Academic Freedom and Tenure: St. Bonaventure University (New York)[1]

I. Introduction

This report arises from the termination of the appointments of eighteen tenured faculty members, on grounds of financial exigency, at St. Bonaventure University. The university is located in the southwest corner of New York state, seventy miles south of Buffalo, only a few miles from the Pennsylvania border. Its verdant 500-acre campus adorns the largely commercial strip that extends for several miles from the small city of Olean to the village of Allegany. Founded in 1858 by the Franciscan Friars of the Holy Name Province, it gained initial accreditation in 1924 from the Middle States Association of Colleges and Schools as a four-year coeducational institution. A few master's degree programs were initiated promptly thereafter. In 1950 St. Bonaventure was named a university by the New York State Board of Regents. Its mission over the years has been that of a four-year liberal arts institution, related to the Catholic Church, in the Franciscan tradition.

The Franciscan presence is manifested on the campus by several faculty members and by the Franciscan Institute, which combines a residence and a scholarly center. The 35-member board of trustees also includes six Franciscans. St. Bonaventure has Schools of Arts and Sciences, Business Administration, Education, and Graduate Studies. The presidents had been Franciscan friars until June 1993, when a president who had served for only three years resigned. The trustees asked him to resign following a vote of no confidence by the faculty as the financial crisis which is the occasion for this report worsened. The events that precipitated his departure are described below.

That president's immediate interim successor was Sister Alice Gallin, O.S.U. An experienced academic member of the board of trustees, she had recently retired from the post of executive director of the Association of Catholic Colleges and Universities and was available to be pressed into service as interim president until the arrival in February 1994 of Dr. Robert J. Wickenheiser. After seven years as an assistant professor of English at Princeton University, he had in 1977 at the age of 34 become president of Mount St. Mary's College in Maryland, an institution not unlike St. Bonaventure in size and mission.

For some years the university had maintained a full-time enrollment of around 2,300, about 80 percent Roman Catholic. Attrition was low and was offset by junior-year transfers from community colleges.

St. Bonaventure had also maintained a full-time faculty of around 160. Salaries were modest (as were the endowment and tuition). Nevertheless, the peaceful rural environment in the foothills of the Alleghenies attracted a stable and apparently contented faculty.

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After extensive correspondence during the summer of 1994 between the Association's staff and President Wickenheiser, following complaints from faculty members that they had been released without adequate cause and procedures, the undersigned committee was appointed to investigate the circumstances attending the termination of the appointments of eighteen tenured faculty members. The investigating committee was cordially received on November 15, 1994, and was intensively briefed by President Wickenheiser and his two chief administrators. Dr. Edward K. Eckert, vice-president for academic affairs, had been a member of the Department of History at St. Bonaventure since 1971 (and had taken his B.A. degree there in 1965). He assumed his present post in July 1993. Dr. Donald L. Zekan, vice-president for business/financial affairs, had arrived in September 1992. He had been executive vice-president since 1980 of Massasoit Community College in Brockton, Massachusetts.

[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 it was subsequently sent to the faculty members at whose requests the investigation was conducted, to the administration of St. Bonaventure University, to the chapter president, and to other persons concerned in the report. In the light of the responses received and with the editorial assistance of the Association's staff, this final report has been prepared for publication.

[2]The investigating committee warmly thanks Professor Steven R. Nuttall of the Department of Philosophy, president of the AAUP chapter at St. Bonaventure. In addition to other helpful assistance, he arranged and scheduled all the interviews, a complicated undertaking. Thanks also go to the St. Bonaventure administration, for providing comfortable interviewing space. Some interviews were held there, while others took place off campus.

The investigating committee then spent the next two days interviewing forty-three recent or present members of the faculty.[2] The chair had earlier had a helpful meeting in Washington, D.C., with Sister Alice Gallin.

II. The Worsening Financial Situation

The AAUP chapter at St. Bonaventure University was reactivated during the 1989–90 academic year with achievement of a greater faculty role in financial decisions one of its key objectives. An initial newsletter warned in December 1990 of an impending budget crisis because of a decline in freshman enrollments, and successive issues of the newsletter addressed a deepening financial problem. A portent of things to come was an abortive attempt in the fall of 1992 to terminate the services of all, or almost all, of the faculty members who had not achieved tenure. Apparently the administration's intention was to give everyone in the group notice and then decide which nontenured faculty members to retain. This maneuver fizzled. Some of the notices missed a stated December 1 deadline, and, under threat of litigation by some of those affected, that plan was abandoned. This and other sources of dissatisfaction led to the ousting of the president.

At the beginning of 1994, Vice-President Zekan alerted the finance committee of the trustees that careless spending and reduced enrollments had resulted in cumulative operating deficits aggregating $9.5 million. A line of credit for borrowing from Chemical Bank was almost exhausted. A portion of the endowment (called "quasi-endowment") that the trustees regarded as accessible for unavoidable spending had been heavily depleted. That year and the year before, according to information provided by Vice-President Zekan, a total of forty-six nonfaculty positions had been eliminated. No one who was well informed seemed to doubt that the survival of the institution was threatened. A former president of the AAUP chapter, writing to the Association's Washington office on January 29, 1994, reported that "the faculty of St. Bonaventure University may be facing an imminent declaration of financial exigency."

In fact, the board of trustees on February 5, 1994, in a closed meeting, voted that a state of financial exigency existed. The board had been advised by Vice-President Zekan that the university's survival was in jeopardy.[3] A similar view was advanced by a consultant, the vice-president for financial affairs of the University of Notre Dame, in a succinct and chilling set of "Observations and Suggestions" dated December 13, 1993. Several faculty members competent in financial analysis who were among those interviewed by the investigating committee concurred.

Other faculty members, however, argued that the recognition of financial exigency could have been averted. They were critical of several situations and events, especially the following: (1) The university owned and operated a golf course and an imposing "fitness center." Might these have been profitably liquidated? (2) A fine arts center, only partially funded by donors, is being completed with borrowed money (followed by a withering analysis from Standard & Poor of the university's financial ability to support underlying bonds). (3) The trustees, even while declining enrollments and revenues were impending, markedly increased spending on athletics.

The investigating committee questions whether the golf course and the fitness center were so readily marketable that proceeds from their sale would have become available soon enough to avert the impending crisis. The sudden injection of additional funds into athletics does seem imprudent at a time when the trustees should have begun to be uncomfortable with the university's stability. So also with regard to borrowing to finish the underfinanced fine arts center. On the other hand, the trustees apparently were moved by a vision that to return to big-time basketball (St. Bonaventure basketball had a time in the sun some years ago) would attract students, as would new buildings (they also commissioned some new dormitories).

The trustees had kept secret their declaration of exigency, and the new administration was remarkably successful in exacting reticence from faculty members involved in preparations for the faculty separations that followed. A reason for this reticence was a belief that the severe decline in freshman enrollment in 1993 was in large part a consequence of the heavy publicity that area media had given to the abortive attempt to dismiss junior faculty members and to the removal of the president. Neither the board nor the campus academic community was eager for more exposure of St. Bonaventure's troubles.

One also observes a remarkable hesitancy on the part of the principal actors to use the word "exigency." The most elaborate circumlocution was Vice-President Zekan's, who told the board's Finance Committee on January 4, 1994, that the university was

[3]Vice-President Zekan, reporting on financial surplus and deficits over the most recent five years, provided the following schedule:

	Revenue	Expenses	Deficit/Surplus
1989–90	$34,283,316	$33,638,872	$ 644,444
1990–91	35,029,118	35,358,490	–329,372
1991–92	34,766,513	36,678,607	–1,912,094
1992–93	34,852,652	39,476,086	–4,623,434
1993–94	33,105,351	35,790,177	–2,684,826

He reported on undergraduate student enrollment over these five years as follows:

Year	Head Count
1989–90	2,370
1990–91	2,270
1991–92	2,195
1992–93	2,055
1993–94	1,805

Noting the inevitable decrease in revenue in the years immediately ahead because of enrolling smaller freshman classes and graduating larger classes, the vice-president projected for the years immediately ahead, assuming a steady incoming freshman class of 430 and expenses held constant, the following:

	Revenue	Expenses
1994–95	$33,097,814	$37,109,380
1995–96	32,762,020	37,109,380
1996–97	32,633,382	37,109,380

in a "state of financial disequilibrium." As used in the 1940 *Statement of Principles on Academic Freedom and Tenure*, "financial exigency" denotes a state of fiscal affairs that can legitimate the termination of tenured appointments. The meaning of financial exigency has been developed, since 1976, in Regulation 4 of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure*, which states that "termination of an appointment with continuous tenure, or of a probationary or special appointment before the end of the specified term, may occur under extraordinary circumstances because of a demonstrably *bona fide* financial exigency, i.e., an imminent financial crisis which threatens the survival of the institution as a whole and which cannot be alleviated by less drastic means."[4]

The investigating committee believes that it was by no means unreasonable for the administration and board of trustees of St. Bonaventure University to decide that a state of exigency existed early in 1994. Association-recommended policy also calls for participation in the decision by "a faculty body," however, and here the formal decision was solely that of the trustees. Working busily during the critical period that winter was an "*ad hoc* faculty budgeting committee" of seven members, "chosen by the deans and the chair of the Faculty Senate," according to Vice-President Eckert, or, according to the committee's own report, "appointed by the vice-president for academic affairs or academic deans." This therefore was a faculty body, but it was not chosen by the faculty. The *ad hoc* faculty committee, in a report of January 13, 1994, that was presented to the Finance Committee of the trustees the next day, concluded that "a state of financial *distress* exists" and "action must be undertaken immediately to solve the budgetary problem. On the matter of the formal procedures [for] dealing with financial *exigency*, other committees and procedures must be constituted" (emphases supplied).

When President Wickenheiser arrived, he altered the composition of the *ad hoc* faculty committee by adding to it several administrators. When he met with the Faculty Senate on February 11, 1994, to inform it that the appointments of tenured faculty might have to be terminated, he described the *ad hoc* faculty committee, according to Vice-President Eckert, not as a "representative committee but a committee of senior faculty who would give him guidance and counsel."

The investigating committee has gone into some detail about the composition of the *ad hoc* faculty committee to make three points: (1) it *was* a faculty committee when it reported to the trustees its belief that financial distress existed; but (2) it was not chosen by the faculty; and (3) soon after the January report to the trustees, the new president in effect coopted it by diluting its membership with administrators and treating it as advisory to him. So, while the investigating committee thinks it clear that the university was in a gravely serious financial condition early in 1994, the committee doubts that there was a sufficient faculty voice in determining the existence of financial exigency.

III. Responses to the Financial Situation

Official recognition of the worsening financial condition of the university came only during the interim presidency of Sister Alice Gallin, from July 1993 until the arrival of President Wickenheiser in February 1994. During her brief incumbency she alerted the faculty to the crisis, energized two special faculty committees, and explored ways to effect substantial savings. One initiative was to ask the faculty and staff to agree individually to give up, for a year and a half, the university's usual contribution to retirement annuities of 10 percent of salaries. The response to this proposal did not reach the 90 percent of acceptance that she thought was necessary to effect it, so it was dropped. She then warned the faculty that substantial cuts in salaries would have to be considered, and she won acceptance through a referendum of a four-month delay, from March 1 to July 1, 1994, in issuing the customary annual contracts.

Probably the most significant action taken on the matter during Sister Alice's tenure was the trustees' recognition of a state of financial exigency, already described. She proposed this step in a memorandum of January 24, 1994. Other documents from her time as interim president showed a strong concern for reforms in faculty governance and an awareness of a widespread sentiment among the faculty that "the trustees have a greater commitment to basketball than to a baccalaureate degree."

With the arrival of President Wickenheiser in February 1994, the pace of events accelerated. He promptly set about interviewing faculty members, some seventy in all, with a view to encouraging voluntary resignations and retirements. This effort yielded twenty-one separations from full-time status, of which three were transfers to administrative positions and seven to part-time positions. But it was not considered to be enough. In May the president, after consulting chiefly with the senior vice-presidents and deans, decided

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[4]Vice-President Zekan, responding to a draft text of this report sent to him prior to publication, commented on this paragraph as follows:

> "Exigency" is a word with no standing in financial reporting and analysis. However, an "imminent financial crisis which threatens the survival of the institution..." can be related to the accounting notion of a going concern and does have meaning in financial reporting. This context suggests nearness to bankruptcy; hence the operational meaning of exigency may be whether the financial condition of the institution is sufficiently strong for it to be considered a going concern.

[5]President Wickenheiser has stated that the reductions in the spring of 1994 had to focus on faculty positions because of the very extensive reductions in nonfaculty positions that had already occurred and because the declining enrollment had resulted in a student-to-teacher ratio of roughly 11:1, as contrasted with the historical St. Bonaventure University ratio of 16:1 or 17:1. (Following the reductions, according to the president, the ratio would be 15:1.) There were some further reductions in nonfaculty positions, however. In athletics, for example, the president reported that an administrative staff position had been eliminated and that a full-time coaching position was to become part-time.

that the involuntary release of about twenty-two faculty members, of whom eighteen were tenured, was unavoidable.[5]

Vice-President Eckert was the principal framer of a department-by-department schedule of positions that would have to be vacated. This schedule was one of numbers, not names. It was hastily communicated to deans and department heads on May 18, with directions to provide names by May 20. The extreme expedition was probably part of an effort to minimize adverse advance publicity. A university publication, *Inside Bona*, appearing on May 20, was headed "University makes cuts to secure its future." It was cast in the form of an extended interview with President Wickenheiser. In addition to describing the university's financial plight and the measures being taken, it reported the president's position that "women will not be let go, whether tenured or not, before tenured males because of the glaring lack of women on our faculty," and further that, "in order to maintain a substantial friar presence, whenever possible a friar will be kept." These assurances will be discussed later in this report.

Soon thereafter the administration announced pay reductions for ongoing faculty, declared to be for one year only, of 6.5 percent in salary, and a reduction from 10 percent of salary to 5 percent in the university's contribution to retirement annuities. These reductions were imposed on administrative officers as well.

The terms of voluntary separations were individually negotiated. Those with tenure who were departing involuntarily were assured of an additional year's salary "plus all benefits," without the cuts to which continuing faculty were subjected.[6]

St. Bonaventure is tuition-driven. Thus it is not surprising that the numbers marked for termination were closely keyed to the administration's perceptions of student preferences, particularly with respect to majors and the attendant need for upper-level courses and seminars.

Cuts were imposed in perhaps two-thirds of the twenty-odd departments. Since a majority of the departments were small (four members was the most frequent size), the burden on the department head of selecting one or two for termination was a severe one and led to some questionable outcomes, shortly to be described.[7] Some heads consulted with their colleagues in the department; some did not. The persistent question—are heads part of administration or primarily "faculty"?—obtrudes here, as it does also with respect to the extent of the faculty role in the larger decisions, because, with the major exception of those in the School of Business, department heads were assigned a central role. But the entire faculty or the Faculty Senate (except for its chair) played virtually no role.

As an additional spur to making the necessary selections for terminations, it came to be understood that a department head who failed this obligation would be considered "self-selected" for termination. One way or another, choices were made, and in the end eighteen tenured and four nontenured faculty members were selected out.

The president, after consultation with Vice-President Eckert, the deans, and the chair and vice-chair of the Faculty Senate, created an appeals panel of four members, chosen by the group from four departments that had not been directly affected by either voluntary or involuntary terminations. The panel heard appeals from twelve tenured faculty members. In the end, only two escaped termination. One was Professor Finbarr Conroy, in the Department of Modern Languages and Literature. The panel, advised that the only other available candidate for termination of appointment was the head of the department, found that his choice of Professor Conroy was "beyond the boundaries stated in a process that was to be fair and equitable." But when Professor Conroy discovered that if he stayed the head would have to go, he magnanimously stepped aside and accepted termination because he was approaching retirement, while the head, a younger man, still had children to educate.

The other successful appeal involved the tangled case of Professor Christopher Gerry in the Department of Physics, which will be discussed in Part IV of this report.

Shortcomings both in the authorized scope of the appeals and in their procedures will be appraised in Part V.

In the fall of 1994, the freshman enrollment rebounded, from a low of 375 in 1993, to 464. This recovery produced enough revenue to repay part of the amounts committed in settlements with those who voluntarily resigned or retired, and to the year of severance salary being paid to those whose appointments were terminated. The obligations created by these voluntary and involuntary terminations, which included some payments to nonfaculty terminees, amounted to $2.2 million. The trustees have stated that they intend to obtain the substantial amounts not covered by revenue gains through a special gift-raising effort among themselves.

The downside of the recovery in enrollment is that the student-faculty ratio has deteriorated, leading to over-large classes and to concerns that too many faculty positions were eliminated.

IV. Troublesome Terminations

Four of the terminations were found by the investigating committee to have troubling aspects, raising intimations of infringements on academic freedom, shortcomings in process, or both. Three of them went through appeals; one did not.

1. *Professor Gary A. Abraham* was one of three sociologists in the Department of Sociology, Social Science, and Political Science. After having been designated for termination by the head, a political scientist, he appealed. His appeal was initially sustained on several grounds. The main ones were (1) that a decision to concentrate student offerings on social work had been belatedly emphasized, in a way that prejudiced the choice between Professor Abraham and the

[6]The faculty handbook, Art. III.E., requires payment of "full salary." The inclusion of "all benefits" was perhaps not required.

[7]An exception to delegation of the selections to departments was in the School of Business Administration, where the dean made all the decisions for six departments. He selected, among others, the heads of the Departments of Economics and of Marketing.

one other colleague who was at risk, and (2) that the administration had exempted a third sociologist, who did not have tenure, from possible termination, because that person, a Native American, was the only racial minority person on the St. Bonaventure faculty. This exemption followed improperly, the panel stated, "after announcement of only women and friars as exemptions." After Professor Abraham had languished in limbo into October 1994, however, the administration upheld the termination of his appointment.

Professor Abraham's teaching record suggests versatility, even if social work is not his forte. He is also, apparently by common consent, one of the most productive scholars on the faculty and one known to speak his mind. The inability to consider scholarly accomplishment as a factor favoring retention is hard for the investigating committee to accept, even if teaching needs had to dominate the process and even though the Association in other cases has opposed basing termination decisions on a perception of relative merit. Meanwhile, the committee is unaware of anything that has been done to implement the decision to augment the program in social work.

2. *Professor Christopher Gerry* in the Department of Physics was every bit as versatile a teacher as Professor Abraham, and he was easily the most widely published scholar in the university. Initially, a recommendation of the head of the department to terminate Professor Gerry's appointment, using a "programmatic criterion of teaching needs," was reversed by the administration because of Professor Gerry's superior record and performance. Another member of the department, Professor Jerry Kiefer, was accordingly selected for termination. He appealed, and his appeal was sustained by the panel, which scolded the administration for using an impermissible "performance criterion." That left Professor Gerry again as the designated victim. He then appealed and gathered a large dossier of endorsements from former students and from fellow physicists, international in range. Professor Gerry's appeal was denied after the 1994–95 academic year had commenced. Along the way, he had made serious charges against the head of the department having to do with outside business interests and use of university resources. He asserts that the head, presenting false information about him, retaliated against him because of these allegations.

In any event, in Professor Gerry's case as in Professor Abraham's, the appeals panel's preoccupation with "programmatic requirements" led to the termination of the appointment of a faculty member whose scholarly activity was outstanding and recognized as such at St. Bonaventure University.

3. *Professor Mark A. Johnson* was head of the Department of Economics, located in the School of Business Administration. In the course of deciding on faculty cuts in the spring of 1994, the administration examined the relative popularity and costs of the various student majors. Several majors were abolished, including economics, amidst heavy disagreement between Vice-President Eckert and the department about the number of students who were majoring, which the faculty asserted was understated. The rights and wrongs of this dispute are beyond the competence of this investigation. But the entire department was abolished. The services of three of its members were terminated; the fourth was relocated in the registrar's office. The case of Professor Johnson is noted here because he had been an active member of the Faculty Senate for three terms and frequently critical of the administration. His appeal was denied.

As has been stated, those suffering termination of appointment in the School of Business were designated by the dean, with no visible faculty input.

4. Another case of termination that struck the investigating committee as raising troublesome questions of fair treatment was that of *Robert M. Murphy*. On his retirement from the United States Army, in 1985, he accepted appointment as a member of the Department of Management Sciences at the rank of instructor. He was advised that he would have to pursue a Ph.D. degree (his highest degree was a M.B.A.). From September 1, 1987, until December 31, 1988, he was head of the Departments of Management Science and of Marketing, still with the rank of instructor. From January 1, 1989, until September 1, 1992, when the position was eliminated because of the gathering financial clouds, he served as assistant to the president for planning and institutional research. He then returned to full-time teaching.

Mr. Murphy was one of the junior faculty selected for release when positions were ineffectively sought to be terminated in the fall of 1992. He was then given a one-year appointment as instructor for the 1993–94 academic year, on his agreement to withdraw a complaint he (and others) had filed with the Equal Employment Opportunity Commission. That appointment was followed by notification on November 15, 1993, from the interim president that his appointment would not be renewed for the academic year 1994–95. Meanwhile, having completed his Ph.D. work, he was recommended by the relevant faculty committee for tenure and promotion to the rank of assistant professor. By now, President Wickenheiser had arrived, and he sent his terse response to the recommendation, dated February 14, 1994:

> Dr. Robert Murphy
> Instructor of Management Sciences
> St. Bonaventure University
>
> Dear Dr. Murphy:
>
> You received notice of nonrenewal of your contract in November of 1993. Naturally, this means that your request for promotion and tenure is denied.
>
> Sincerely yours,
>
> Robert J. Wickenheiser, President

Dr. Murphy received notice that was late by six months for someone in his sixth year of full-time service, under the Association's *Standards for Notice of Nonreappointment*. Beyond that, perhaps all the investigating committee can say is that he seems to have been treated shabbily. A more considerate view of due process might at least have afforded him access to the appeals procedure that President Wickenheiser was to establish a few months later.

V. Issues and Findings

A. The Existence of a Financial Crisis. The substantial evidence bearing on St. Bonaventure's financial condition in 1994 leaves the investigating committee, as it has indicated earlier, with no doubt that the university was in a perilous financial state. The combination of increasing expenditure and decreasing enrollment was a sure-fire recipe for disaster, probably within a year or so. The admissions staff was overhauled in order to check further declines in student applications, but that did little to counter the generational trough in the numbers reaching college age. To damp injurious publicity that had clouded the university's image when the president was ousted in June 1993, the trustees, when voting in February 1994 that a state of financial exigency existed, kept their action secret until the new president in mid-May 1994 required upwards of twenty selections for separation from the faculty. These developments immediately became public when President Wickenheiser explained and defended the terminations in the university's newsletter. The decisions that were announced had been reached with very little faculty participation. To be sure, there was a faculty committee (appointed by the administration) which, as has been explained, advised the trustees in early 1994 that a crisis was impending. This essentially complied with Association policy, set forth in Regulation 4 (c) of its *Recommended Institutional Regulations,* that, "as a first step, there should be a faculty body which participates in the decision that a condition of financial exigency exists or is imminent...," even though that committee chose to call the financial condition not "exigency" but "distress." Thereafter, the faculty was to a limited degree informed but scarcely at all consulted about what was to be done.

B. Measures Taken in Response to the Financial Crisis. President Wickenheiser, immediately upon taking office, launched the consultations and negotiations that resulted in the voluntary resignation or retirement of twenty-one faculty members. In three instances, these included transfers to administration; in seven, acceptance of part-time appointments. As far as the investigating committee can determine, there was no coercive element in this thinning-out of faculty.

Then came the hard part. The appointments of eighteen tenured faculty members were terminated. Their cases are the primary subjects of this report. The surviving faculty, however, together with administrators, suffered for 1994–95 a substantial salary cut and a reduction by half of the university's retirement contribution. These reductions seem to have been imposed with little if any prior faculty consultation, but, it should be noted, no protests were voiced to the investigating committee during its meetings with those who were affected.

Were involuntary terminations of tenured faculty of the magnitude that occurred avoidable? A central fact is that 87 percent of the St. Bonaventure full-time faculty were tenured in 1993–94, leaving only about twenty who were nontenured. Theoretically, if the services of all of the nontenured could have been terminated, if certain conferrals of tenure that occurred on the eve of the recognition of financial exigency had been withheld, and if the voluntary departures had remained stable, all of the earlier tenured faculty could have been kept. But that would have required across-the-board cuts, like the previous administration's attempt to dispense with all nontenured faculty. A central difficulty with across-the-board cuts is that they take no account of what needs to be taught, nor of the fact that professors are not interchangeable parts.

The Association's Regulation 4 (c) states 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." Accordingly, within departments or disciplines at St. Bonaventure University, where some flexibility of substitution may be found, the investigating committee has inquired as to whether tenured faculty members were let go while nontenured people were retained. The committee encountered no instances of preferences given to nontenured faculty—*if they were lay Caucasian men.*

The preference in favor of retaining women and friars, earlier noted, requires comment. St. Bonaventure disavows discrimination "on the basis of...sex"; the American Association of University Professors does likewise. One released faculty member complained to the Equal Employment Opportunity Commission asserting reverse discrimination, i.e. in favor of women, and was later rehired. Ten others filed complaints with the EEOC shortly after he did; their cases were languishing at this writing.

The foregoing notwithstanding, President Wickenheiser had asserted that "Women will not be let go, whether tenured or not." After the voluntary retirement of five women, their total number had dropped to nineteen. The small number of women faculty in an institution where the proportion of women students had for at least a decade approached 50 percent was a reflection on past administrations. It seems reasonable to the investigating committee for a more conscientious successor administration to be sensitive to affirmative action, if only to keep a poor situation from worsening. The Association's 1983 statement, *Affirmative Action Plans,* recognizes that considerations of affirmative action may be applied when "an administration moves to terminate the positions of faculty members on continuous appointment on grounds of financial exigency." Whether the affirmative action can legitimately extend to retaining a nontenured woman while releasing a tenured man is quite another question. The one such case known to the investigating committee is that of the faculty member who subsequently gained reinstatement.

The preference for friars, specifically from the Holy Name Province, was expressed by President Wickenheiser when he addressed the Faculty Senate on February 11, 1994, as needed "to preserve the university's identity and support its mission." Again, this preference may be contrary to St. Bonaventure's anti-discrimination policy, which includes "creed" as well as "sex." The Association's *Statement on Discrimination,* however, does except discrimination "demonstrably related to the job function involved." It does not seem frivolous to suggest that Franciscans have a "job function" in a Franciscan university. The impact of this stated preference seems to have been small. Six friars were separated (one died; two retired; three were cut), leaving eleven.

C. Selecting Those Appointments to be Terminated. The driving principle at St. Bonaventure University in reconstructing a faculty reduced in size by a quarter was repeatedly asserted to be teaching needs. This principle seems to have been rigidly pursued, even when it appeared to have untoward consequences.

Initially, the administration, with little or no faculty involvement, made studies of student demand and decided on reductions in force, department by department—not by names but by numbers. The next step was to direct heads of departments where cuts had to be made (roughly two-thirds of the departments) hurriedly to designate those whose appointments were to be terminated. Many of the approximately twenty departments had only a handful of members. Roughly half the heads are elected (in departments of six and above), while in smaller departments they are appointed. A formidable responsibility thus was focused on the head, reinforced by the draconian mandate that a head who did not come up with the required candidate for termination was "self-selected" for that fate.

Every step in this process should have had some measure of faculty participation, according to AAUP's Regulation 4 (c), but it occurred only in those departments where the senior members' advice was sought by the heads. Especially in the numerous small departments, the delegation of responsibility to the heads had a potential for abuse.

The investigating committee is left with a sense of concern about the cases of Professor Abraham and Professor Gerry in this regard. Their scholarly productivity was outstanding. They were also outspoken. Without being able to state with certainty that the appeals panel based its decision solely on "programmatic needs," the committee cannot rule out the possibility of infringements on academic freedom in these two cases.[8]

The case of Professor Johnson seems still more ambiguous to the investigating committee. Professor Johnson's case differed from those of Professors Abraham and Gerry in that he did not appear to have been individually targeted because his entire Department of Economics was abolished. It is, however, troubling that the dean, without any evidence of faculty acquiescence, could abolish what most institutions regard as a key discipline. Association-supported principles, enunciated in the *Statement on Government of Colleges and Universities*, assign primary responsibility to the faculty for a decision of this kind.

D. The Appeals Process. The president "charged" the appeals panel with:

> 1. Determining that *a state of financial exigency* exists at the University...
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> 2. Determining that the *process followed for determining faculty position cuts* was fair, equitable, and had faculty involvement...
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> 3. Determining that the *criteria defined and developed by the process were properly applied in an individual's case.* In hearing all terminated faculty who have requested an appeal, you will confine each appeal to principles involving process, objectivity, and integrity...(emphases in original).

The charge went on to assure the panel of access to all needed or requested information, including interviews with all relevant administrative officers.

As to the existence of financial exigency, the appeals panel declined to hear from appellants, despite requests from a number of them that they be permitted to argue the matter. The panel, in an identical statement that accompanied each decision, replied somewhat obliquely to the first two charges, as follows:

> 1. Upon review, the Panel considers the process and criteria for determining financial exigency at the University to have been reasonable;
>
> 2. Upon review, the Panel considers the process and criteria for determining faculty position terminations at the University to have been reasonable.

It will be noted that the panel did not respond to the portion of Charge No. 2 about "faculty involvement." As for the conduct and substance of the hearings on the third charge before the panel, the investigating committee heard few complaints. The panel, however, operated under constraints which it considered implicit in its charge. It did not take the quantity or quality of anyone's scholarship into account, in part because it considered that it lacked competence in the various disciplines involved. It viewed its overriding mandate to be attending to programmatic requirements of the university toward the student body. Thus, after the panel initially supported the termination of the appointment of Professor Gerry, and the Dean of Arts and Sciences disapproved because of Professor Gerry's academic distinction, the panel sustained the appeal of the next person selected for termi-

[8]Here is the entire report of the panel on the appeal of Professor Jerry Kiefer in the Department of Physics. His successful appeal was taken to require the release in his place of Professor Gerry.

> We as a Panel unanimously conclude that Dr. Kiefer's chair employed a programmatic criterion in recommending Dr. Christopher Gerry for termination. Such criterion was within the parameters of the process. Yet, upon review the dean (Dr. White) did not affirm the chair's recommendation of Dr. Gerry based upon Dr. Gerry's publication record, for which such performance-based criterion was not to be a part of the process.
>
> The dean's performance-based criterion for retaining Dr. Gerry, thus terminating another faculty member in the department (ultimately Dr. Kiefer), was surely inappropriate in the process because it clearly elevated performance above programmatic needs.
>
> We, therefore, find for the appellant.

nation, Professor Kiefer, whereupon the administration selected Professor Gerry and resisted his subsequent appeal.

Substantively, little change resulted from the panel's deliberations. Two outstanding members of the faculty—Professors Abraham and Gerry—wound up with their appointments terminated after action that initially had been favorable. Professor Kiefer, in appealing notice of termination, prevailed to the detriment of Professor Gerry. The other successful appeal, Professor Conroy's, was overridden by his own magnanimity.

Procedurally, the workings of the appeals panel deviated severely from applicable Association-supported standards as set forth in Regulation 4 (c). The panel was directed to consult and did so extensively and privately with senior administrators and others, leaving not even a pretense of an on-the-record adjudicative hearing. Second, appellants were not permitted to challenge the existence and extent of financial exigency. Third, the hearings were limited to one hour. Fourth, the burden of persuasion apparently rested on the appellants. Fifth, presence of counsel was not allowed.

This catalog of procedural shortcomings is certainly not to be taken lightly by the Association, but the investigating committee's concern is tempered by the fact that complaints to it directed at the conduct of the appeals were few and limited in scope. The major complaint heard by the investigating committee regarding the criteria for both identifying candidates for separation and adjudicating the appeals was the narrow focus on perceived curricular needs. The investigating committee must acknowledge and respect the driving motive in the spring of 1994, on which survival depended, to attract and retain students. The investigating committee further acknowledges, if financial stability was to be restored, that the operation had to be efficient, that hard choices among a congeries of small departments were required, and indeed that it may not be possible to shrink a faculty overall by one-fourth without pain and also without some perceived injustice.

Still, the investigating committee finds that these considerations did not prevent the administration from demonstrating, and do not excuse it from declining to demonstrate, the existence and extent of financial exigency in a hearing of record (it need only have been done once), from permitting representation by counsel of choice, and from affording the other procedures called for in Regulation 4 (c) of the *Recommended Institutional Regulations.*

E. General Conditions of Academic Freedom and Governance. The investigating committee was left with the sense that academic freedom is, on the whole, respected at St. Bonaventure University. There were two or three terminations of appointment that, because of the outstanding academic merits of the victims juxtaposed with their propensity to criticism, arouse some suspicion about the good faith of the separation; that is all the committee can say, except to express regret that the university was unwilling in these cases to place a value on scholarly excellence.

As for the faculty's role in governance, the investigating committee finds the situation to be far from satisfactory. Again and again this report has recorded major decisions of faculty concern that were made by the senior administrative officers, sometimes including a small group of deans and occasionally involving department heads. The Commission on Higher Education of the Middle States Association of Colleges and Schools, declining in June 1994 to reaffirm the university's accreditation pending further developments, focused on shortcomings in faculty governance, including inadequacies in the operation of the Faculty Senate. These, the investigating committee finds, warrant AAUP's continuing concern. St. Bonaventure University, while it heals its financial wounds, also has a mission to develop genuinely collegial academic governance.

VI. Conclusions

1. St. Bonaventure University early in 1994 was in a very poor financial state, brought about by imprudent spending and by a sharp decline in student enrollment which warranted prompt remedial actions including reduction in the size of the faculty.

2. The St. Bonaventure University administration, in acting to terminate the appointments of eighteen tenured professors, proceeded in disregard of the applicable provision of the 1940 *Statement of Principles on Academic Freedom and Tenure* by declining to demonstrate the existence of financial exigency of a magnitude necessitating the actions.

3. The administration also declined to afford on-the-record adjudicative hearings as called for in the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure* and to allow the presence of counsel. While the appeals panel appears to have performed conscientiously within the constraints imposed upon it, the departures from Association-supported standards cannot be condoned.

4. The role afforded by the administration to the St. Bonaventure University faculty in the decisions concerning financial exigency and the resulting terminations was inadequate throughout.

RALPH S. BROWN (Law)
Yale University, *Chair*

JACK W. HAUSSER (Chemistry)
Duquesne 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: WILLIAM P. BERLINGHOFF (Mathematics), Colby College; MATTHEW W. FINKIN (Law), University of Illinois;

ROBERT A. GORMAN (Law), University of Pennsylvania; MARY W. GRAY (Mathematics), American University; JEFFREY HALPERN (Anthropology), Rider University; THOMAS L. HASKELL (History), Rice University; BETSY LEVIN (Law), University of Baltimore; IRWIN H. POLISHOOK (History), Herbert H. Lehman College, CUNY; LAWRENCE S. POSTON (English), University of Illinois at Chicago; JOAN WALLACH SCOTT (History), Institute for Advanced Study; MARY 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*; JUDITH J. THOMSON (Philosophy), Massachusetts Institute of Technology, *consultant*; WALTER P. METZGER (History), Columbia University, *senior consultant.*

*Did not participate in the vote.

Addendum: Comments from President Robert J. Wickenheiser

Let me respond to the AAUP's report first by reiterating that throughout the restructuring process at St. Bonaventure University, we have been as considerate as possible of the faculty and others we were compelled to terminate because of our serious financial problems, as the salary and benefit continuations for those terminated will attest.

In dealing with our financial crisis we likewise endeavored to follow the spirit of the AAUP's guidelines for dealing with financial exigency, a state which, as you know, we have declared and which presently exists at this university. In that same spirit, let me assure you of the following issues which are of great importance to each of us:

1. The university recognizes that a three-year period is considered the norm for recall of terminated tenured faculty, and we have openly stated on numerous occasions that returning terminated faculty should an opening occur in their respective disciplines within that time remains a moral obligation on our part. This will continue to be a university priority and is evidenced by the current year recall of one tenured faculty member when a position became available within his discipline. Further, the university will continue to consider terminated faculty for appropriate positions after the three-year period has passed.

2. Additionally, the university's Office of Human Resources will circulate notices of administrative job openings to terminated faculty and will encourage their application for those positions whenever and wherever appropriate. Any job offered, of course, will be solely for the administrative position and will not include, in that instance, a restoration of tenure.

3. It is clear to a great many of us that the existing Faculty Status and Welfare Handbook of 1978 and as amended is sorely in need of overhaul for many reasons, not least of which because of due process and procedure rules governing academic freedom and tenure. While the AAUP necessarily considers those rules to be foremost, a critical review of our current faculty handbook will reveal a plethora of necessary changes, and a comprehensive revision is intended to be completed for full faculty review in the coming academic year. A revised handbook will also include procedures for dealing with financial exigency or serious financial distress.

4. The university's governance structure has been the subject of much discussion and criticism for more than a decade. Much of this comment comes through the university's own comprehensive self-studies for Middle States evaluations as well as from Middle States evaluations themselves. In response to all of this and to the concerns shared by many on campus, we have this year endeavored to involve the faculty as and when appropriate in governance; we have endeavored to do the same with regard to all campus constituencies, including contract and hourly staff as well as students.

With regard to faculty in particular, we have worked closely with the Faculty Senate on all matters pertaining to the welfare of our faculty and to the evaluation of our curriculum; we have also worked with the Faculty Senate on other matters of importance to the university's future well-being. Through the efforts of the Faculty Senate and its various committees, for example, a policy governing equity of salaries for all faculty has been developed and approved by the senate, endorsed by me as president, and supported by the board of trustees. Under the aegis of the Faculty Senate's Curriculum Committee, an extensive review of our curriculum has been undertaken by the faculty. Further, in an endeavor to develop meaningful structural ties and relationships between the Faculty Senate and the board of trustees, chairs of Faculty Senate committees now serve as faculty representatives on counterpart committees of the trustees.

We welcome the involvement of everyone in resolving issues of governance, and I believe it is becoming readily apparent to everyone on campus that working together and in appropriately defined ways is not only the necessary thing we must do to restore financial health and long-term stability to St. Bonaventure University, it is also the right thing to do. In this, we share the AAUP's concerns for developing and maintaining wherever called for and in whatever ways we can renewed academic commitment and professional integrity in all that we do to carry out the mission of this venerable institution.