Academic Freedom and Tenure

University of the District of Columbia: Massive Terminations of Faculty Appointments[1]

I. Introduction

The subject of this report is the action taken in February 1997 by the administration of the University of the District of Columbia (UDC) to terminate the appointments of 125 members of the faculty with six weeks of severance salary.

UDC, whose main campus is located in northwest Washington, was established by Congress in 1977, through the merger of three existing public colleges with widely different missions, academic programs, faculties, and student bodies. The three predecessor institutions were District of Columbia Teachers' College, a four-year institution that had been founded in 1955 through a merger of two previously segregated women's normal schools which traced their origins to the nineteenth century; Washington Technical Institute, a two-year vocational college which had opened in 1968; and Federal City College, a four-year liberal arts institution, also first opened in 1968, the year the two institutions attained land-grant status. At the time of its founding, UDC was an agglomeration, not a true consolidation, of these three institutions. All of the faculty and staff of each institution were assured of continuance in the new university.

The university, the only urban land-grant institution in the country, was founded with a noble mission. It was intended to provide open access to higher education, at affordable levels of tuition, to all high school graduates residing in the District of Columbia. The potential demand was there. When Federal City College opened a decade earlier it had attracted so many applicants that students had to be selected by lottery. The goal of open admissions was retained. By fall 1979, UDC enrolled more than fifteen thousand full- and part-time students, and while that number declined somewhat over the next decade, enrollment seemed to have stabilized by the early 1990s, with roughly twelve thousand students.[2]

In its first year of operation, UDC's full-time faculty numbered 670, nearly half of whom came from Federal City College; most of the remainder were from the Washington Technical Institute. The faculty is organized for the purpose of collective bargaining with the UDC Faculty Association, an affiliate of the National Education Association (NEA), as the bargaining agent. A fourth master agreement between the Faculty Association and the university, dated February 15, 1989, comprises sixty-four pages of detailed provisions, including many concerned with faculty status and issues relating to potential terminations of the kind that in fact occurred. (The five-year term of the agreement expired on October 1, 1993, and no successor agreement was negotiated. The actions of those in authority in 1996 and 1997, however, were predicated on the assumption that the provisions of the agreement remained in effect and had to be dealt with.)

Under an academic reorganization which took effect in 1995, and eliminated or merged dozens of undergraduate and graduate programs, UDC currently consists of a College of Arts and Sciences, with Schools of Arts and Education and of Science and Mathematics, and a College of Professional Studies, with Schools of Business and Public Administration and of Engineering and Applied Science. In accordance with its land-grant status, the university also maintains a Cooperative Extension Service, its largest department, through which it offers a number of specialized pro-

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 current and former faculty members at the University of the District of Columbia, to the administration of the university, and to other persons concerned in the report. In light of the responses received and with the editorial assistance of the Association's staff, this final report has been prepared for publication.

2. To avoid double counting of individuals, enrollment figures whenever given are for the fall semester.

grams. It also has had a law school since 1995, as a result of having taken over the former Antioch Law School.

UDC describes itself as offering degrees in a wide range of traditional academic areas, as well as in many others that are less traditional carryovers from the programs of its predecessor institutions. As of the 1996–97 academic year, the university's catalogue listed twenty-two associate, forty-five baccalaureate, and eight master's degree programs, as well as the juris doctor program in the law school. Owing to the university's open admissions policy and to the poor state of elementary and secondary education in the District of Columbia, a large proportion of the students who enter UDC lack certain basic skills and take remedial or developmental classes before being admitted to college-level course work. This is particularly true in English and mathematics, where remedial courses are said to account for as much as 70 percent of the student enrollment.

Dr. Julius F. Nimmons, Jr., was appointed acting president of the university in late November 1996. He replaced Dr. Tilden J. LeMelle, UDC's fifth president (not counting three previous acting presidents), who resigned after serving since 1991. At the time of his appointment, Dr. Nimmons was the university's provost and academic vice president, a position he had held since 1993. In October 1997, Dr. Nimmons named Dr. Beverly Anderson, the dean of the College of Arts and Sciences, as acting provost and vice president for academic affairs, when the acting incumbent, Dr. Samuel Sullivan, resigned his administrative position.

The university is nominally governed by a board of trustees consisting of fifteen members, eleven of whom are appointed by the mayor of the District of Columbia with confirmation by the elected city council. (Three other members are selected by the alumni and one is elected by the UDC student body.) From the start UDC has been regarded, and treated, as a unit of the frequently troubled District of Columbia government, rather than as a quasi-independent educational institution. Since 1995, oversight of the university has been in the hands of a congressionally established five-member "control board" (officially, the District of Columbia Financial Responsibility and Management Assistance Authority), which was given wide-ranging powers over the D.C. government's operations and is charged with managing the District's finances. The control board has been issuing most of the directives to which the UDC administration has responded, and in December 1996 it also engaged consultants to undertake a formal review of virtually all aspects of the university's operations. (The results of that review were made public in mid-January 1998.) The university is now formally, as it has perhaps always been informally, merely a unit in the structure of the troubled District of Columbia. City appropriations to the university reached a high of $76.9 million in fiscal 1991. Intentionally low tuition did not make a large addition to this total, nor did endowment income or indirect cost recovery from sponsored research. Over the years UDC managed to weather many a financial storm, owing to the apparent willingness of the D.C. government to tolerate the university's operating at a deficit when it could not stay within its budget. Indeed, the university came to rely on periodic "supplemental" budget appropriations from the mayor and the city council.

II. The Events of 1996 and 1997

Abruptly, in early 1996, when the city was experiencing major financial problems, outside events precipitated a crisis at UDC. The university, itself facing significant strains on its resources, was ordered to repay a $6.75 million accumulated deficit within the 1996 fiscal year, and to live thereafter within its budgeted appropriation, by then reduced to under $38 million. At the beginning of May, the city's chief financial officer sent a letter to President LeMelle, threatening to assume "direct financial control of the university's financial operations" if it did not come up with a plan by May 15 to eliminate the $6.75 million deficit.

The administration responded to this ultimatum with a series of drastic measures, approved by the board of trustees, to achieve the required savings, among them placing faculty and noninstructional staff on unpaid furloughs for six weeks, shutting down the university for a month in the summer, delaying the university's opening of classes in fall 1996 by six weeks, until October 15 (two weeks after the beginning of the 1997 fiscal year), and nearly doubling tuition rates. The delay in the opening of classes and the increase in tuition, combined with widespread media coverage of UDC's financial crisis and questions about the university's survival, were to have a severe impact on enrollments, which had already begun to drop, albeit only gradually, since the early 1990s. In fall 1996 enrollments were under 7,500, and by the following fall they were under 4,800.[3]

While the administration's actions resolved the immediate crisis, they did not address the potential future fiscal-year deficits, projected for 1997 at $16.2 million. Indeed, in August, Provost Nimmons (soon to be acting president) was reported in the local press as having declared that the university was "engulfed in a financial crisis. Our academic mission is being challenged."

Even more ominous, a letter of July 15 from UDC's accrediting agency, the Middle States Association of Colleges and Schools, informed President LeMelle that the university was being placed on "warning status," pursuant to a visiting team's report which found that "the academic climate and classroom instruction is perilously close to falling below the minimum quality level." If UDC, the letter went on, is forced "to take further cuts in its appropriations—without receiving appropriate amounts of

3. Further sizable drops in enrollment remain a concern. The fall 1997 enrollments included only six hundred entering first-year students, roughly half the number required to achieve even the reduced overall enrollment levels of 1997 as students graduate from the university. The problem is exacerbated by the low retention rate of new students and the increasing proportion of those attending UDC on a part-time basis (now some three-fourths of the total)—apparently a result of the tuition increase imposed by the university in 1996.

alternative sources of revenue—it will not be able to sustain a quality academic environment."

Rumors swept the university in the fall that a major reduction-in-force (RIF) would be required, and these were given weight in early October by the posting in each department of a "retention list" consisting of a seniority ranking of faculty and "bumping rights," where applicable, in the event of a RIF. The faculty, which had been largely shut out of all discussions concerning the institution's financial problems, was given until October 11 to challenge the listings. At an emergency meeting on October 2, the faculty authorized the appointment of an ad hoc committee to analyze the UDC budget and to provide the board of trustees and the control board with recommendations for addressing the financial problems. On October 4, the president of the faculty union wrote to President LeMelle and informed him of the faculty's planned study of the budget. He solicited the administration's "cooperation with this important effort." "Cooperation in this endeavor," he wrote, "will go a long way toward developing the collegial model of management which is sorely needed at UDC." Such cooperation was not forthcoming.

The faculty committee issued a draft of its report, "A Blueprint for the Effective and Efficient Operation of [UDC] Given Current Financial Constraints," on October 16, the day after the belated resumption of classes. It was the first of several such documents issued in the next few months, each of which proposed ways to cut the base budget to meet the projected deficit, initially estimated at $16.2 million per year—a number that would rise to over $18 million in the course of the following months. (Each of these plans involved more than cuts in personnel—for example, sale of the university's radio station and closing of certain underutilized buildings—but personnel cuts were a central feature of every proposal and are the aspects that are relevant to this report.) The baseline figures to which the cuts applied were a faculty of 374 and nonfaculty staff of 437.[4]

The "blueprint" report, a document of more than one hundred pages, alleged the existence of a bloated administration, with numerous staff redundancies, and proposed meeting the required budget reductions without the loss of any faculty positions, but with specified cuts in the administration amounting to 199 nonfaculty staff positions. A later version of the faculty plan, issued on January 23, 1997, called for the elimination of 35 faculty positions (10 percent) and 184 staff positions (45 percent). Although carefully explicated, these faculty proposals do not appear to have been seriously considered by the administration or the board of trustees as alternatives to the administration's own plans to close the university's budget deficit.

The first administration-sponsored plan—the "Report of the Provost's Special Task Force," a body consisting largely of deans and academic department chairs, though with some faculty and student representation—was issued on November 25, 1996, and proposed that 94 faculty positions and 153 staff positions be eliminated by the following spring. Members of the faculty questioned the accuracy of the report's data and the validity of its conclusions and recommendations. The report appeared on the eve of Dr. LeMelle's resignation from the presidency. Following his departure he released a statement: "I have chosen to step aside in the hope that my presence will no longer be a deterrent or an excuse to avoid addressing the university's real problems of forced fiscal insolvency and threatened academic deterioration." Provost Nimmons was named acting president and charged with preparing a plan to resolve the budget deficit.

During Dr. Nimmons's first month in office, the report of his task force went through a series of revisions and formed the basis for what was then retitled "The President's Plan for Fiscal Years 1997 and 1998." In the process of revision, the number of proposed faculty cuts was increased from 94 to 125, though no explanation was given for the increase.[5] The plan also indicated a reduction in staff positions of approximately 100.[6] On December 20, the board of trustees approved the president's plan.

On January 13, following a payless furlough over the holidays for all faculty and staff, Acting Provost Sullivan transmitted to the faculty the "final draft" of the "Academic Affairs Fiscal Contingency Plan"—developed by the provost's office working with deans, department chairs, and the director of the Division of Learning Resources—which allocated the 125 faculty position cuts to specific departments and programs. The administration gave the faculty three days to offer comments "in order that the final plan can be approved by the President and forwarded to the Board of Trustees by January 17." The document, unchanged so far as the investigating committee knows, was forwarded to the trustees on January 21, with a cover memorandum expressing the administration's belief that the plan would be "least disruptive to the academic pursuits of our students and . . . will achieve its gap-closing objective." In the meantime, on January 16, city financial officials notified the administration that UDC would need to absorb additional cuts of $682,000 as the university's share of a

4. Not surprisingly, there is some dispute about these numbers, arising from such questions as whether former faculty members then serving in the administration should have been included in the faculty total.

5. Several of the faculty members interviewed by the undersigned investigating committee suggested that the leadership of the two UDC unions, representing faculty and nonfaculty respectively, had negotiated a "more equitable sharing" of the required cuts. We have no way of evaluating the validity of this hypothesis.

6. While in the subsequent discussion of the administration's plans the number of proposed faculty cuts remained stable at 125, the number of nonfaculty staff cuts ranged between 100 and 169. Part of the explanation is that not all of the proposed cuts involved elimination of functions, but instead reflected proposals to "outsource" the services provided. While reducing the number of university employees, outsourcing does not necessarily result in budget savings, and certainly not to the full extent of the salaries and benefits that are taken off the university's payroll.

multimillion dollar budget reduction that was being imposed on all city agencies.

Throughout this period developments occurring outside the university continued to have a significant impact on what was going on inside; indeed, on most matters affecting the institution the locus of decision making was beyond the campus. On December 2, Anthony Williams, the city's chief financial officer, whose staff had been "reviewing all areas within the University, including space utilization, the consolidation or elimination of programs, and the reduction in size or outsourcing of the security function as areas to reduce expenditures this fiscal year without impacting UDC's ability to maintain accreditation," wrote to the D.C. city council, stating that "the elimination of the $16.2 million deficit is impossible to achieve if UDC is forced to honor the Master Agreement . . . [with] the Faculty Association." The next day, at Mr. Williams's request, the city council adopted a "sense of the council" resolution declaring the university to be in a state of financial emergency and suggesting that the board of trustees, through the council, request the U.S. Congress to enact legislation that would permit the abrogation of certain provisions of the collective bargaining agreement respecting the amount of notice of intent to terminate appointments, the amount of severance pay, and the level of retirement benefits for continuing faculty.

The control board, apparently on advice of counsel, determined that it did not need to seek congressional authorization to proceed. On January 22, invoking its existing statutory authority to issue orders, rules, and regulations, the board adopted a "Resolution and Order Concerning Collective Bargaining Agreements [at UDC]," declaring that the university was in "a state of fiscal crisis and that certain provisions in the agreement with the faculty represent significant impediments to the achievement of any budget savings through personnel reductions." It found that "there are no less drastic means of achieving the required budget savings than through the unilateral modifications of the collective bargaining agreements." It instructed the UDC board of trustees, "notwithstanding the provisions of any . . . agreement," to "develop and approve . . . a reduction-in-force plan that provides for reasonable notice and other terms of separation for both faculty and nonfaculty personnel." It further stated that "the reduction-in-force plan shall provide that a faculty member's degrees or lack thereof may be taken into consideration when determining the order of separations from the University."

On February 4, citing the control board's January 22 "Resolution and Order," the board of trustees approved new reduction-in-force procedures for the faculty, setting aside pertinent provisions of the collective bargaining agreement. These included those relating to seniority rights and notice and severance salary.

On February 14, Acting Provost Sullivan notified 125 faculty members, approximately one-third of the entire UDC faculty, that their appointments would be terminated effective April 1.[7] Affected individuals were placed on administrative leave until then, with their salaries for the intervening six weeks constituting the entirety of severance pay. They were afforded the opportunity to file written requests for review by the president, and some eighty did so. Acting President Nimmons subsequently indicated that, given what he regarded as the unusually large number of appeals, he could not review them before April 1, and thus the appointments would be terminated as scheduled. They were.

On February 19, the UDC Faculty Association filed a class-action grievance on behalf of the faculty members whose appointments were being terminated. In that grievance the union alleged that the implementation of the RIF violated the seniority, bumping, retention list, notice, and severance pay provisions of the collective-bargaining agreement. It sought the rescission of any and all dismissals that had been effected in violation of those provisions and, in those cases that were not in violation, compliance with the terms of the agreement relating to severance pay. At the same time, the Faculty Association filed a second class-action grievance over the university's announced intention to reduce drastically its contributions to the faculty retirement plan. In early April, counsel for UDC responded by asserting that neither grievance was reviewable "because, notwithstanding the contrary provisions of the collective bargaining agreement, the university's actions were taken pursuant to the control board order which abrogated those provisions." In May, the Faculty Association went to federal district court, alleging that the control board had exceeded its congressional mandate in abrogating provisions of the agreement. In February 1998, the court ruled in favor of the faculty union. The consequences of this decision remain unclear. The control board has filed a notice of appeal.

* * * * *

Late in 1997, the Middle States Association, which had placed UDC on warning status in 1996 owing to the university's ongoing financial difficulties, removed the warning because of the improved financial situation that had resulted from the massive cuts in faculty and staff ranks.[8] The elimination of 125 full-time faculty positions has necessitated substantial reductions in the available course offerings and has seriously damaged many of the university's academic programs. The accrediting body's letter to Acting President Nimmons, announcing the removal of the warn-

7. The final plan for faculty reductions called for the elimination of sixty-nine positions from the College of Arts and Sciences, forty-nine from the College of Professional Studies, and seven from the Division of Learning Resources. These actions were projected to save $8 million. The administration also announced a plan to issue notices of termination, on a staggered basis, to nearly 200 of the 437 full-time noninstructional staff, thereby saving an additional $6.9 million.

8. Commenting on a draft text of this report sent to him prior to publication, the chair of the D.C. control board, Dr. Andrew F. Brimmer, stated that the warning was withdrawn "at the conclusion of fiscal year 1997, when UDC was able to stay within its budget."

ing, was silent, however, with respect to the academic impact of the large-scale cuts.

* * * * *

In late January and early February 1997, following the administration's announced intention to terminate 125 faculty appointments, UDC faculty members, including the president of the faculty union, sought the Association's assistance. On February 6, the staff wrote to Acting President Nimmons, conveying the Association's concerns. The president did not respond. On March 26, with the notices of termination having been issued, the staff wrote again. While expressing appreciation for the university's difficult fiscal condition, the staff questioned the absence of hearing procedures for the affected individuals and the brevity of notice. A subsequent exchange of letters with the administration left the Association's concerns unresolved, and in May the general secretary authorized an investigation. The staff so notified President Nimmons and later also informed him of the composition of the investigating committee and the dates planned for its visit. The president did not respond, and the administration ultimately chose not to cooperate in the investigation. The president of the faculty union also declined to cooperate. In a September 29 letter to the staff he stated that the UDC Faculty Association (NEA) "is the *exclusive* representative of faculty, and that the University cannot negotiate or otherwise deal with any other employee organization in regard to matters that are subject to collective bargaining, including reductions in force."

The undersigned investigating committee visited the UDC campus on November 10 and (with the university closed the following day because of a federal holiday) was at an off-campus site on November 11. We regret that we were denied the opportunity to discuss the matters covered in this report with those in administrative authority at UDC, with the leadership of the faculty union, or with members of the control board. Our information perforce had to come from the many documents that are available, from interviews with more than forty current or former members of the faculty, and from data and correspondence provided by individuals we interviewed. From these sources we believe that we have sufficiently accurate information to support our assertions of fact and our findings and conclusions. There are numerous small discrepancies in the data received that we cannot definitively resolve, but we do not believe that they affect the substance of our report.

III. Issues of Concern

1. Applicable Standards in the Termination of Faculty Appointments

The 1940 *Statement of Principles on Academic Freedom and Tenure* calls for a maximum period of probation not to exceed seven years, with service beyond the probationary period constituting continuous appointment or tenure. The 1940 *Statement* calls for procedural safeguards against involuntary terminations not only for faculty members on continuous appointment but also for those with appointments of limited duration prior to their expiration.

The extent to which tenure officially existed at UDC at the time of the events herein discussed is a matter of some dispute, and, indeed, is the subject of pending litigation. When the university was established in 1977, faculty members at each of the three predecessor institutions were assured that they retained all of the rights they had possessed at the time of the consolidation. The Washington Technical Institute had a formal tenure system: full-time faculty members reappointed for a fourth year after a third-year review were deemed to have acquired indefinite appointment. Faculty members who served at D.C. Teachers' College were likewise eligible for tenure on more or less conventional grounds. In contrast, Federal City College, the largest of the predecessor institutions, did not have a formal tenure system at the time of the merger, although many of its faculty had already served for more than seven years. In 1978, the governing board of the newly formed UDC recognized this anomaly and created what was called "reserved interest status" for faculty members who had completed more than seven years of full-time service, "with seniority rights equal to those of University tenure status in the event of a reduction in force." This is revealing: tenure at UDC seems always to have meant only recognition of seniority. It was granted by virtue of continuous service rather than awarded upon evaluation of the faculty member's qualifications after a fixed probationary period. To the best of our knowledge, UDC, in the years since its founding, has made no awards of tenure to newly appointed faculty members.

The collective bargaining agreement has little to say on the subject of tenure. Its only reference to tenure is found in Article XIV, here quoted in its entirety: "The University, as a public land-grant institution, recognizes and supports the concept of tenure. The granting of tenure to a bargaining unit member shall not constitute relief from the application of the full provisions of this Agreement."

When, in the wake of the RIF of February 1997, the former Washington Technical Institute and D.C. Teachers' College faculty members with formal tenure who were designated for release sought to distinguish themselves from their colleagues and thus to be exempted from the RIF, their claims were explicitly and unambiguously rejected by President Nimmons. As he wrote to one of them, "The RIF procedures do not afford any special consideration to faculty who had obtained tenure at one of the predecessor institutions. . . . I cannot use your tenure status . . . to justify retaining you and releasing another faculty member who did not obtain tenure."

Whatever the tenure status or seniority of particular individuals among the 125, however, all of them—those on continuous appointment and those on appointments of limited duration—were separated from the university prior to the expiration of their term of appointment. The investigating committee finds that they were therefore entitled to the safeguards of academic due process in any action to terminate their services involuntarily.

2. The Declaration and Bona Fides of Financial Exigency

The 1940 *Statement of Principles* allows for the termination of a continuous faculty appointment under extraordinary circumstances because of a demonstrably bona fide condition of financial exigency. Regulation 4(c)(1) of the Association's derivative *Recommended Institutional Regulations on Academic Freedom and Tenure* defines financial exigency as an "imminent financial crisis which threatens the survival of the institution as a whole and which cannot be alleviated by less drastic means" than the termination of faculty appointments. The regulation calls upon an institution to pursue "all feasible alternatives" to termination.

While it does not refer specifically to financial exigency, the UDC collective bargaining agreement, in Article X, affords the administration the right to "take whatever actions may be necessary to carry out the mission of the University in emergency situations." According to Article XXI ("Reduction in Force") of the agreement, the university reserves the sole right "to relieve employees of duties because of lack of work or other legitimate reasons." Discussions at UDC and beyond the campus about how to deal with the university's financial difficulties were predicated on the assumption of the need to terminate faculty appointments. The only issues open to debate were the number of such appointments to be terminated and the designation of the individuals to be released.

In the winter of 1996–97, when the D.C. city council, the control board, and the UDC board of trustees all declared that the university was running an unacceptable deficit, drastic action was necessary to reduce expenditures. Two questions need to be addressed: What had caused the deficit and the imminent crisis? Could the gap have been closed without the termination of faculty appointments, or at least with many fewer cuts than 125?

For many institutions of higher education that find themselves in a state of financial exigency, the prime cause is declining enrollment, usually the result of a decrease in the demand for the institution's services, as it has lost out in competition with other colleges and universities. In many cases where institutions find it necessary to declare a state of financial exigency, better management might have averted the problem, but the general presumption is that the chief administrative officers of these institutions have done as well as their talents allowed in difficult situations not of their own making. It would be incorrect to make such a presumption in the case of UDC.

As noted above, UDC is an entity of the government of the District of Columbia, and many of its problems derive from that fact. The District government has been notorious for its imprudent practices, among them: running large deficits, handling fiscal matters in a loose and profligate way, overstaffing, relying on favoritism in personnel matters, renting unneeded buildings at inflated rents from politically influential landlords, and awarding contracts on a noncompetitive basis. The university has suffered from these practices in two ways. First, the weakening and collapse of the District's financial situation in 1996 meant that the city's vitally needed appropriation to the university was cut nearly in half with no change in its articulated mission nor any initial decrease in its student population. Second, successive university administrations (and, as noted earlier, the turnover in the presidency over the institution's twenty-year history has been great) were reported as having engaged in many of these same imprudent practices in running the institution, partly, some have suggested, at the behest of the city's political leadership. An appropriation that was originally sufficient, perhaps even more than ample, to maintain the operation of the university and to provide decent salaries and benefits for faculty and administrative staff, would turn out to be inadequate. By 1996, the appropriation had become far less than the university's base budget. As soon as the university was no longer allowed to run deficits, it was plunged into a cost-reducing crisis.

A major factor in UDC's financial difficulties, by virtually all accounts, was the excessive size of the administration. This situation dates in part from the formation of the university, when little attempt was made, either at the start or subsequently, to consolidate the administrations of the constituent predecessor institutions, and thus to reduce redundancies. Indeed, the size of the administration continued to expand year by year. The political leadership of the District of Columbia seems to have considered the nonfaculty positions in the administration of UDC to be appropriate places for employment of friends, political allies, and individuals in the District government who had to be moved out of their existing positions for one reason or another.

Another complicating factor in the financial difficulties of UDC relates to the law school that the university had been compelled to incorporate into its budget. The law school was originally a private institution (Antioch Law School). In 1986, after it had run into financial difficulties and was faced with closure, the District government took it over as the D.C. School of Law, committed to serving the legal needs of low-income D.C. residents and providing an affordable legal education to minorities. It continued to run at a large deficit, costing several million dollars a year. In 1995, the school was moved to UDC's main campus and merged with the university. The move was intended to reduce the cost of the law school to the District by eliminating $1 million in rental fees and to remove the school as a separate line item in the city's budget. But it also meant an additional, and far from negligible, financial drain on UDC's already overburdened budget.

The investigating committee finds that the crisis of 1996–97 was unmistakably real, although the product of many years of neglected opportunities to produce a leaner, more efficient operation. While UDC was indeed in a state of financial exigency at the time the 125 faculty members were dismissed, this condition was not the result of declines in student demand largely beyond the control of the administration. There was, however, enough uncertainty about the university's continuing viability that many students withdrew and many others chose not to enroll. UDC, with its low tuition for residents, had a good opportunity with which to maintain enrollment. Rather, UDC's dire financial situation was due in part to egregious mismanagement on the part of the District government, and in part to mismanagement by the UDC administration, which gradually converted a financially difficult situation into a large-scale, abrupt disaster by running ever-increasing deficits instead of adjusting, year by year, to its declining appropriations.

The second question—taking the crisis as given, and the size of the required budget cuts as accurate and requiring immediate attention—is whether the university administration seriously considered feasible alternatives to a cut of 125 full-time faculty positions. The investigating committee believes that it did not. Several alternative plans mentioned above contemplated meeting the required base budget cuts in a variety of ways, with no faculty cuts or lesser faculty cuts of thirty-five and ninety-four, each thoughtfully presented. The acting president's proposed cut of 125 faculty positions, the figure finally arrived at, appears to have been chosen in response to asking *how large,* not how small, could be the share of the cuts in positions to be taken by eliminating faculty positions. It seems to have been arrived at by calculating the minimum number of faculty positions needed to meet the assumed aggregate demand for credit hours, while neglecting such matters as the educational necessity of a wide variety of courses, including many that inherently would have much smaller-than-average class sizes. The curriculum, after all, included advanced undergraduate work in many fields and graduate courses in others.

The inflated size of the UDC administration is widely believed within the faculty to suggest that the deficit could have been eliminated with the termination of far fewer faculty appointments. The investigating committee finds that the administration and board of trustees, contrary to what is called for in the 1940 *Statement of Principles* and Regulation 4(c) of the *Recommended Institutional Regulations,* made no attempt to demonstrate the necessity of such massive faculty cuts. They did not seriously consider alternative scenarios, nor did they accept the offers of either the ad hoc faculty group or the collective bargaining representative to discuss and jointly develop a more acceptable plan.

3. The Role of the Faculty in the Decisions to Terminate Faculty Appointments

The basic norms of sound academic governance in American higher education are enunciated in the 1966 *Statement on Government of Colleges and Universities.* That document recognizes the following core principle: "The variety and complexity of the tasks performed by institutions of higher education produce an inescapable interdependence among the governing board, administration, faculty, students, and others. The relationship calls for adequate communication among the components, and the full opportunity for appropriate joint planning and effort." The statement calls for the faculty to have primary responsibility for decisions affecting the institution's academic programs and determining faculty status. Regulation 4(c) of the Association's *Recommended Institutional Regulations* sets forth standards for faculty participation in decisions preceding termination of appointments on grounds of financial exigency. These standards call for meaningful participation by a faculty body in deciding whether a financial exigency exists or is imminent. They confer upon the faculty or an appropriate faculty body primary responsibility for making judgments on where within the overall academic program termination of continuous appointments may occur, if less drastic means for ameliorating the situation cannot be identified. They call for the faculty or an appropriate body of the faculty also to have primary responsibility in determining the criteria for identifying the individuals whose appointments are to be terminated, and they assign responsibility for identifying particular individuals whose appointments are to be terminated to a person or group designated or approved by the faculty.

Faculty members at UDC have justifiably complained about the absence, despite the existence of the faculty union, of any meaningful faculty involvement in any aspect of the decision-making process—from the determination to declare a state of financial exigency, to the necessity to terminate continuous faculty appointments, to the determination of the programs to be cut and the magnitude of the cuts, to the criteria for selecting particular individuals for release, to the identity of persons to be terminated, to hearing procedures, to the amount of notice or severance pay. Nor, so far as is visible, was there careful consideration of the impact on the educational enterprise of the sort that faculties are in the best position to contribute. Indeed, apart from the union, there was no duly designated body of the faculty, either for the university as a whole, or for any of its colleges or schools, through which the faculty might have participated.

Members of the faculty state that they made repeated requests to discuss matters with officers of the administration before final decisions were made. As noted earlier, in October 1996, an ad hoc faculty committee prepared a lengthy report, "A Blueprint for the Effective and Efficient Operation of [UDC] Given Current Financial Constraints," that had no apparent impact on the decision-making processes which followed. In January 1997, when the office of the provost released the "Academic Affairs Fiscal Contingency Plan," which was described as the "final draft plan for eliminating 125 faculty positions," the faculty's role seems to have been limited to reacting to recommendations that the administration had already publicly embraced. In carrying out this limited role, the faculty seems to have been in turn constrained by the administration's insistence upon prompt action. They were given only three days to provide "final comments and documentation" on complex proposals affecting the future of the university and their own careers. Even traditional local governance structures at the departmental and school-college levels were bypassed in this process.

Neither the severity of the budgetary crisis nor the need for a prompt response to the ultimata that came down from the control board to the administration is sufficient to explain the exclusion of the faculty from a meaningful role in whatever decisions had to be made. The decisions to exclude the faculty from effective participation in institutional governance at UDC were made many years before the present crisis, as was exemplified by the abolition of the faculty senate in 1992 and its replacement by an administration-dominated university senate, and by the absence of any consultation with faculty bodies in the academic reorganization that took effect in 1995. The university, well before the crisis, did not have adequate governance structures in place to provide for reasonable communication, let alone shared decision making, between the faculty and either the trustees or the administration.

The investigating committee finds that the decision-making process in 1996–97 at UDC bore no resemblance to generally accepted standards of academic government. Decisions were made entirely and exclusively by some combination of the control board, the board of trustees, and the administration, with the board of trustees doing little more than to transmit the imperatives of the control board to the administration to execute, which the latter seems to have done with vigor. When, in January 1998, the control board released its consultants' report on UDC, and made recommendations for the future, the board, too, gave no meaningful role to the faculty in the key academic decisions it considers essential for the university's survival and revitalization.

4. Criteria for Selecting Particular Individuals for Release

Regulation 4(c)(3) of the *Recommended Institutional Regulations* provides that "the appointment of a faculty member with tenure will not be terminated in favor of retaining a faculty member without tenure, except in extraordinary circumstances where a serious distortion of the academic program would otherwise result."

Article XXI of the collective bargaining agreement deals at considerable length with reduction in force. Its pertinent provisions with respect to the selection of individuals whose services are to be terminated amount to strict application of seniority. "Bumping" rights set forth in the agreement permit faculty members to supplant less senior colleagues in other units in disciplines in which the affected individual had received an advanced degree and in which he or she had previously taught in an academic department.

The reduction-in-force procedures promulgated by the board of trustees in February 1997 provided that the president would "identify the number of positions in each discipline that will be eliminated" and also "identify each faculty member in each discipline" whose services were to be terminated. Nominally, the president's discretion was limited. Selection of individuals was to be governed strictly by the seniority provisions in the collective bargaining agreement, but the new RIF procedures allowed for several exceptions: (1) bumping provisions would not apply; (2) seniority would not apply when "in the judgment of the President to do so would be inconsistent with meeting the objectives or academic purpose of the University"; (3) for individual disciplines, "a faculty member's degrees or lack thereof may be taken into account when determining the order of separation"; and (4) "a faculty member's record of receiving grants, awards, contracts, and/or other agreements that have generated [indirect] cost revenue for UDC may also be taken into account."

Any of the permitted exceptions could be invoked at the sole discretion of the president, and together they gave him unlimited discretion in designating who was to be released.[9] President Nimmons was quoted in the local press as having stated that "careful review of every teaching . . . position at the university determined which could be cut without jeopardizing the quality of education," with the primary consideration to place the institution "in a solid financial and academic position." In what followed, the president delegated his discretionary authority to the deans, and in many cases they delegated their authority to a single person, sometimes the chair, sometimes not, in a given department or program. The resulting pattern showed great variation in the degree to which one or more of the exceptions was used, and no institution-wide consistency. For example, the two departments which experienced the largest number of cuts, English and mathematics, seem to have been treated very differently; in English, the investigating committee was informed, seniority was followed without exception, whereas in mathematics the seniority list was greatly modified, though again not in a consistent manner.[10] In at least one case of which the investigating committee is aware, the affected faculty member has accused the acting president of assigning him to the wrong discipline for the purpose of the RIF and of then improperly designating him for release. That case is currently in litigation.

The investigating committee finds that the methods employed for the identification of faculty appointments to be terminated (if one were to assume that terminations of that magnitude were justified) invited highly personalized, arbitrary, and capricious selections. Virtually every dismissed faculty member with whom the investigating committee spoke believed that he or she had been improperly selected, and that favoritism, personal animosity, and other inappropriate considerations played a role in at least some of the designations of persons to be retained or released. While this should not be surprising since the interviewees were self selected, and while the investigating committee was not in a position to assess the validity of their claims, the procedures followed give the committee little confidence in the administration's decisions on whose appointments would be terminated.

5. Opportunity for a Faculty Hearing

Regulation 4(c)(2) of the Association's *Recommended Institutional Regulations* calls for affordance of an on-the-record adjudicative

9. Similarly, the assignment of individuals who taught in more than one program or department to the units in which they were to be considered could, and in some cases did, greatly affect the individual's likelihood of being released, since the assigned cuts were highly uneven across units.

10. English went from thirty-four to twenty full-time faculty, and mathematics from thirty-seven to twenty.

hearing before an elected faculty committee to a faculty member whose appointment is subject to termination on grounds of financial exigency. At such a hearing, according to the standards, the burden rests with the administration to demonstrate the existence and extent of the exigent condition. The validity of the educational judgments, the criteria for selecting those whose appointments are to be terminated, and the application of the criteria to individual cases are subject to review. The hearing process permits the testing of the application of the judgments and criteria in particular cases and serves the purpose of identifying, and permitting correction of, specific mistakes. The governing board should be available for final review.

Article XXI ("Reduction in Force") of the collective bargaining agreement between UDC and the UDC Faculty Association provides that the university's exercise of its right "to relieve employees of duties because of lack of work or other legitimate reasons" is not subject to grievance. Under the RIF procedures for faculty promulgated by the board of trustees on February 4, 1997, individuals issued notice of termination of appointment could file a request for review by the president. The requests, to be submitted by February 24, had to "include a statement of the reasons why the faculty member believes that the reduction-in-force action in his/her case was improper." The faculty members were advised that "the determination of the need for a reduction-in-force, including any determination by the President with respect to the elimination of specific positions or other discretionary decisions with respect to the reduction-in-force, shall not be subject to appeal." Finally, affected faculty members were told that the president would "review the reduction-in-force action for compliance with [the RIF] procedure and issue a written decision to the faculty member by March 26, 1997. If a decision has not been issued within this time, the faculty member may treat the nonresponse as a denial of the appeal."

The review procedure thus foreclosed the opportunity for a faculty member to be heard by a body of faculty peers, to contest the criteria for appointment termination, or to challenge the number of positions to be terminated within an academic department—or, indeed, overall. Nevertheless, the investigating committee was informed, some eighty faculty members filed requests for review. In addition, as noted earlier, the faculty union filed a class-action grievance on behalf of the 125 faculty members, alleging violations of the seniority, bumping, retention list, notice, and severance pay provisions of Article XXI (which the resolutions of the trustees and the control board had abrogated).

By identical letters dated March 25, the day before the deadline by which he had stated he would issue written decisions to all of the individual faculty members who had filed requests for review, Acting President Nimmons wrote:

> The large number of appeals lodged was not anticipated when the procedure was established. Because of the large number received and the lack of adequate staff to address the appeals, the University will not be able to review the RIF actions nor issue written decisions within the time period specified in the Procedures.
>
> Under the Procedures, faculty may treat the lack of a response as a denial of the appeal. However, the lack of a decision due to the quantity of appeals is not tantamount to a decision to deny your appeal. Thus, the decision to terminate your employment will not become final until your appeal has been reviewed and a final written decision has been issued. The University will complete the review and issue final written decisions during the next four weeks. If the final decision is in your favor, you will be reinstated effective April 1, 1997; otherwise, your termination will remain effective March 31, 1997.

In at least some cases, President Nimmons did not meet his new four-week deadline either. The investigating committee was unable to ascertain how many faculty members, denied timely consideration of their requests for review, continued with their appeals. One former faculty member in mathematics did persist in pursuing his appeal and had a further exchange of correspondence with the acting president into June, seeking a reversal of the decision to terminate his appointment, but his appeal was ultimately rejected. A handful of other faculty members filed suit against the university. Their cases are still pending as of this writing.

The extraordinary discretion vested in the administration to decide whom to release and whom to retain, posing obvious risks to principles of academic freedom, is particularly disturbing in view of the fact that no provision was made for faculty review of the decisions. While individuals could (and many did) petition the president for review of the decisions concerning them, the form of that petition was to argue that the wrong person had been designated and to identify another person who should have been released instead. Quite apart from the effect of such a process on interpersonal relations, it was not a device whereby the overall pattern of selection was capable of being addressed or assessed.

The investigating committee finds that the review procedure available to the faculty members notified of termination was totally inadequate when measured against applicable Association-supported standards.

6. Notice and Severance Pay

The standard of notice or severance salary called for by the Association's *Recommended Institutional Regulations,* if financial exigency is the basis for the action, is at least one year of notice, or of terminal salary in lieu of notice, for any faculty member with two or more years of service.

Under the UDC collective bargaining agreement, the university was required to "give Notice of Intent to RIF to the affected faculty members one academic year prior to the effective date," although the agreement goes on to state that the university "may find it necessary to forego" this obligation. In that event, affected faculty members will receive at least four weeks of notice and "one academic year's compensation for those with two or more years of continuous service" at the institution. As noted earlier, the control board, having concluded that these provisions of the collective bargaining agreement constituted a "significant impediment to the achievement of any budget savings through personnel reduction," authorized their "unilateral modification" by the university and instructed the UDC board of trustees to develop regulations that provided for "reasonable notice and other terms of separation." It did not define reasonable. Termination notices were issued on February 14, with salaries ceasing as of March 31. (As previously noted, in a decision issued on February 3, 1998, the federal district court ruled that the control board exceeded the authority delegated to it by the U.S. Congress when it abrogated the collective bargaining agreement's provisions on notice and severance salary, a ruling that is being appealed.)

The investigating committee finds that the six weeks of severance salary afforded the faculty members whose appointments were terminated was shockingly inadequate, not merely by the AAUP-recommended standard but by any standard.

IV. Final Considerations

The vision behind the creation of the University of the District of Columbia was that residents of the nation's capital should have open access to higher educational opportunities of the sort available in many of our states. UDC no longer serves that vision, and, lacking a tradition of focused, consistent, or structured academic planning, it has not thus far articulated a revised mission statement that would define the role it is to play for the future—a problem addressed in "Graduating to a Better Future," a report on the university that was commissioned by the control board and released in January 1998.

The last few years have been a period of turmoil, unprecedented even for UDC. As the control board's report observes, "Whether the university is finally behind the worst of its problems remains to be seen." The university continues to be "confronted with dwindling appropriated funds, falling revenue despite recent tuition increases, a plummeting student population, and persistent management problems." The university's long-term stability, and even its viability, are still very much in question.

For UDC to overcome its financial difficulties and revitalize its academic mission, massive changes will be required. To bring the university into essential conformity with the principles and procedural standards enunciated in the 1940 *Statement of Principles* and the *Statement on Government*, a great deal needs to be done. Perhaps most distressing to the investigating committee is the dearth of evidence that these matters are of concern to those in authority. Indeed, in the control board's January 1998 report, the concerns of the faculty are almost invisible.

V. Conclusions

1. The administration and the board of trustees of the University of the District of Columbia, disregarding what is called for in the 1940 *Statement of Principles on Academic Freedom and Tenure* and the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure,* made no attempt to demonstrate the need for massive terminations of faculty appointments.
2. The administration's methods for identifying appointments for termination invited arbitrary and capricious selections.
3. The review procedure available to the faculty members notified of termination was totally inadequate.
4. The severance salary afforded the faculty members was shockingly scant.
5. The decision-making process at the University of the District of Columbia bore (and bears) no resemblance to generally accepted standards of academic government.

PETER O. STEINER (Economics and Law), University of Michigan, *Chair*

BARBARA R. BERGMANN (Economics), American University

MURIEL E. POSTON (Biology), Howard University

Investigating Committee

Committee A on Academic Freedom and Tenure has by vote authorized publication of this report in *Academe: Bulletin of the AAUP.*

ROBERT M. O'NEIL (Law), University of Virginia, *Chair*
Members: ROBERT A. GORMAN (Law), University of Pennsylvania; MARY W. GRAY (Mathematics), American University; JANE DINEEN PANEK (Education), Molloy College; IRWIN H. POLISHOOK (History), Herbert H. Lehman College, City University of New York; WENDY W. ROWORTH (Art), University of Rhode Island; JOAN WALLACH SCOTT (History), Institute for Advanced Study; DENISE MARIE TANGUAY (Management), Eastern Michigan University; GERALD TORRES (Law), University of Texas at Austin; LELAND WARE (Law), Saint Louis University; MARY A. BURGAN (English), AAUP Washington Office, ex officio; JORDAN E. KURLAND (History and Russian), AAUP Washington Office, ex officio; JAMES E. PERLEY (Biology), College of Wooster, ex officio; RALPH S. BROWN (Law), Yale University, *consultant*; BERTRAM H. DAVIS (English), Florida State University, *consultant*; MATTHEW W. FINKIN (Law), University of Illinois, *consultant*; WALTER P. METZGER (History), Columbia University, *senior consultant*; BEULAH WOODFIN (Biochemistry), University of New Mexico, *liaison* from Assembly of State Conferences.