured against applicable AAUP-recommended standards.

V. General Comments

As has been seen, the handling of the cases of the seven faculty members described in this report was marked by multiple shortcomings. Despite the differences among the cases, there are threads that run through all of them that are strongly suggestive of an uncivil, even unhealthy, environment at Bethune-Cookman University.

Beyond the sensationalism inherent in the cases of the four professors accused of sexual improprieties—which could well serve as a distraction—the investigating committee found a pervasive atmosphere at B-CU that was repressive of academic freedom. The administration acted pursuant to undefined proscriptions such as “failure to cooperate,” “insubordination,” “contumacious conduct,” and “violating the chain of command.” The resulting atmosphere has affected all of the cases discussed in this report—from that of a very recent appointee like Professor Comabella to that of a long-serving faculty member like Professor Mootry. In the view of the investigating committee based on considerable persuasive testimony, this unhealthy

atmosphere was aggravated by underlying administrative efforts to co-opt faculty responsibility for grading.

With respect to sexual harassment, the investigating committee finds it disingenuous, to say the least, that the same administration that, in dealing with allegations of sexual harassment against faculty members, substituted a hastily concocted and flawed extramural procedure in place of the published internal one, justifying it by asserting a need to act swiftly and decisively, should leave languishing and then unilaterally dismiss similar and far more openly documented allegations of sexual harassment made by a faculty member against a university administrator.

Finally, the investigating committee was struck by the sharply different views of the current B-CU administration, particularly of President Reed, expressed by the faculty members interviewed. The committee found no reason to question President Reed's commitment to ensure the survival of the institution, but it sees her as seeking to achieve this goal through a unilateral administrative mandate that preempts the proper role of the institution's faculty.¹⁶

VI. Conclusions

1. The administration of Bethune-Cookman University, in dismissing Professors Russell Mootry, Trebor Negrón, Smart Uhakheme, and John Ukawuilulu on grounds of sexual harassment, based on hearsay and anonymous reports involving alleged moral turpitude, denied them virtually all aspects of academic due process as called for in the 1940 *Statement of Principles on Academic Freedom and Tenure*, the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*, and the Association's *Sexual Harassment: Suggested Policy and Procedures for Handling Complaints*.
2. The Bethune-Cookman University administration attributed its actions to release Professors Annette Kashif and Luis Comabella to a board mandate to reduce expenses yet without a for-

mal declaration of financial exigency requiring termination of faculty appointments. At the same time, it established elsewhere in the institution a program similar to one in which Professor Kashif had taught and in which she was well qualified to teach, and it advertised positions in Professor Kashif's and Professor Comabella's departments for which they were qualified without having offered to reinstate them. Its actions against both professors thus disregarded the provisions relating to financial exigency in the 1940 *Statement of Principles* and in Regulation 4c of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure*.

3. In the case of Professor Kashif, whose sexual-harassment complaints were ignored, and that of Professor Daniel Miller, who was peremptorily released after eleven years of service on the questionable grounds that his graduate academic credentials did not meet the standards of the accrediting agency, the Bethune-Cookman University administration afforded them no hearing at all, before or after it acted against them. In thus imposing summary dismissals, its actions violated academic due process under Association-supported standards.
4. A pervasive atmosphere currently exists at Bethune-Cookman University in which the administration supports favorites and ignores or punishes those who fall out of favor or who question, contend, or appeal. No adequate mechanism or procedure exists for the impartial or balanced hearing of grievances. In instances critical to the protection of academic freedom and tenure, the university has no published procedures, and where it does, the administration has often failed to follow them. What may be valid grounds for an action becomes so clouded by persuasive claims of administration animus that the truth cannot be determined. The resulting climate of doubt leaves faculty members wondering which claims or rumors to believe and what might happen to them if they are not careful. The chilling effect on academic freedom is evident.
5. The pattern at Bethune-Cookman University of turning to outside investigators, consultants, and lawyers to deal with matters for which the faculty should have responsibility, coupled with the administration's appointing of faculty

16. In an additional response, sent on July 28, attorney Kurak asserts that the "report is clearly pre-disposed to cast Dr. Reed in a negative light, and does so based solely on the allegations of the complainant professors. No facts or statements to the contrary regarding Dr. Reed's commitment to faculty governance, integrity, and accountability are taken into consideration by the report."

members to a faculty-assigned role instead of the faculty's electing its members, speaks poorly for shared academic governance at the institution as called for under the Association's *Statement on Government of Colleges and Universities*. ■

KERRY E. GRANT (Mathematics)
Southern Connecticut State University, *chair*

JULIENNE H. EMPRIC (Literature)
Eckerd College

LARRY D. WATSON (Social Sciences)
South Carolina State University

Investigating Committee

Committee A on Academic Freedom and Tenure has by vote authorized publication of this report on the AAUP Web site and in the *Bulletin of the American Association of University Professors*.

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