

Academic Freedom and Tenure: Minneapolis College of Art and Design¹

I. Introduction

This report concerns the action taken in May 1996 by the administration of the Minneapolis College of Art and Design to dismiss, with a year of severance salary, five senior members of the faculty, each of whom was completing the second year of a three-year term contract. No reasons were given for the administration's action, other than the institution's asserted "right to terminate [the] appointment without cause one year prior to the expiration of its term," and no hearing was afforded to any of the affected professors.

The Minneapolis College of Art and Design (MCAD), founded in 1886 by the trustees of the Minneapolis Society of Fine Arts and originally named the Minneapolis School of Fine Arts, is located just south of downtown Minneapolis. It is part of a complex of buildings which includes the Minneapolis Institute of the Arts and the Children's Theatre Company. Throughout its first hundred years, MCAD continued with the support and governance of the Society of Fine Arts, which simultaneously administered the Institute of the Arts. In 1910, its name was changed to the Minneapolis School of Art to reflect its growing emphasis on applied arts. In 1954, having gradually moved away from an emphasis on vocational objectives, the school adopted a bachelor of fine arts degree program which was accredited by the North Central Association of Colleges and Schools in 1960. In 1970, the institution changed its name to the current one in order to reflect its new status as a college of art and design.

At present the college offers a four-year curriculum leading to the B.F.A. degree, with majors in Design, Fine Arts, Media Arts, and Interdisciplinary Studies, and (since 1993) a two-year M.F.A. degree program in Visual Studies. Beginning in September 1997, MCAD will also offer a B.S. degree in Visualization. The college provides educational opportunities to the general public through

its continuing studies and exhibition programs. The curriculum is described in the college catalogue as "multi-disciplinary, integrated and studio-based." The college enrolls approximately 410 full-time and 110 part-time students, and its full-time faculty numbers forty-three, most of them working professional artists and designers.

Mr. John S. Slorp became president of MCAD in the fall of 1990, having served the previous eight years as president of the Memphis College of Art, and before that as a member of the faculty at the Maryland Institute, College of Art. Ms. Andrea Nasset was appointed vice-president and dean of academic affairs in the fall of 1992; she succeeded Mr. Thomas Morin, who had held that position since 1987. The college's thirty-four-member board of trustees is chaired by Wayne Huelskoetter, a Minneapolis businessman.

II. Background

During the 1980s, the Minneapolis College of Art and Design experienced administrative and financial difficulties. In the late summer and fall of 1986, prompted by what they later termed "fiscal considerations," two leading members of the executive committee of the Minneapolis Society of Fine Arts board, then the governing body for MCAD, entered into secret discussions with officers of the University of Minnesota administration, looking toward the merger of MCAD with the university's Studio Arts Department. It was reported in the local press shortly thereafter that no one at MCAD, including the college's administration and faculty, had been aware of these discussions. Negotiations broke off abruptly in December, when the plans became known to the public. Resulting concerns over the threatened discontinuance of MCAD as an independent professional school led to a reexamination of the college's governance relationship with the Minneapolis Society of Fine Arts. Two years later, the society relinquished control of both the college and the museum, which became separate, independent institutions; MCAD henceforth had its own governing board. Following the brief tenure of an interim president, the board appointed John Slorp to the presidency of the college and charged him (according to a 1994 memorandum from the administration) "with analyzing the state of MCAD and mak-

¹ The text of this report was written by the staff of the Association and submitted to Committee A on Academic Freedom and Tenure. With the approval of Committee A it was subsequently sent to the faculty members whose cases are the subject of the report, to the appropriate administrative officers of the Minneapolis College of Art and Design, and to the chair of the college's governing board. In the light of the responses received, this final report has been prepared for publication.

ing recommendations for actions to bring solvency to the College while maintaining and even improving educational quality.”

During the 1990–91 academic year, President Slorp’s first at MCAD, the college was faced with a deficit estimated by the administration at \$350,000–400,000, along with a decline in student enrollment. At the end of the fall semester the college notified eleven part-time faculty members that their services would not be needed in the spring. On April 5, 1991, the president announced that the board, at his request, had issued an official “declaration of financial emergency,” so that the college would “be able to meet its expenditures in support of its mission without sustained loss of funds.” According to the president’s memorandum, “This declaration of financial emergency does not indicate an immediate threat to the college’s ability to continue operations or to provide a top quality visual arts education to its students. It should allow the college to reorder its expenditures and programs—both academic and internal—so that the present course of annual deficits will be eliminated and future solvency assured.”

Dean Morin notified the full-time faculty members on April 12 that the administration would not be issuing contracts until June 30. He stated:

The college has investigated voluntary employment reduction and reassignment of faculty in non-teaching positions. However, it has been determined that in order to maintain the quality of the academic program and the financial integrity of the institution, a voluntary transfer from full-time employment to part-time pro-rata employment will be made available for consideration by full-time faculty. The conditions applicable to this program and the time frame involved are still being considered and will be announced when available.

Involuntary layoff is also being studied and will follow the completion of the part-time pro-rata program.

At the end of June, Dean Morin sent letters to nearly a quarter of the full-time faculty, some of them with long years of service at the college, notifying them that, pursuant to the financial emergency, they were being placed on layoff status, effective August 15, with payment of their salaries in most cases to cease on January 15, 1992. The affected faculty members and others at MCAD questioned the extent of the claimed financial difficulties and protested the lack of faculty participation both in the discussions that preceded the declaration of financial emergency and in the administration’s decision to single out particular appointments for termination. They also protested, to no avail, the administration’s failure to pursue all feasible alternatives at the college to the termination of their appointments.

In succeeding months, the administration announced that it was reducing or discontinuing several programs, raising student tuition, and increasing the teaching loads of continuing full-time faculty as well as class sizes and student-faculty ratios. At the same time, it announced increased expenditures on new equipment (notably in computer design technology) and an expansion of the

college’s physical plant. These developments provoked an outcry among a segment of the faculty and student body. During the summer and fall of 1991, a group of anonymous faculty members, calling themselves Faculty Advocacy by Standing Together (FAST), published an underground newsletter, *The Cockroach*, which was highly critical of the administration for terminating appointments, carrying out curricular restructuring, and making other changes without faculty consultation. They complained that “an old-fashioned and dysfunctional pyramidal structure had been imposed on the institution.” In response to criticism that his administration had failed to consult with the faculty, President Slorp was quoted in the local press as stating: “We had to decide what we could and could not support, and those decisions were not going to be made in some sort of soup of homespun democracy.”

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The 1989 Faculty Handbook, which was in place at the time of President Slorp’s arrival, reflected principles of “shared academic decision-making” called for under the Association’s *Statement on Government of Colleges and Universities*. The handbook expressly “encourage[d] faculty participation in the governance of the College through appropriate governmental structures and procedures,” and recognized the faculty’s “primary responsibility for formulating and implementing the educational programs and policies of the College.” Under President Slorp, however, the administration consolidated its authority by eliminating or reducing the authority of key faculty committees and assuming primary responsibility for curricular and other educational matters. Structures for faculty governance were largely dismantled, as the college witnessed what one faculty member described as “a shift from direct faculty representation to administrators representing faculty.” With the erosion of the faculty’s role in institutional government, the Dean’s Cabinet (consisting of all the division chairs and the vice-president/dean of academic affairs) took over most of the functions previously carried out by the Educational Policy and Curriculum Committee. In particular, the cabinet, with encouragement from President Slorp, undertook an accelerated process of “curricular restructuring.” (Under a new 1994 Faculty Handbook—discussed below—the “Board of Trustees has delegated to the President the primary responsibility for the educational programs and policies of the College.”)

The 1989 Faculty Handbook had provided for Divisional and College Faculty Review Committees which were responsible for evaluating faculty performance and making recommendations on reappointment and promotion. The regulations had no provisions for granting tenure to members of the MCAD faculty, who, based on their rank, served on one-year, three-year, or five-year contracts, indefinitely renewable at the administration’s pleasure. The handbook did provide grievance mechanisms for appealing adverse personnel decisions. In particular, in cases of dismissal for

cause, the policies called for a hearing of record before a faculty body, with the burden of proof on the administration to demonstrate adequacy of cause.

One of the dismissed faculty members, a former chair of the Faculty Handbook Committee, has told the Association's staff that "John Slorp's dislike for the Faculty Handbook from the beginning was well known to many on the faculty." As chair of the committee, he reports,

I met with repeated frustration in attempting to clarify and improve the existing handbook (an instrument the faculty had evolved over many years). Every time my committee developed language and received approval from the College Assembly on a vote, the president would veto or otherwise thwart the inclusion of the new language into the existing handbook. We would attempt to work with him in clarifying the problems, but progress was never made.

In a memorandum dated June 13, 1994, on the subject of "Contracts," Dean Nasset notified the faculty that the board of trustees, at its meeting on June 6, had approved a new Faculty Handbook. The trustees' action, she noted, was pursuant to the following motion, which had been adopted earlier that week by the board's Academic Affairs Committee:

This Committee was presented with a proposed revision of the Faculty Handbook by the President of the College pursuant to Section 1.8.3 of the existing version of the Faculty Handbook. The proposal was made as one part of the continuing effort to ensure the long-term financial health and creative vigor of the College by, in this case, improving the policies and procedures of the College to allow it to be more responsive to the desires of students, the needs of the College, and the demands of the marketplace.... The revised Faculty Handbook will apply to each faculty member upon the earlier of either the execution of a new employment contract with the College or the expiration of the term of an existing employment contract.

A copy of the new handbook, prepared with little or no faculty involvement, was sent to each full-time faculty member along with the dean's memorandum. The document's introduction states that the handbook "contains a summary of the policies, practices, and procedures in effect at MCAD as of June 6, 1994. It supersedes all previous versions of the Faculty Handbook, which are now null and void." The introduction makes clear that the handbook "is not intended to, and does not, create a contractual relationship between MCAD and faculty members. Each member of the faculty has an individual employment contract with MCAD...[in which] the contractual rights of each faculty member are fully set forth." The introduction further provides that "The Board of Trustees or their designates reserve the right to interpret, modify, or revoke any of the policies in this Handbook or to choose not to apply any policy based on its determination of

what is in the best interests of MCAD."

Along with her June 13 memorandum and the new handbook, Dean Nasset sent each faculty member what she termed "a personalized new faculty contract" as well as "a personalized old faculty contract," and advised them that they had "a choice this year only between staying on the old contract or signing the new contract." The alternatives were subsequently discussed at a meeting of the faculty called by President Slorp. The dean gave all full-time faculty members a choice between accepting the radically different terms and conditions set forth in the new (three-year) contracts, with substantial financial incentives, or signing their existing contracts without such incentives. It was made clear that, upon the expiration of the "old" contracts, the terms and conditions of all appointments would automatically be converted into those set forth in the new contract. Where the old contracts stated that "The provisions of the Faculty Handbook and other appropriate college documents apply to this appointment," the new ones contained no references to the Faculty Handbook, stating that "This letter constitutes the entire agreement and understanding of the parties concerning your employment and as to all matters discussed in this letter. This letter replaces all previous understandings, obligations and agreements of the parties and any such previous understandings, obligations, and agreements are hereby rescinded by mutual agreement." The old contract stated that "Further appointments beyond the above-mentioned expiration date are made at the College's discretion. There is no expectation of renewal after expiration of a term appointment." By contrast, the new one provided that "The term of your appointment is for three academic years beginning August 26, 1994, and ending May 31, 1997, subject to the College's right to terminate your appointment earlier according to the terms set forth below.... The College may offer to renew this contract during its term, offer an extension of [it], or offer a subsequent appointment. Any such offer will be according to terms established by the College." Under the heading "Termination of Appointment," the new contract stated that "The College retains the right to terminate your appointment before the expiration of its term on the following conditions." The first of these conditions, and the one invoked in the cases which are the subject of this report, is "a. Termination Without Cause": "The College may terminate your appointment without cause one year prior to the expiration of its term. If the College exercises this right, you will receive notification by May 31 of the second year of your appointment and you will be entitled to severance [pay] of one year's salary, paid out in twenty-six equal bi-weekly installments."

To a faculty that had received no salary raises for the previous two years, and whose salary levels were among the lowest in the state of Minnesota, the offer was apparently irresistible. Most, if not all, of the MCAD faculty—including the five whose cases are the subject of this report—agreed to sign the new contracts and received substantial salary increases (in the 8 to 10 percent range) as a result.

III. The Dismissed Faculty Members

Four of the dismissed faculty members had served in the Fine Arts Division. Associate Professor Norman A. Andersen, an MCAD alumnus, began his full-time faculty service with the 1985–86 academic year, although he had taught on a part-time basis since the fall of 1978. He taught courses in Foundation Studies (required of all first-year students), Performance, and Sculpture. Professor Lee Bjorklund's full-time faculty service began in the 1973–74 academic year. He taught courses in Drawing and Painting. Professor James Burpee began teaching at MCAD in the fall of 1967. He taught courses in Drawing and Painting. Associate Professor Judy Stone Nunneley had been a full-time member of the MCAD faculty since the 1984–85 academic year. She taught courses in Printmaking and Book Arts. Mr. Donald Zwernik, Associate Professor of Design, began his full-time service at MCAD with the 1969–70 academic year, when he was appointed as shop supervisor. His appointment was originally of the type designated "Academic Support Faculty" ("full-time ranked faculty who serve the college in an instructional and technical support capacity"), but as of the 1991–92 academic year his rank was changed to "regular full-time Associate Professor." For many of his years at the college he taught courses in Foundation Studies, Furniture Design, and Sculpture, with teaching responsibilities just short of a full-time load.

During the spring 1996 semester these five professors had all been listed to teach courses (most of them a full load) for the following fall term. Students had preregistered for their courses. One week after commencement, with no forewarning, each of them received a registered letter, dated May 13 and signed by Dean Nasset. The letters began: "This is to inform you that the College has decided to exercise its right to terminate your appointment May 31, 1996." The dean cited the provision in their letters of appointment for the previous two years as the basis for the college's action. She informed them that "Effective immediately you have no further duties or responsibilities as a faculty member at MCAD." She also advised them that, pursuant to their letters of appointment, they would "receive severance pay of one year's salary...beginning on August 28, 1996." "Please know," she stated to each of the five, "that you are not the only faculty member whose contract has been terminated." She concluded by asking them to "remove your personal effects and return your keys and any other College property in your possession to the Faculty Office by May 31, 1996."

On the same day that the notices of dismissal were sent to Professors Andersen, Bjorklund, Burpee, Nunneley, and Zwernik, Dean Nasset wrote letters to the rest of the MCAD faculty, stating as follows: "This is to inform you that we have chosen to terminate some faculty appointments prior to their expiration as is permitted by their written contracts. They are presently being notified of their termination. We felt it important that you receive this information directly from me before hearing it from others."

She went on: "This is to reassure you that President Slorp has approved the continuance of your faculty appointment."

The affected faculty members sought an explanation for the decision to single them out for dismissal and also endeavored to persuade the administration to reconsider. Professor Burpee, then 58 years old and with nearly three decades of service at the college, asked that he be allowed to continue on the faculty for three more years, until he was eligible to collect Social Security. He proposed to his division chair that the college retain him at a reduced salary or place him on a sabbatical leave for a year. The administration did not respond to his request. All efforts by the five professors to effect a better resolution were to prove unavailing.

Within a month after receiving notice of termination of services, Professor Burpee, on behalf of himself and his dismissed colleagues, sought the Association's advice and assistance. The AAUP staff, after reviewing documents received from the affected faculty members, conveyed the Association's concerns to President Slorp by letter of August 28. (The letter was held until that time at the request of the dismissed professors, who asked that the staff not approach the administration before payment of the promised year of severance salary had begun.) The president did not respond to the staff's letter nor to a subsequent letter of September 27, which emphasized the seriousness of the actions that had been taken. By letter of October 17, President Slorp was informed that the general secretary had authorized the preparation of this staff report. As before, the president did not respond.

IV. Issues

1. Tenure and Applicable Standards. The 1940 *Statement of Principles on Academic Freedom and Tenure* calls for a maximum probationary period not to exceed seven years of full-time faculty service, with service beyond the probationary period to be with continuous tenure.

The regulations governing faculty appointments at MCAD have never provided for indefinite tenure after a fixed period of probation. Instead, faculty members have served on term appointments indefinitely renewable at the administration's pleasure. Despite the lack of tenure, however, the Association's staff was told that until the arrival of President Slorp senior faculty members at MCAD could feel comfortable with a sense that they would be retained indefinitely. If this sense of security did not end in 1991, with the mass layoffs following the declaration of "financial emergency," it certainly ended in 1994, with the appearance of the new faculty handbook and the new contracts.

Professor Andersen was completing his eleventh year of full-time service at MCAD, Professor Bjorklund his twenty-third, Professor Burpee his twenty-ninth, Professor Nunneley her twelfth, and Professor Zwernik his twenty-seventh when they were notified by Dean Nasset on May 13 that their services were being terminated effective immediately, with their salaries to be paid through the 1996–97 academic year. (Responding to com-

plaints about how vulnerable teachers at MCAD had become, Dean Nasset is quoted as stating: "The faculty is no more or less vulnerable than any of us. They're protected by their adaptability and skills.") These five faculty members had plainly attained continuous tenure under the provisions of the 1940 *Statement of Principles*.

2. Procedural Standards in a Dismissal for Cause. The 1940 *Statement of Principles* provides that, "After the expiration of a probationary period, teachers or investigators should have permanent or continuous tenure, and their services should be terminated only for adequate cause." It describes the requisite procedures as follows:

Termination for cause of a continuous appointment or the dismissal for cause of a teacher previous to the expiration of a term appointment, should, if possible, be considered by both a faculty committee and the governing board of the institution. In all cases where the facts are in dispute, the accused teacher should be informed before the hearing in writing of the charges and should have the opportunity to be heard in his or her own defense by all bodies that pass judgment upon the case. The teacher should be permitted to be accompanied by an advisor of his or her own choosing who may act as counsel. There should be a full stenographic record of the hearing available to the parties concerned. In the hearing of charges of incompetence the testimony should include that of teachers and other scholars, either from the teacher's own or from other institutions. Teachers on continuous appointment who are dismissed for reasons not involving moral turpitude should receive their salaries for at least a year from the date of notification of dismissal whether or not they are continued in their duties at the institution.

Elaborations on these provisions are found in the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*, like the 1940 *Statement* a joint formulation of AAUP and the Association of American Colleges and Universities, and in Regulations 5 and 6 of AAUP's derivative *Recommended Institutional Regulations on Academic Freedom and Tenure*. Of special relevance are the requirements of (1) a statement of charges, framed with reasonable particularity, of the grounds proposed for the dismissal; (2) a hearing of record before a duly constituted faculty committee, with the faculty member to be afforded the opportunity to examine all evidence and to confront and cross-examine all witnesses; and (3) the administration's bearing the burden of demonstrating adequate cause for dismissal.

As noted above, the contracts under which Professors Andersen, Bjorklund, Burpee, Nunneley, and Zwernik served provided that "The College may terminate your appointment without cause one year prior to the expiration of its term," and the subsequent notifications of their dismissal were silent as to cause. The affected individuals report that there had been no prior warning of the administration's intentions and no previous discussion with

them or with the faculty as a whole regarding the possibility of terminating their (or any other) appointments. Each of them had originally been scheduled to teach courses the following fall for which students had preregistered. Courses that they had been scheduled to teach continue to be offered and were assigned during the 1996-97 academic year to adjunct and part-time instructors and to at least one newly appointed full-time faculty member.

While the MCAD administration did not state the grounds for its actions in the five cases, Dean Nasset has made various statements about what prompted the administration to do what it did. In the letter of May 13 that she sent to continuing faculty members, she stated that "the decision to terminate some contracts was a difficult and complicated one. The goals we kept uppermost in our minds during these deliberations were: to improve the educational program, [to] ensure institutional financial stability, and to act as humanely as possible." "These decisions," she asserted, "were not made lightly" and were "in the best interests of the students and the College." The dean has emphasized that the administration did not act out of concern over the academic performance of the affected professors. Asked by the *Minneapolis Star-Tribune* to explain the administration's reasons for singling out these particular individuals for release, she is reported to have stated that one of the college's objectives was to reduce the number of full-time faculty and increase the proportion of part-timers. According to the newspaper's account, she noted that about 25 percent of the current teaching load was carried out by part-time faculty, "and we'd like to make that 30." She reportedly cited new needs arising from "curricular restructuring" at the college and suggested that those whose services were terminated "lacked flexibility or adaptability." According to the dean, the dismissals were not prompted by any current financial difficulties, "though we're constantly adjusting curricular and economic concerns." These statements by the dean reveal very little, however. As one of the dismissed faculty members remarked, "There were seemingly no evaluation processes involved in determining who would be selected for nonrenewal, yet somehow the decision was made; on what basis?"

Under the current MCAD regulations, a dismissal can be effected without stated cause. Moreover, the regulations make no provision for a hearing of any sort, and no hearing was afforded to the five affected professors. The administration's actions, therefore, were summary dismissals, violative of the most basic elements of academic due process.

3. Offering the New Contracts. During the six years since President Slorp arrived at the Minneapolis College of Art and Design, the administration, with the apparent approval of the college's governing board, has taken many steps to diminish the faculty's position at the college, but none that compares in severity with the introduction of new faculty contracts and the promulgation of a new Faculty Handbook in the spring of 1994. The new contracts were first discussed at a special faculty meeting called by the president that June and were presented as part of a "deal,"

which offered a good-sized salary increase in exchange for accepting the new contract and surrendering those modest rights the faculty had possessed relating to peer evaluation and procedures for grievance. According to one of the dismissed faculty members, however,

The "choice" which we were offered to remain with the former contract and handbook was in essence substanceless. My understanding from the president's comments at the meeting was that within two years the previous Faculty Handbook would no longer be in force regardless of which contract was signed.... Signing the optional contract could only be a foolish show of principle. To my knowledge, all faculty members signed the "new" contracts, handing President Slorp the axe he would need to cut some of us free this past spring.

Members of the academic community can certainly sympathize with the MCAD faculty who declined to forgo the possibility of a significant salary increase, even though it meant relinquishing basic rights of academic due process which should have been theirs as members of the academic profession. Members of the academic community can only condemn the behavior of the college's administration—endorsed by the board—in dangling money in front of the underpaid members of the faculty, effectively bribing them to accept terms and conditions of service under which they could be summarily dismissed.

MCAD's mission statement, issued at the time of the college's centennial celebration in 1989, announced, *inter alia*, that the college would endeavor "to construct a community that is a model of successful problem-solving through teamwork, leadership, and consensus." In the ensuing years a sadly different community has emerged.

V. Conclusions

1. The administration of the Minneapolis College of Art and Design acted in violation of the 1940 *Statement of Principles on Academic Freedom and Tenure* in dismissing Professors Norman A. Andersen, Lee Bjorklund, James Burpee, Judy Stone Nunneley, and Donald Zwernik, after eleven, twenty-three, twenty-nine,

twelve, and twenty-seven years, respectively, of full-time service at the college, without having set forth cause and demonstrated its adequacy in a hearing of record before a duly constituted faculty committee.

2. The regulations of the Minneapolis College of Art and Design are fundamentally at odds with the 1940 *Statement of Principles* in requiring all faculty members to serve indefinitely on term appointments, renewable entirely at the administration's pleasure, within which their services can be summarily terminated.

3. The administration's move to induce faculty members to relinquish existing rights in exchange for a higher salary increase was unconscionable.

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*

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