
Academic Freedom and Tenure: Felician College (New Jersey)¹

(MAY 2015)

I. Introduction

This report concerns the cases of seven faculty members who in late January 2014 received identical letters from the administration of Felician College, notifying them that their appointments would not be renewed when they expired in June and citing “the exigency of the college’s financial status” as the reason for the action. Six of them had been teaching full time at the college for at least eleven years, several for nearly twenty. Although sixteen faculty members had been so notified, only these seven approached the Association, beginning in early June 2014, informing the AAUP’s staff that the notices of termination of their services had come as a complete surprise to them, to their colleagues, and even to some administrators; that, despite the college president’s assertions to the contrary, the college’s own policies regarding termination of appointments had not been followed; and that their efforts to obtain an account of the process by which their appointments had been selected for nonrenewal had been fruitless.

Felician College is a private, four-year institution affiliated with the Roman Catholic Church, with campuses in Lodi and Rutherford, New Jersey, about seventeen and thirteen miles, respectively, from New York City. Established by the Felician Sisters, a Franciscan order, the college first emerged as a freestanding postsecondary institution in 1942, incorporating under the laws of the state of New Jersey as

Immaculate Conception Junior College. In 1967, when it began offering four-year degrees in teacher education, it reincorporated as Felician College. Nine years later it admitted its first male students. The college, which has been accredited by the Commission on Higher Education of the Middle States Association of Colleges and Schools since 1974, offers bachelor’s degrees in some thirty majors; master’s degrees in business, counseling, nursing, and education; and a doctorate in nursing. Departments and programs are organized into four schools—arts and sciences, business, education, and nursing. During the 2013–14 academic year, the college enrolled some 1,700 undergraduate and three hundred graduate students, total enrollment having fallen to that level after having peaked around 2,400 during 2010–11.

In December 2014, the number of faculty members was around two hundred, about half of them part time. All full-time faculty members at the college serve on renewable term appointments with no provision for indefinite tenure. Their contracts contain the following sentence: “In the event that student enrollment during the period of this contract does not warrant the continued offering of courses or services in your professional area, the appointment may be terminated.”

In July 2012, Dr. Anne M. Prisco assumed office as the college’s fifth president, the first who was not a member of the Felician Sisters. President Prisco, who holds a PhD in economics and education from Columbia University, had served in a number of administrative posts at various institutions—most recently as vice president for enrollment management at Loyola Marymount University in California—before assuming the Felician presidency. Her experience as a faculty member included several brief appointments as an adjunct instructor and three probationary years at St. John’s University in New York. When the events of concern in this investigation occurred, the provost and vice

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 staff and, as revised with the concurrence of the committee, was submitted to Committee A on Academic Freedom and Tenure. With the approval of Committee A, the report was subsequently sent to the subject faculty members, to the administration of Felician College, and to other persons directly concerned. This final report has been prepared for publication in light of the responses received and with the editorial assistance of the staff.

president for academic affairs was Sister Mary Rosita Brennan, a member of the Felician order. In fall 2014, Sister Rosita retired from that position but continued to serve on the faculty.

The undersigned committee conducted its investigation at an off-campus location on December 17 and 18, 2014, the administration's having declined to cooperate in the investigation and having refused to permit the members of the investigating committee to enter the campus. In addition to interviewing the seven subject faculty members, the committee met with Dr. Edward Kubersky, dean of the School of Arts and Sciences at the time of the terminations, and with one continuing faculty member. The committee spoke by telephone with a second continuing faculty member who wished to explain why he was unwilling to meet with the committee. The AAUP staff had contacted about a dozen individuals whose names had been suggested by the subject faculty members but received responses from only a few who declined to meet with the committee out of a stated fear of retaliation. While the committee would have preferred to meet with more faculty members, those interviewed represented a range of departments and provided substantial documentation before, during, and after the site visit. Although the committee had no direct contact with any current representative of the Felician College administration, it did review the correspondence between the administration, the attorney retained by the college, and the AAUP's staff.

II. Events Leading Up to the Terminations

Several months after taking office, President Prisco initiated "town hall" meetings open to faculty and staff. According to faculty members who attended these meetings, among the issues discussed was a decline in student enrollments. Administrative officers told faculty members that the situation was worrisome but did not share any concrete information or financial data. Individuals interviewed by the investigating committee unanimously agreed that they saw nothing deeply alarming in the enrollment figures or in the financial picture presented by the president or the vice president for finance, Mr. Michael Fescue, at these meetings. Dean Kubersky confirmed to the investigating committee that the financial picture at the beginning of fall 2012 did not differ significantly from earlier situations that the college had weathered successfully.

The possibility of faculty layoffs was not mentioned, and the term *financial exigency* was never used. Although the college is tuition dependent, it

had successfully managed enrollment fluctuations in the past without laying off faculty members. Those with whom the investigating committee spoke did, however, expect that as had occurred following past financial downturns, the administration would soon announce freezes in salaries and in new faculty appointments, including replacements for faculty retirements, and cuts in the college's TIAA-CREF contribution. Several faculty members also recalled the president's having reported a reduction in the number of vice presidents and staff positions during the 2012–13 academic year. Throughout that year and into fall 2013, the president and the vice president for finance told members of the Felician community that all would need to tighten their belts and work with admissions to recruit more students.

During this period, Professor Robert Ingoglia met with Sister Rosita to express his concern about the staff members who were laid off in 2012–13. Sister Rosita told him that as long as she was in her position, full-time faculty members would be safe. She noted that in the last nineteen years only two faculty members had been laid off. In addition to the town hall discussions, meetings of the chairs, of departments, and of the full faculty continued to be held. According to all with whom the investigating committee spoke, no discussion of the possibility of faculty layoffs or of financial exigency took place at any of the meetings they attended.

Then, in August 2013, President Prisco initiated an "academic program prioritization process" with the assistance of consultant Dr. Robert C. Dickeson and his firm, Academic Strategy Partners (ASP).² The process involved deans and senior administrators, as well as a faculty committee of twelve members appointed by the president from candidates nominated by the faculty. The resulting report, which was completed in four months, ranked the college's thirty-eight programs into five quintiles based on each department's perceived strengths and weaknesses. Programs in the lowest quintiles were to

2. The Association has had abundant experience with Dr. Dickeson's career over several decades as a consultant to colleges and universities that undertake his "prioritization process" for "streamlining" academic programs through discontinuing courses and reducing tenured positions in ways that disregard Association-supported standards of academic freedom, due process, and governance. For the AAUP's most recent published account of his activity, see "Academic Freedom and Tenure: National Louis University (Illinois)," in *Bulletin of the American Association of University Professors* (special issue of *Academe*), July–August 2013, 18–20, and footnote 2.

be candidates for reorganization or discontinuance. Departments had six weeks to prepare their reports, and the rankings were made public in January, four months after the start of the process.

The “Felician College Success Story” posted on the ASP website described the prioritization process as “an institution-wide assessment of campus operations with an eye toward improving quality, streamlining processes, and assuring a more sustainable financial model.” It noted that it was completed in a “record time” of four months and credited that accomplishment, among other things, to the president’s “strong sense of urgency.”

Faculty members reported that they did not associate program reorganization and discontinuance, the stated goals of the process, with the termination of faculty appointments but rather with the repositioning of faculty members in newly organized departments. As they understood it, the prioritization process was intended to identify programs’ strengths and weaknesses and was supposed to lead to programmatic changes for the good of the institution. Some faculty members considered it a reasonable undertaking, because they suspected that Felician had been attempting to offer too many programs. They believed that an exercise to rank departments, if it were carried out with integrity, could be useful to make programmatic changes that would strengthen the institution. Others considered a consultant-led process an unnecessarily costly exercise in a time of belt tightening. All appeared concerned with the rush to complete an undertaking that could have profound implications for the educational mission and academic structure of the college. At a meeting in early November 2013, the faculty in arts and sciences sought to confirm its understanding of the process and directly asked Dean Kubersky if the administration was planning to eliminate full-time faculty positions as an outcome. After speaking to Sister Rosita, the dean reported to his faculty that there were no plans to let any faculty members go.

Near the end of November 2013, however, Sister Rosita informed the deans that the president had directed her to compile a list of full-time faculty members whose appointments were to end effective June 20, 2014. She was to develop the list in consultation with the deans over several meetings and submit it to the president for her final decision by Christmas vacation. Dean Kubersky expressed alarm at the “sudden and drastic” nature of this course of action, telling Sister Rosita and, subsequently, the president that he could not participate in compiling the list. As

Dean Kubersky informed the investigating committee, he was unaware of any prior administrative statement about cutting faculty appointments or about a state of financial exigency. And, he also informed the committee, he was unaware of any clear set of criteria for identifying faculty members. As far as he knew, only the deans had been informed that such a list was being drawn up; the administration had not consulted with department chairs. Sister Rosita reportedly told the deans that the actions were necessary to cut costs, were essential for Felician’s survival, and were being taken not as a result of the prioritization exercise but rather because the college had more full-time faculty members than comparison institutions.³

III. The Letters of Appointment Termination

In January 2014, sixteen full-time faculty members received letters notifying them that their appointments would not be renewed when they expired on June 20, 2014. The seven faculty members whose cases have occasioned this investigation received identical letters, dated January 21 and signed by Sister Rosita, notifying them of the nonrenewal of their appointments and ascribing the decision to “the exigency of the College’s financial status” caused by declining enrollments in the previous two years. The letter suggested that they might “wish to refer” to the faculty severance policy in the *Felician College Faculty Handbook*. The letter also stated that the academic prioritization process had “assisted” the administration “in identifying the strengths and limitations of each academic program and department,” but it did not in any way specify why particular faculty members had been selected for appointment termination.

When he received the provost’s January 21 letter, Dr. Fahmi Abboushi was an associate professor of computer science with sixteen years of full-time service. Dr. Charles Barton, associate professor of mathematics and chair of the mathematics department, had accepted his first full-time appointment in fall 2003 and was thus in his eleventh year at the college. Professor Nancy Brey, who had begun as a part-time instructor in the college’s School of Nursing in 1993, eventually served full time for fifteen years, first as an assistant professor of nursing and

3. Dean Kubersky and many faculty members with whom the investigating committee met expressed sympathy for Sister Rosita. They spoke of having had warm and respectful relationships with her. They believed that she, as a Felician sister, felt bound by orders from the president to participate in terminating the sixteen appointments.

subsequently as an instructor with a split appointment between nursing education and psychology. Dr. Robert Ingoglia, professor of history in the Department of History and Social Sciences, had served full time at the college for nineteen years. Dr. David Molnar, an assistant professor of mathematics, was in his fourth year of service. Dr. John Monopoli, an associate professor of psychology, had been on the faculty for fourteen years. Dr. Yvonne Raley was an associate professor in the Department of Philosophy with eighteen years of service, thirteen of them full time.

The letters were sent by overnight mail on January 23. On January 24, in a meeting of the chairs in arts and sciences, Sister Rosita informed them that sixteen nonrenewal letters had been sent, but she did not reveal the names of the recipients. A former department chair interviewed by the committee asked if he could advocate for the reinstatement of a department member, if necessary. Sister Rosita told him that the decisions would not be reconsidered, a response he characterized as “a flat no.” He found it surprising that Sister Rosita did not refer to the college’s Faculty Grievance Committee, which is explicitly charged with hearing grievances involving nonrenewal of appointments. She told the attending chairs that the nonrenewals had been carefully considered with the assistance of legal counsel and that the decisions were “airtight.” Ironically, this department chair was one of the sixteen faculty members who received letters of termination at their homes later that evening. Thus, as faculty members confirmed to the investigating committee, it was not until January 24 that department chairs, who had not been consulted at all in the matter, became aware of the termination letters. Several affected faculty members have e-mail messages from their chairs attesting to this fact.

Confirming the claims that the nonrenewals were completely unanticipated is a February 10, 2014, letter that the college’s Ad Hoc Committee on Shared Governance presented to the faculty assembly.⁴ The letter reacted to news of the terminations as follows:

We faculty opened our Felician e-mail on January 26 and saw the first message: a colleague had received a letter informing her that, for reasons of “financial exigency,” her contract would not be renewed for the following year. Messages from other faculty with the same news followed, and by Monday we knew that 16 of our colleagues had

lost their jobs. There had been no indication from the Administration that such an action was in the works; the letters came out of the blue. None of the 16 had been spoken with earlier about the decision: though chairs had been told on Friday the 24th that some faculty were to be rified, they were not told who those faculty members would be. The whole process was secretive, sudden, and shocking, and understandably, the faculty mood has been one of depression and anxiety.

The authors went on to cite at length AAUP-recommended standards on termination of appointments under conditions of financial exigency and to ask the administration to address those standards “by providing a hearing for all terminated faculty,” by “demonstrat[ing] that Felician is truly in a state of financial exigency by providing full access to the pertinent financial documents,” and by “explain[ing] how and why those terminated were chosen and whether any faculty were consulted in the decision.”

Throughout spring 2014, Felician faculty members, both those affected and those not affected, asked repeatedly and in every possible venue for information about the criteria used to determine which faculty members had been selected for appointment termination. In response, administrative officers said repeatedly that they could not and would not disclose them.

IV. The AAUP’s Involvement

Professor Robert Ingoglia, who sought the AAUP’s assistance on June 3, 2014, was the first of the sixteen affected faculty members to approach the Association. In the weeks to follow, six more affected faculty members asked the AAUP’s staff to include their cases when conveying the Association’s official concerns to the Felician College administration. When the investigating committee asked these individuals to explain their delay in contacting the AAUP, one of them stated that she felt completely vulnerable between January and June 2014, when her appointment expired, and feared that raising any issues about her nonrenewal would result in immediate termination. Others expressed their belief, based both on Sister Rosita’s statement at the January 24 meeting and on the unwillingness of the administration even to engage in a discussion of the criteria used, that the president would never reconsider her decision. Others were too distressed to act alone and only later considered acting in concert with similarly affected faculty members.

4. For the letter’s context, see section V.F, below.

A July 25 letter from the AAUP's staff to President Prisco focused on two issues: the inadequacy of the procedures leading to the decision to terminate appointments for financial reasons and a failure to afford the protections of academic due process to these seven faculty members, six of whom, under Association-supported standards, were entitled through length of full-time service to the procedural protections of tenure. The letter urged that Professor Molnar, with four years of full-time service, be either immediately reinstated to his appointment or paid six months' additional salary in lieu of adequate notice and that the six faculty members who had served beyond the maximum probationary period be either immediately reinstated or provided settlements they found acceptable.

President Prisco, responding by letter of August 14, stated that Felician College was an institution at which "academic freedom flourishes," but not through conforming to AAUP-recommended principles and standards. Instead, she wrote, "Felician has always understood that we are free to implement and follow policies of our choice and have done so in this instance." She asserted that the procedures followed in reaching the decision to terminate appointments were "fair" and treated the institution's "valued faculty" with "the respect they have earned." Most of the letter provided her account of what those procedures had entailed but did not directly address the Association's concerns and the urged resolutions.

The AAUP's staff responded on September 19, pointing out, among other things, that AAUP-recommended standards were, in fact, among "the policies and procedures set forth in the Felician faculty handbook" to which President Prisco had referred:

On page 45 of the handbook begins the section entitled "Faculty Rights and Privileges." The first sentence reads, "Felician College affirms and is guided by the ideal that all faculty, full-time or part-time, are entitled to academic freedom as set forth in the 1940 *Statement of Principles on Academic Freedom and Tenure*, jointly formulated by the American Association of University Professors and the Association of American Colleges." The next five paragraphs of the handbook consist of verbatim quotations from the 1940 *Statement* for the purpose of defining, according to the handbook, "what is meant by academic freedom" at Felician College. If the language on page 45 of the handbook

does not constitute an endorsement of AAUP-recommended standards on academic freedom, it is not clear to us how else to characterize it.

The staff's letter also noted that the 1940 *Statement* referenced in the Felician faculty handbook provides that, "[a]fter the expiration of a probationary period, teachers or investigators should have permanent or continuous tenure, and their service should be terminated only for adequate cause, except in case of retirement for age, or under extraordinary circumstances because of financial exigencies," and that the actions taken against six of the affected faculty members appeared to violate this provision. The letter rejected President Prisco's suggestion that "the context for the administrative decisions" she provided in her letter of August 14 should have satisfied the AAUP's concerns "and the concerns of the affected faculty," asserting that, "if anything," her information had only "increased those concerns." The letter closed by noting that the staff would be in further communication when the Association had determined its next course of action.

That action followed on October 24 when the staff wrote to inform President Prisco that the Association's executive director had authorized an investigation into the actions taken by the Felician College administration in separating the seven subject professors from service, because these actions raised important issues relating to academic freedom, tenure, and due process as well as to the faculty's role in academic governance.

In subsequent correspondence between the college and the AAUP's staff, the college was represented by Mr. Angelo J. Genova, an attorney whose firm the college had retained as general counsel. Mr. Genova informed the staff that, because the subject professors had retained an attorney, the administration would no longer be communicating with the AAUP about their cases. Questioning the authority of the AAUP to conduct its "purported investigation," he stated that the administration declined to participate and, further, did not "condone the use of any College buildings, facilities, or resources by the AAUP for these self-serving purposes." The investigating committee did not find these subsequent communications between the college and the AAUP relevant to its inquiry, with the exception of the staff's clarification to the Felician president and attorney that the "AAUP's clients . . . are not the individual professors" but "the principles and procedural standards that the Association has striven to implement over the course of a century."

On or around December 4, the Felician College e-mail server began rejecting all e-mail messages originating from the *aaup.org* Internet domain with the message “Sorry, your e-mail address . . . has been blacklisted.”

V. Issues of Concern

The investigating committee identified the following matters as of primary concern.

A. Academic Due Process

Under Regulation 1b of the AAUP’s *Recommended Institutional Regulations on Academic Freedom and Tenure*, all full-time faculty appointments, excluding special appointments clearly limited to a brief association with the institution, are either tenured or probationary for tenure, regardless of how the faculty member’s institution may designate them. While Felician College chose not to designate its full-time faculty appointments as either probationary or tenured, the college was clearly at odds with AAUP standards in denying the protections of academic due process to faculty members who were, by these standards, in the position of probationary or tenured faculty members.

Professor Molnar, with four years of service, was entitled under AAUP-recommended standards to the protections of academic due process afforded to probationary faculty members, as set forth in *Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments*.⁵ These standards require that a recommendation not to renew an appointment be made by an appropriate faculty body in accordance with procedures approved by the faculty, after the candidate has been afforded the opportunity to submit all relevant materials. They also require that the faculty member be given timely notice of nonrenewal; a written statement of the reasons for the decision, if requested; and the opportunity to appeal it to a duly constituted faculty body.

Professors Abboushi, Barton, Brey, Ingoglia, Monopoli, and Raley, all having served well beyond the seven-year maximum period of probation, were entitled to the procedural protections that accrue with indefinite tenure, as set forth in the 1940 *Statement of Principles on Academic Freedom and Tenure*. These protections require an administration to demonstrate

adequacy of cause for dismissal in an adjudicative hearing of record before an elected faculty body.

B. Financial Exigency

The 1940 *Statement* and Regulation 4 of the *Recommended Institutional Regulations on Academic Freedom and Tenure* make clear that the services of faculty members with continuous tenure may be terminated only for adequate cause or, in extraordinary circumstances, for bona fide financial exigency or bona fide program discontinuance for educational reasons. Regulation 4c defines financial exigency as “a severe financial crisis that fundamentally compromises the academic integrity of the institution as a whole and that cannot be alleviated by less drastic means” than terminating faculty appointments.

While the January 21, 2014, letters of termination claimed that “the cause of this decision” was “the exigency of the College’s financial status,” as far as the investigating committee can ascertain, President Prisco publicly used the words “financial exigency” for the first time on Monday, January 27, 2014, in a town hall meeting at which she confirmed that sixteen full-time faculty members had received letters of non-renewal. According to faculty members interviewed, the president did not mention the exigency of the college’s finances in any subsequent meetings held that spring semester. When asked about the terminations, President Prisco referred to the need to reduce the faculty-to-student ratio because of financial pressures caused by enrollment declines and, more specifically, to the need to reduce the number of *full-time* faculty members, which she said was high in relation to that of comparison colleges. She did not provide faculty members with any documentation for these claims.

In her August 14 response to the first letter from the AAUP’s staff, President Prisco mentioned a significant enrollment decline and described the financial situation as “challenging” and in need of stabilization. She did not mention financial exigency. The investigating committee does not question that enrollment declines creating financial pressures occurred in fall 2012 and again in fall 2013. From a high total enrollment of 2,301 students in fall 2011, enrollment fell by 192 students in fall 2012 and by an additional 176 students in 2013. At a May 20, 2014, arts and science faculty meeting, four months after the notices of terminations went out, Vice President Fescue explained that by October 2013 the college knew it was facing a \$2 million shortfall. Evidence demonstrating that this deficit constituted a “severe financial crisis” that

5. Under Felician College’s policies, Professor Molnar was not regarded as a probationer, having achieved “established” status in fall 2013 after three years of probation. No due-process rights, however, were attached to established status. See section V.E, below.

“fundamentally compromised the academic integrity of the institution,” however, was not available. According to faculty members, the Felician administration did not routinely share detailed financial information with the faculty, or even with department chairs, and declined to provide it when requested.

In early March 2014, two months after the notifications of termination, Dr. William Back, vice president for institutional advancement, did not paint a dire picture of Felician’s finances. The March 6 issue of *NorthJersey.com* quoted him as saying, “Here at Felician College we aren’t in any kind of critical state as far as declining enrollment. In fact, our enrollment project[ion]s are trending upward from where we are currently.”

After the terminations, the administration published a “Strategic Plan 2014–2019” with initiatives that included seeking university status, adding doctoral programs, renovating the student center (to be finished spring 2016), completing the Education Commons building on the Rutherford campus, and establishing a school for continuing education and professional studies.

The strategic plan certainly did not suggest that a condition of financial exigency was looming, and at no time—either before or after the terminations—did the administration attempt to document that such a condition existed. There is no evidence that the decline in enrollment constituted a “severe financial crisis,” let alone one that “fundamentally compromise[d] the academic integrity of the institution.” Any decisions based on the purported financial exigency were made without faculty involvement. Casual reference to financial exigency in order to justify terminating faculty appointments assuredly does not meet the AAUP’s recommended standards.

Even if Felician College, in compliance with Regulation 4c of the *Recommended Institutional Regulations*, had established that a severe financial crisis threatened its academic integrity, that fact alone would not have provided sufficient justification for terminating faculty appointments. The institution still had to show that it could not respond to the financial crisis by less drastic means than the termination of faculty appointments. The administration made no attempt to demonstrate that the college could not alleviate the financial situation by less drastic means. At the May 20, 2014, meeting at which Vice President Fescue revealed the \$2 million shortfall, faculty members asked him how much money the administration saved by releasing the sixteen full-time faculty members. His answer was

\$1.6 million, suggesting that the reduction in full-time faculty made up 80 percent of the \$2 million shortfall. There certainly was no discussion involving faculty members or deans about less drastic ways of responding to the enrollment decline than a 14.5 percent reduction in the college’s full-time faculty members.

In her August 14 letter to the AAUP’s staff, President Prisco revealed one reason for targeting full-time faculty members for nonretention when she referred to a comparative study of full-time faculty-to-student ratios “at approximately 20 institutions of higher education in our region.” No one with whom the investigating committee spoke was aware of this study or of its finding “that Felician was supporting one of the lowest ratios in the group, second only to Princeton University.” President Prisco wrote, “Given its fiscal climate and financial challenges, it was determined that this skewed, below the norm ratio was no longer sustainable at Felician. This data set affirmed the need to take a hard look at reducing the number of full-time faculty positions.”

Instead of responding to the enrollment declines in a way that would have preserved faculty positions, the administration apparently had determined that an imbalance existed in the ratio of full-time faculty to students, and, when enrollments (and revenue) fell, that imbalance became a justification for reducing the number of full-time positions.

The administration also departed from the AAUP’s recommended procedural standards for identifying individuals whose appointments are to be terminated under conditions of financial exigency.

Regulation 4c(1) of the *Recommended Institutional Regulations* requires that

[t]he faculty or an appropriate faculty body should exercise primary responsibility in determining the criteria for identifying the individuals whose appointments are to be terminated. These criteria may appropriately include consideration of length of service.

The responsibility for identifying individuals whose appointments are to be terminated should be committed to a person or group designated or approved by the faculty.

As noted above, in her August 14, 2014, letter to the AAUP’s staff, President Prisco stated that the procedures followed in reaching the decision to terminate appointments were “fair” and treated the institution’s “valued faculty” with “the respect they have earned.” In fact, the process did not involve faculty members in

determining the criteria or in identifying the individuals whose appointments were to be terminated. The twelve-member prioritization committee mentioned earlier, for example, performed its task from August to December 2013, when it issued its report and disbanded. Hence, while this administratively appointed faculty committee was engaged in making recommendations that were never implemented, the administration was independently drawing up its list of appointments for termination.

In his meeting with the investigating committee, Dean Kubersky, who watched the process unfold in fall 2013, emphasized that unfairness and lack of faculty involvement rendered it “fatally flawed.” According to him, the administration introduced the deans to the president’s mandate to create a list around Thanksgiving 2013, when Sister Rosita asked them to identify faculty members whose appointments would be terminated. The list of faculty members who were to receive nonrenewal notices was developed over several meetings. Sister Rosita was the arbiter of the “final” list, which may have existed by Christmas, although the investigating committee does not know if this version matched the president’s final one.

While he did attend all of these meetings, Dean Kubersky told Sister Rosita and the president that he would not participate in this exercise, except to provide the provost with what he called “public information” on the sixty-six faculty members in his division. (When pressed by Sister Rosita and President Prisco to participate in identifying individuals to be laid off, Dean Kubersky provided Sister Rosita access to complete faculty files, including retention documents and any other correspondence. Asked by Dean Kubersky if she had gone through those files in drawing up the list of faculty members in arts and sciences for nonrenewal, Sister Rosita said she had not, because adequate time to do so was lacking, an appraisal with which Dean Kubersky agreed.)

Dean Kubersky informed the investigating committee that he knew of no clear set of criteria that resulted in the list of names. Also, as far as he knew, no one except the deans was aware that a list was being drawn up in late fall 2013.

Dean Kubersky retired from Felician College effective at the end of January 2014 because, in his own words, he did not want to “preside over a decimated and demoralized faculty.” Subject faculty members expressed deep appreciation for his actions, calling them honorable and describing him as “a man of integrity,” saying, “He pulled through for us in the

end.” Dean Kubersky agreed completely with the sentiment expressed by some of the subject faculty members—that it was unbearably sad to witness the effects of the terminations and of the way in which they were carried out at an institution like Felician College, where so many in the academic community tried to live up to Franciscan values.

Faculty members were assured that the terminations were not tied to performance. Confirming this, the February 25 issue of *NorthJersey.com* quoted Vice President Back as saying, “It’s not that anybody did anything wrong or that they were poor performers.” The investigating committee reviewed recent evaluations for several of the subject faculty members, and all were extremely positive.

The termination letters allude to the prioritization process, asserting that it had “assisted . . . in identifying the strengths and limitations of each academic program and department,” but there is no evidence that the results of the prioritization process informed the decisions. On the contrary, departments rated in the top quintile (philosophy, computer science, and mathematics) lost faculty members despite high enrollments and, in some cases, heavy reliance on part-time faculty members. None of the subject faculty members was from departments in the lowest quintile, making the administration’s reference to the academic prioritization process in the nonrenewal letters puzzling. The mathematics department (ranked in the top quintile) seemed particularly decimated for curricular purposes: before the terminations, it had seven faculty members, three with PhDs in mathematics, and, afterward, it had four faculty members, one with a PhD.

Dean Kubersky confirmed to the investigating committee that the academic prioritization process was supposedly not intended to lead to terminations and that selection of appointments for termination had no connection to the results of that process. The stated purpose of the prioritization process was to strengthen departments, while the effect of the terminations, he asserted, was to weaken them.

As noted above, the letters of termination did not in any way specify why particular appointments were selected. Throughout spring 2014, Felician faculty members asked for an explanation of the criteria. Administrators told the faculty that criteria existed, but that they needed to remain secret; that the faculty was not entitled to review the secret criteria, but that the secret criteria were fair. After a January 27 town hall meeting, at which the president confirmed that sixteen faculty members had been sent letters

of termination, Professor Yvonne Raley, one of the subject faculty members, asked Sister Rosita why these individuals had been selected, and Sister Rosita responded, “We thought some people would land on their feet.”

C. Terminal Salary or Notice

The 1940 *Statement* and Regulation 8 of the derivative *Recommended Institutional Regulations* specify that full-time faculty members beyond their second year of service selected for involuntary release, whether through nonreappointment, layoff, or dismissal for cause (excepting discharge for moral turpitude), should receive twelve months of notice or at least one year of severance salary. The sixteen affected Felician faculty members received only five months of notice.

D. Felician College Policies

The investigating committee identified the following provisions of the *Felician College Faculty Handbook* implicated by the administration’s actions.

1. Faculty Severance Policy

The letters of termination state that the recipients might “wish to refer to the Faculty Severance Policy found on page 67ff of the Faculty Handbook.”

That policy enumerates three types of nonrenewal of appointment, of which only one is relevant here: “Non-renewal of appointment for administrative reasons is related to an administrative need of the College such as: cancellation or redirection of a program, declining enrollment, financial exigency, or over-staffing.” If a reduction in faculty is planned, a number of procedures are to be followed, including the following:

- A discussion, as soon as possible, among members of the Administration, Division Dean, Associate Dean and Department Chair of the affected department.
- Mutual consideration of possible alternate assignments for affected faculty members.
- Notification of affected faculty member(s) as early as possible; however, no later than the schedule outlined above except in cases of extreme financial exigency. [The relevant provision in the referenced schedule is “Ordinarily, full-time faculty members with three or more years of service would receive a one-year notification before the expiration of the appointment.”]

The committee’s investigation confirmed that the administration of Felician College did not follow these mandated procedures. As noted earlier, no discussions that included a departmental viewpoint took place, and department chairs, along with the rest of the Felician faculty, first learned who had received termination letters from e-mail messages sent by the affected faculty members themselves, beginning the day after they received their notices.

Certainly, “mutual consideration of possible alternative assignments for affected faculty members” did not occur. While the investigating committee heard that several of the sixteen affected faculty members had been rehired, the administration made no special effort to explore current or anticipated alternatives at the college. It was not enough to direct the affected faculty members to meet with Sister Rosita, their dean, and the director of human resources, as was done in the nonrenewal letters. Professor Ingoglia provided documentation of his attempts to obtain clarification on the handbook-mandated “mutual consideration of possible alternate assignments for affected faculty members.” He met with Sister Rosita, Dean Kubersky, and Ms. Virginia Topolski, director of human resources, in late January to discuss an alternate assignment in the college. During the meeting Ms. Topolski said that she would get back to him. In May, four months later, not having heard from her, he wrote to Sister Rosita, who directed him to contact Ms. Topolski, whose response one day later was pro forma and dismissive.

The investigating committee was told that a number of faculty positions at the time of the nonrenewals remained unfilled, but the committee does not know if the administration decided to cut these unfilled positions and, if not, whether they would have been available for occupancy by the affected faculty members. (If these positions indeed were cut, then full-time faculty positions would have been reduced by more than 14.5 percent in fall 2014.) For example, one full-time faculty member had announced his retirement from the philosophy department on January 8, 2014, and another full-time faculty member in the department resigned on January 16, 2014. If these positions had been open, then Professor Raley could have been retained; if they were not, then the philosophy department lost three full-time positions. No one discussed with Professor Raley the current or future hiring plans of the philosophy department. Professor Abboushi had transferred from the School of Education to the School of Arts and Sciences in fall 2013, but

the graduate program in teacher education in the School of Education where he had formerly served advertised for graduate faculty on the Felician website in fall 2013. In June 2014, another full-time faculty member in the graduate program resigned. His former program thus appeared to have had three full-time vacancies. Again, it is not clear whether these positions were cut, were reduced to part-time positions, or were filled by new full-time appointees. No one discussed with Professor Abboushi any current or future possibilities for another suitable appointment in the college.

The subject faculty members received five months of notice. As mentioned earlier, the Felician College faculty handbook mandates one year of notice, except in cases of “extreme financial exigency,” which, as the committee has already determined, did not exist.

The administration of Felician College therefore acted in disregard of the college’s own severance policy.

2. The Faculty Grievance Committee

The responsibilities of the Faculty Grievance Committee, outlined in Appendix T of the faculty handbook, include hearing grievances on “renewal of contract,” with such grievances being limited to “allegations that College policies or procedures have been violated or that an administrative decision has been rendered unfairly or improperly.” The committee is an elected faculty body authorized to make recommendations that are binding if accepted by the involved parties. If they are not accepted, recommendations go to the president, whose decision is final.

At no point did the administration refer the affected faculty members to the college’s internal grievance process—neither in the termination letters nor in conversations with them. None of the sixteen faculty members chose to file a grievance with the college’s committee. Explanations for not having filed a grievance varied among the seven faculty members. Professor Abboushi, a past chair of the grievance committee, said that once financial exigency had been declared, he believed he had no grounds for an appeal. One faculty member said she was “in shock” and felt like a “throw-away” continuing to teach her five classes with the clock ticking down to June 20. Several of the faculty members believed that filing a grievance would be a waste of time and effort. “Why bother?” they said they asked themselves, knowing that the president would render the final decision and that Sister Rosita (as noted earlier) had stated that the decisions were final and airtight.

On the committee’s further questioning, however, it also became clear that they feared for their colleagues on the grievance committee who would have had to hear and rule on any grievance. One wrote, “I was afraid that if my fellow faculty members ‘found’ for me, they would incur the wrath of the president. Once I had been terminated, fellow faculty members avoided me like the plague. In spite of this, I did not want anyone else to suffer.” This concern was not misplaced. As late as May 2014, faculty members inquired of the vice president for finance if there was another list of faculty members whose appointments were to be terminated.

That not one of the sixteen affected faculty members sought redress through the internal grievance process speaks to the finality with which the termination decisions were conveyed and perceived, as well as to the intense climate of fear that the sudden dismissals engendered.

3. Faculty Emeritus Policy

To be considered for emeritus status at Felician College, a faculty member must have served full time at the institution for a minimum of ten years. If, in addition, the candidate had received an earned doctorate and had attained the rank of full professor, the bestowal of the honor was, essentially, automatic and, according to the faculty handbook, involved the Promotions Committee only in order to verify that the three requirements had been met. Any faculty member, including the candidate, can initiate the process.

Professor Ingoglia possessed an earned doctorate, became a full professor in 2008, and taught full time at Felician well over ten years. (During his nineteen years at the college, in addition to teaching courses in history, Latin, and interdisciplinary general studies, he had been director of the college’s computer laboratories, an assistant in the institutional research office, a weekend librarian, college webmaster, assistant to the academic vice president, and editor and publisher of the undergraduate and graduate catalogs.) He submitted the documentation for professor emeritus status to Sister Rosita on April 3. That same day she responded that she had already submitted his name to the Promotions Committee, which, she stated, supported the application, and that “[t]echnically there should be no problem” since his application met “the criteria from the faculty handbook.” On June 23, three days after his last day as a Felician College faculty member, Professor Ingoglia received an e-mail message from Sister Rosita

informing him as follows: “The president and board did not approve your request for emeritus status.”

The only explanation provided to Professor Ingoglia for the denial of his application was that the president had decided not to grant him emeritus status. Earlier, Professor Ingoglia had been assured that the termination of his appointment as an active faculty member had had nothing to do with performance, and, in fall 2013, he had received perfect scores on his last retention evaluation. He had been told that his appointment termination was attributable solely to the financial troubles of the college, and yet the conferral of emeritus status, which in his case should have been automatic, was withheld. While emeritus status can be seen as merely honorific, it would have benefited Professor Ingoglia in his career and in his search for another position. Since professor emeritus status included library privileges, Professor Ingoglia could have continued to use the college library to engage in scholarship, and the notation of emeritus on his curriculum vitae would have signaled to prospective employers that his termination had not been performance related. He was clearly harmed by having been denied emeritus status.

Although the investigating committee cannot prove a direct connection, Professor Ingoglia was the only Felician faculty member to be quoted in press accounts about the layoffs.⁶ It is difficult to see President Prisco’s denial of emeritus status to Professor Ingoglia as anything other than retaliatory. Not only did it violate the relevant provisions of the *Felician College Faculty Handbook*; it was astonishingly petty and punitive.

E. The Climate for Academic Freedom

As has been noted earlier in this report, all full-time faculty members at Felician College serve on renewable term appointments with no provision for indefinite tenure. Under the faculty handbook, a “Faculty Retention Evaluation Process” divides the full-time faculty into two groups: “probationary” faculty members, who have served fewer than three years, and “established” faculty members, who have served beyond three years. Probationary faculty members are evaluated annually until, after three years of service, they achieve “established status.” Thereafter, full-time faculty members undergo

evaluation every three years. While not officially seen as tenure, the milestone of established status had meaning for the faculty members with whom the investigating committee spoke. They considered it a reciprocal commitment between established faculty members and the college. It was clear to the investigating committee that faculty members trusted that the college would honor this reciprocal commitment based on their belief that the Franciscan values that ostensibly guided the institution would also ensure the protections of academic freedom and academic due process. Unfortunately, once President Prisco took office, this trust became misplaced.

Despite serving on renewable term appointments, faculty members with whom the investigating committee spoke felt that before President Prisco took office, they could question decisions made by the administration and the administration would respectfully listen and respond. Professor Ingoglia said that he was not afraid to speak his mind on any issue prior to President Prisco’s tenure and that his outspokenness sometimes resulted in the administration’s changing its position on issues. It appears that some faculty members played the critical role of “loyal opposition” and felt safe doing so. Professor Molnar recounted his dean’s informing him that established faculty status meant that it was extremely rare to lose one’s job; it was this sense of security that led faculty members to speak freely. While decision making was clearly top-down at Felician, faculty members described the college as a place where they were free, within bounds, to express their views and ask questions.

Faculty members, however, did express frustration with being left in the dark about enrollment, financial, and building planning, even before President Prisco took office. In these areas they often felt deprived of enough information even to question the administration’s decisions. A faculty member reported having inquired at an open meeting about enrollment targets and, after the meeting, being called to task by a vice president, who told him that it was inappropriate for a faculty member to ask such a question.

Since Dr. Prisco assumed the presidency, the climate for academic freedom has steadily chilled. Faculty reported that throughout spring 2014, after the sixteen terminations, the hallways became silent, a stark contrast to the previous lively interactions among faculty colleagues, and questions at faculty meetings ceased. Most faculty members at Felician were apparently afraid to express, and did not expect colleagues to express, views of which the administration may not

6. See Colleen Flaherty, “Faculty Members at Struggling Colleges Say They Were Blindsided by Cuts,” *Inside Higher Ed*, March 18, 2014, <https://www.insidehighered.com/news/2014/03/18/faculty-members-struggling-colleges-say-they-were-blindsided-cuts>.

have approved. As noted earlier, some current faculty members who declined to meet with the investigating committee said they did so because they feared retaliation. Several of the affected faculty members told the investigating committee that living and teaching Franciscan values had once been genuine at Felician and that people had been kind and respectful to each other. As for the present, in the words of one, “Prisco broke” that culture.

The investigating committee heard remarkable stories of continuing dedication to students despite the atmosphere of fear and sadness. Even though the subject faculty members felt isolated and humiliated, they continued to be accessible to their students. One said, “I consider it a good day when I help students with their math.”

As mentioned before, the unwillingness of unaffected faculty members to meet with the investigating committee was not surprising, even less so considering a December 3 e-mail message from President Prisco. Having the evident purpose of discouraging faculty members and current as well as former administrative officers from meeting with the investigating committee, it read:

Several members of our Felician College community have received written communication from the American Association of University Professors (AAUP) regarding a purported “investigation” the AAUP intends to conduct on campus later this month.

As many of you may know, Felician College has no affiliation with the AAUP. So its authority to initiate what amounts to a self-serving “investigation” of the college’s affairs is questionable, at best, and certainly lacks any Felician imprimatur, at worst.

[In an apparent reference to a letter from attorney Genova to the AAUP’s staff on December 3 objecting to the investigation:] We take seriously our duty to protect confidential information from disclosure to unauthorized third parties; therefore, I have notified representatives of the AAUP that Felician College has declined the invitation to participate with its “investigation.”

President Prisco ended her letter by assuring her readers that “no member of Felician College is under any obligation to facilitate or participate in the AAUP’s ‘investigation,’” recommending that those with questions should contact their “respective Felician College vice president.”

The investigating committee also learned that the administration had informed faculty members that if they spotted the members of the AAUP’s investigating committee on campus, they were to notify the security office, and security officers would escort them off the premises.

A thriving academic institution cannot exist without academic freedom, which requires an atmosphere of openness so that the not-always-easy discussions between the faculty and the administration on matters affecting the academic life of the institution can take place. The investigating committee found that before the appointment terminations, while many decisions were made without faculty involvement, most did not fear retaliation for asking questions about those decisions. The behavior of unaffected faculty members in spring 2014, as observed by the affected faculty members, indicated that fear of reprisals through further terminations had stifled questioning and dissent.

F. Shared Governance

Genuine shared governance requires appropriate structures, adherence to the structures in letter and spirit, conscientious participation in the structures, and trust. *The Felician College Faculty Handbook* appropriately gives the faculty authority over admission requirements, academic courses and programs, academic policies and regulations, and graduation requirements. A section of the handbook explains that faculty members “should value their association with the institution and strive to improve the effectiveness of the College through willing and thoughtful participation in its governance.” The handbook provides for a variety of standing faculty committees: curriculum, distance learning, faculty development, library, promotions, student affairs, and grievances, with provision for establishing other committees as needed. The structure does not appear to call for faculty participation in areas such as financial affairs or long-range planning.

The handbook defines the faculty assembly, a regular meeting open to all faculty members, as a non-policy-making forum that promotes collegial exchange among faculty members. While senior administrators do not hold membership in the faculty assembly, associate deans do. Attendance at faculty assembly meetings is not required, and the investigating committee was told that its meetings were poorly attended, with fifteen to twenty faculty members ordinarily present, of a full-time faculty of over one hundred. The assembly is chaired by one of the four elected faculty members of the faculty council. A goal is for faculty

members to see the faculty assembly meetings as a safe environment in which to discuss their concerns, which are then brought to the full faculty council anonymously by the council's faculty representatives.

The full faculty council consists of four senior administrators, who are ex-officio members, and elected full-time faculty representatives from each school. It has a wide-ranging charge: proposing policies, practices, and procedures governing the status and welfare of the faculty. Instead of the usual majority rule, motions proceeding from the faculty council require consensus before being presented to any constituency outside the council.

The investigating committee understands that some Felician faculty members participated willingly and thoughtfully in governance, but others felt that participating in faculty governance was a waste of time because the administration made all the important decisions. The structure of the system appears reasonable enough—excepting an absence of any provision for faculty involvement in financial affairs and in long-range planning—but the structure should be measured by what it produces. As has been noted, faculty assembly meetings, designed to provide a forum for open discussion and questioning, were poorly attended. Faculty members engaged in routine committee work, according to those who spoke with the investigating committee, but current conditions did not allow anything innovative or controversial to emerge from those committees. Faculty members could discuss matters with the administration in the various governance bodies but only “up to a point.” Some subjects could not be broached, and information that could have helped in proposing alternatives was not made available. Faculty members found especially frustrating the lack of access to financial data and of opportunity to participate in plans for changes in college programs and to the physical plant.

At some point prior to President Prisco's arrival, the Ad Hoc Committee on Shared Governance was established. Its charge, as best the investigating committee could determine, was to examine the status of shared governance at Felician College, to determine its effectiveness, and to recommend changes. The ad hoc committee appears to have originated in the faculty assembly, where faculty members had been expressing concerns about their involvement in the governance of the college. In December 2014, during the period in which the investigating committee's visit occurred, the ad hoc committee was reportedly discussing potential changes in Felician's shared governance system

with the president. Faculty members with whom the investigating committee spoke did not know what governance changes were being discussed, and the investigating committee does not understand why faculty members would be in the dark about the ad hoc committee's work.

As noted earlier, in February 2014 the ad hoc committee drafted a letter lamenting the inhumane, impersonal process of announcing terminations in form letters sent by overnight mail, questioning the legitimacy of the “financial exigency” justification for the terminations, and asking the administration to address a number of issues. The chair of the Ad Hoc Committee on Shared Governance presented the letter to the faculty assembly, asking that body to endorse it for presentation to the administration. After discussion in which some faculty members expressed their reluctance to convey the letter to the president, the chair withdrew his proposal.

The investigating committee found it troubling that the administration's action to terminate the appointments of sixteen full-time faculty members did not elicit a formal response to the administration from any faculty governing body. The committee is aware that the fear that such actions can engender makes it difficult for faculty members, even as a group, to respond—especially where the due-process protections of tenure are lacking. A well-structured and well-functioning governance system, however, ensures that faculty members are involved at the level at which decisions are being made so that they do not find themselves in the position of having to react to final decisions without adequate information and without having been part of the process. This point is, of course, directly related to the subject of this investigation, the unexpected termination of sixteen full-time faculty appointments, but it also applies to many administrative decisions made at Felician College—large and small—that affected the faculty and its ability to carry out its responsibilities. For example, the administration recently decided—without faculty discussion and deliberation—to abolish department chairs.

The investigating committee was struck by how little information was shared with the faculty and, as a result, how marginalized the faculty had become in the governance of the college.

VI. Conclusions

1. In terminating the appointments of sixteen full-time faculty members, seven of whom sought

the Association's assistance, the administration of Felician College attributed its action simply to "the exigency of the college's financial status" without any further explanation. The administration's action thus was in violation of the joint 1940 *Statement of Principles on Academic Freedom and Tenure*, which provides that terminations based on financial exigency be "demonstrably bona fide."

2. The affected faculty members, with one known exception, had served well beyond the maximum probationary period permitted by the 1940 *Statement* and thus were entitled under that document to the procedural safeguards against involuntary termination that accrue with continuous tenure. The Felician College administration, insisting that its decisions on terminations were final and not subject to review, acted summarily and in virtually total disregard of the applicable AAUP-supported procedures set forth in Regulation 4c ("Financial Exigency") of the Association's derivative *Recommended Institutional Regulations on Academic Freedom and Tenure*.
3. In the exceptional case, that of a faculty member in his fourth year of probationary service and thus not entitled to the procedural protections of tenure under AAUP-recommended standards, the administration, in not providing him with an explanation of why he was selected for release, not providing adequate notice, and not affording opportunity for review, acted in disregard of the AAUP's *Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments*.
4. A state of financial exigency as defined by the Association did not exist at Felician College. The only discernible reason for the administration's terminating the appointments of approximately 15 percent of the full-time faculty was its dubious desire to "improve" the ratio between the full-time faculty and students enrolled.
5. As to the climate for academic freedom at Felician College, the fear of faculty members to communicate with the investigative committee or to be seen by the administration as dissenters was palpable. Denying emeritus status to a top-notch teacher and productive scholar with a record of speaking out against what he found wrong was punitive and petty in the extreme. According to its faculty handbook, "Felician College affirms and is guided by the ideal that all faculty, full time or part time, are entitled to academic

freedom as set forth in the 1940 *Statement of Principles on Academic Freedom and Tenure*."

Despite this affirmation, academic freedom at Felician College seems to have been in short supply before the current president took office. Now it barely exists.

6. With respect to the faculty role in academic decision making, the forms of elected faculty governance exist with a couple of exceptions, but the administration has refused to involve or has avoided involving or even informing the faculty when important decisions were made, as the actions that occasioned this investigation illustrate. ■



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Trinity College (CT), *chair*

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Fairfield University

Investigating Committee

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

Chair: **HENRY REICHMAN** (History), California State University, East Bay

Members: **MICHAEL BÉRUBÉ** (English), Pennsylvania State University; **DON M. ERON** (Writing and Rhetoric), University of Colorado; **MARJORIE HEINS** (Law), New York, NY; **CHRISTOPHER HOOFNAGLE** (Law), University of California, Berkeley; **WALTER BENN MICHAELS** (English), University of Illinois at Chicago; **DEBRA NAILS** (Philosophy), Michigan State University; **CARY R. NELSON** (English), University of Illinois at Urbana-Champaign; **JOAN WALLACH SCOTT** (History), Institute for Advanced Study; **HANS-JOERG TIEDE** (Computer Science), Illinois Wesleyan University; **RUDY FICHTENBAUM** (Economics), Wright State University, *ex officio*; **RISA L. LIEBERWITZ** (Law), Cornell University, *ex officio*; **JOAN E. BERTIN** (Public Health), Columbia University, *consultant*; **BARBARA M. JONES** (Legal History), American Library Association, *consultant*; **JAMES TURK** (Sociology), Ryerson University, *consultant*; **IRENE T. MULVEY** (Mathematics), Fairfield University, *liaison from the Assembly of State Conferences**

* Did not participate in the vote.