

# Academic Freedom and Tenure The Metropolitan Community Colleges (Missouri)<sup>1</sup>

The events and issues to be discussed in this report stem from actions taken by the Board of Trustees of the Metropolitan Community Colleges on December 14, 1978. At its meeting on that date, the board (1) amended its policies governing layoff of members of the faculty so as to allow for appointment or retention of part-time faculty members to teach in particular areas while full-time tenured faculty members in those areas were released; (2) received a statement from Mr. William D. Hatley, then chancellor of the college system, describing it as being in a state of financial exigency; and (3) accepted recommendations from the chancellor that twenty-one full-time tenured faculty members be issued notice of layoff, effective at the conclusion of the fall semester of the 1979-80 academic year, and that two academic programs be suspended.

The Metropolitan Community Colleges system, currently consisting of four colleges in greater Kansas City, traces its origins to the establishment in 1915 of the Kansas City Polytechnic Institute by the municipal board of education. A junior college division of the institute, with several additions, four years later became the Junior College of Kansas City. Shifts of population to the suburbs and state enabling legislation led in 1964 to the creation of "The Junior College District of Metropolitan Kansas City, Missouri" and, by 1976, the emergence within it of four institutions: Longview, Maple Woods, Penn Valley, and Pioneer Community Colleges.

Student enrollment in the Metropolitan Community Colleges rose steadily during the early 1970s. Amounting to 152,946 credit hours for the 1970-71 academic year, it increased to a peak of 329,293 credit hours eligible for state aid for the academic year 1975-76. Over the next three years, enrollment dropped; 211,820 credit hours eligible for state aid were reported for the academic year 1978-79. The number of administrative officers and staff rose significantly during the years of major increases in enrollment. The size of the faculty increased but little, however. In at least some areas of instruction, the numbers of different courses and sections of courses were reduced during the years of expansion, so that the sizes of classes increased. Faculty members were informed that additional full-time faculty appointments were not being made in any great quantity in order to protect existing faculty members lest enrollment in future suffer a decline. As a result, the number of full-time faculty positions in the system

increased by only three or four during the years of major growth, and in 1978, when student enrollment totalled 211,820 credit hours, the size of the full-time faculty was actually smaller than it had been in 1972, when credit hours totalled only 193,049.

## EVENTS PRECEDING THE ACTIONS OF DECEMBER 14, 1978

Falling student enrollment resulted in a drop in revenue for the 1977-78 academic year of approximately \$2,000,000 as compared with the previous year. Among other steps taken to reduce costs early in 1978, eight full-time faculty positions were discontinued, either by nonreappointment or by not filling vacancies, and a number of administrators and part-time faculty members were released.

On June 5, 1978, the administration presented a five-year fiscal plan for the Metropolitan Community Colleges to a Master Plan Advisory Committee composed of members of the Board of Trustees, the administration, the faculty, and the staff. The plan called for the elimination of twenty-four faculty positions for the 1979-80 academic year, for an average teaching load of 725 student credit hours, and for a standard which would set the proportion of full-time faculty members in the system at 55 percent and part-time faculty at 45 percent of the total full-time-equivalent faculty. This 55-45 ratio had been proposed earlier as "a protection" against adding full-time faculty positions during a period of rapid and perhaps temporary growth in enrollment. The ratio of full-time positions was in fact approximately 80 percent, however, and faculty members objected to a reference in the new fiscal plan to achievement of the 55-45 ratio through "attrition."

Although the president of the system's Academic Senate, Professor Ellen Giovagnoni (now Ellen Forrest), had expressed concern about the lack of time provided for faculty response, the fiscal plan was submitted to the Board of Trustees, together with the budget for the 1978-79 academic year, at a special meeting on June 19. On the following day, Professor Giovagnoni was handed a report, dated May 9, 1978, that outlined a reduction of twenty-four faculty positions by academic discipline. Between June 26 and June 28, the fiscal plan was reviewed at hearings held at the four colleges. On June 29, the Academic Senate met and adopted several resolutions which, among other matters, urged that the stipulation of an average 725-credit-hour teaching load and the 55-45 ratio "be subject to the same rigid analysis and criticism" that other elements of the fiscal plan would be receiving in the ensuing months and that a condition of faculty "overstaffing" be recognized "only when sufficient courses are not available for assignment to full-time faculty." The Board of Trustees, meeting on July 13, adopted a resolution directing the chancellor to undertake a

<sup>1</sup>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 sent to the Association's Committee A on Academic Freedom and Tenure, to the administration of The Metropolitan Community Colleges, to the chapter president, and to other persons directly concerned in the report. In the light of the suggestions received, and with the editorial assistance of the Association's staff, the report has been revised for publication.

comprehensive study of operations "with the assistance of the appropriate units of the District governance system" and to submit recommendations to the board by March 31, 1979. The study was to "identify multiple options impinging upon a just and equitable solution of the District's long-range fiscal problems." It was learned on July 13 that the incumbent chancellor was resigning as of August 31 and that Mr. Hatley would be offered the position.

The Academic Senate, meeting again on September 28, 1978, expressed concerns about having at least one faculty representative on various subcommittees of the Master Plan Advisory Committee and about the timetables being followed by the subcommittees. These concerns were directed especially to subcommittees dealing with "management and operations," "fiscal plan," and "staffing parameters." Professor Giovagnoni, as president of the Academic Senate, expressed dissatisfaction over the membership and functioning of the subcommittees at a meeting on October 2 with Chancellor Hatley and with Dr. John Gazda, the vice chancellor for planning and development.

Professor Giovagnoni selected Professor Leon P. Ogilvie to be the faculty representative on the "staffing parameters" subcommittee. From what the undersigned *ad hoc* investigating committee could learn, Professor Ogilvie was reputed to be the best informed faculty member at the Metropolitan Community Colleges on the subcommittee's area of concern. He stated later to the investigating committee that the subcommittee's intent, from the beginning, was to reduce the size of the full-time faculty by adopting the standard of an average teaching load of 725 credit hours with a maximum of 65 percent of the credit hours taught by full-time faculty members. An estimate of 190,000 credit hours for the 1979-80 academic year was accordingly divided by 725, producing the number of 262 full-time equivalent faculty, 65 percent of which would total 170 full-time faculty positions. Since the budget provided for 219 full-time faculty positions, the result would have been the layoff of 49 full-time members of the faculty.

Professor Ogilvie, in his presentations to the "staffing parameters" subcommittee, emphasized that the faculty of the Metropolitan Community Colleges, unlike the administrative officers and the nonacademic staff, was already smaller in size than it had been when student enrollment was previously at the level projected for the 1979-80 academic year. He asserted that the full-time faculty would be decimated if its size were now to be determined on the basis of its ability to produce an average of 725 student credit hours (a figure which had been reached only once if ever in the institution's entire history) combined with its being reduced to 55 percent or even 65 percent of the total instructional staff. The subcommittee chairman said to Professor Ogilvie that he could submit a minority report. No reports were to come from this body, however. After one of the administration's finance officers who had played a key role in the subcommittee's sessions did not appear at a session on November 14, the subcommittee stopped meeting. The administration turned to other channels.

Chancellor Hatley had meanwhile called a general meeting on October 6 to discuss his assessment of the decline in student enrollment and to invite individuals and groups to submit comments on the budgetary problems for that year and the following year and to

make recommendations for reducing the current year's budget, originally \$14,459,000, by \$1,300,000. The chancellor met on October 18 with the president of the Academic Senate to discuss the budget, suggesting proportional reductions to solve the immediate fiscal problem by cutting approximately \$300,000 each from the budgets for the administration, the faculty, and the nonacademic staff. He told Professor Giovagnoni that cutting \$300,000 from the faculty budget involved the elimination of twenty-seven full-time faculty positions. She has reported that the number at first puzzled her, since the average faculty salary was over \$22,000. She said that she asked the chancellor to explain his figures, and he responded that he was using a figure of \$12,000 for each faculty position to be eliminated because that would be his estimate of the real savings after part-time instructional costs for replacing the full-time faculty members had been subtracted.

On November 2, Chancellor Hatley issued a memorandum stating that almost \$900,000 had been cut from the current budget without terminating any positions but that another \$400,000 would have to be identified within the next few weeks. He stated that the budget for the 1979-80 academic year would have to be reduced by a full \$2,000,000 below what was originally budgeted for the current year. He said that any suggestions would be carefully considered when he met with his cabinet on November 7 and that a plan would be presented to the Board of Trustees by the board's December meeting.

The Academic Senate of the Metropolitan Community Colleges, meeting on October 26 and November 2, adopted a detailed series of proposals that were submitted to the chancellor. The senate's proposals began with a call for maintaining education of high quality, for providing service to students, and for upholding quality and service by continuing to offer "second year" courses regardless of cost. The proposals called for a number of actions designed to reduce costs that related to physical facilities and administrative operations, including a modification of the "Master Plan" process. According to the senate, "the amount of time, effort, and money spent in developing a plan which has failed to survive the test of application and is thus losing credence with the employees of the district has been excessive."

With respect to the faculty, the senate's proposals stated that full workloads could be maintained in specific cases when necessary by dividing schedules or workloads between two or more colleges in the system. The senate's proposals cautioned that "no overload should be given and no part-time instructors assigned to a discipline as long as full-time faculty from that discipline do not have a full load." They recommended "that no faculty member be terminated in order to establish a ratio between full- and part-time faculty." They asked for consideration of annual appointments that would include the summer session in cases where a full workload might not exist during the traditional academic year but would exist if the summer session were included. Pointing out that the percentage of the Metropolitan Community Colleges budget which was allocated to instruction (56.9 percent) was currently lower than the national average for multi-unit community college districts (61.33 percent), the senate proposed that in future the percentage spent on teaching be no lower than the national average.

The senate's proposals emphasized that established

provisions for governance should be respected. They stated that it should not be necessary to suspend any existing policy, that there are procedures for changing policies if new conditions necessitate changes. "The only possible reason for a suspension of policy," the senate asserted, "would be to allow for selective application of policy and dismissal of employees without having to justify or state reasons for such action."

These proposals and others from various sources, including three of the college presidents, were before the chancellor's cabinet when it met on November 7. The chancellor stated that he was still flexible but that the current plan called for a reduction of approximately forty-four faculty positions.

On November 20, a day when the Board of Trustees was to meet, the officers of the Academic Senate saw a new "discipline-load study" and a new seniority list which included changes from similar documents that they had seen on October 26. They challenged the accuracy of some of the figures. The president of the senate, who traditionally was present when the administration addressed the Board of Trustees, was informed that on that evening she might make a statement prior to the chancellor's presentation but that the board members would wish to meet with the chancellor alone. Professor Giovagnoni, when she spoke to the board that evening, conveyed the Academic Senate's concern over possible unilateral action against full-time tenured members of the faculty. She reminded the board members that "our own regulations and procedures specify that the district will not reduce full-time faculty and replace with part-time faculty."

A third, "corrected," version of the discipline-load study and the seniority list appeared on November 22. It was recalled on November 26, and on November 27 a new "correct" version was issued. The vice chancellor presented this latest version at a faculty meeting the following day. Approximately 150 faculty members were present, and they affirmed their support for the proposals on the system's financial situation that had been submitted by the Academic Senate. The president of the senate spoke at an open meeting of the Board of Trustees on November 28. She questioned a number of the administration's figures and procedures. She itemized the resolutions adopted by the senate over the previous six months in order to emphasize that the faculty had been diligent in proposing alternative courses of action. She concluded by stating that the faculty would demand that the board adhere to its regulations and procedures.

#### THE DECEMBER 14 ACTIONS AND THEIR AFTERMATH

At the opening of the meeting of the Board of Trustees on December 14, 1978, legal counsel for the board recommended the adoption of an amendment to the official policies of the Metropolitan Community Colleges relating to layoff of members of the faculty. The Board of Trustees accepted the recommendation, which had been introduced without previous notice, and adopted the amendment after suspending the board's regular procedures by unanimous consent.

The existing policies and procedures stated that "faculty members who are qualified to teach other courses shall be so assigned if positions are available" and that "a nonprobationary [tenured] faculty member will not be placed on leave of absence as long as there are available courses on other campuses or courses in

related disciplines which he/she is qualified and willing to teach." The amendment adopted on December 14 provided that "this board policy applies only to full-time faculty. Nothing herein shall be construed to mean that part-time faculty . . . may not be employed (or retained as employees), assigned and compensated within the district in accordance with standards and goals established by the Master Plan and board policies as now or hereafter approved, adopted or amended. All district procedures shall be applied in accordance with this board policy and shall not be interpreted in any manner inconsistent or contrary herewith."

The faculty's reaction to what the board had done was strong. Professor Giovagnoni was quoted in the next day's *Kansas City Times* as stating that she was appalled that the board would agree to a change in policy that those affected had not had a chance to see and to address. Professor Ogilvie later wrote that "with that single stroke the board all but eliminated the concept of tenure in this district." The president of the local AAUP chapter later stated to the investigating committee that the adoption of the amendment, from the perspective of both the effect of what was done and the way it was done, virtually removed the relationship that the faculty had worked for over ten years to establish.

Chancellor Hatley later asserted to the investigating committee that he had not had any advance notice of the amendment, nor had the president of the board to his knowledge. According to the chancellor's account, the attorney had made a surprise presentation that had carried the entire board.

Later during the same Board of Trustees meeting on December 14, the chancellor stated that a condition of financial exigency in the Metropolitan Community Colleges is "a matter of thorough public record." He referred to his November 2 memorandum for a full explanation and added that the conclusion remains unchanged, that the budget for the current academic year has to be reduced by \$1,300,000 and the budget for the following year must be reduced to approximately \$2,000,000 less than the 1978-79 budget.

Chancellor Hatley proceeded to recommend the reduction of between fifty and sixty staff positions, which he said could be accomplished in many cases through attrition or not making new appointments. He expressed optimism about being able to reduce the size of the nonacademic staff entirely through attrition. With respect to administrators, he recommended the elimination of at least ten and as many as fifteen positions, depending on a forthcoming plan for reorganizations. He recommended that the programs in dental laboratory technology and dietetic technology be suspended, with notices of layoff to be sent to the faculty members in these programs. He recommended that notices be sent to probationary faculty members in those academic disciplines that the most recent discipline-load study found to be overstaffed. Finally, he recommended that notices of layoff be sent to twenty-one full-time tenured members of the faculty: six in English; three in social science; two in music; two in physical education; and one each in aviation maintenance technology; biology; chemistry; dental assisting; geology; lodging and food service; philosophy; and physics. The board approved the chancellor's report and authorized him to act as he deemed necessary and advisable to implement it.

By letters dated December 18, 1978, the chancellor notified the affected faculty members that they were being placed on unpaid leave of absence at the conclusion of the fall semester of the 1979-80 academic year because of financial exigency, insufficient funds, and substantial decrease in total enrollment. The faculty members were selected from the academic fields found in the discipline-load study to be overstaffed, and they were chosen in reverse order of the dates of their initial appointment in the Metropolitan Community Colleges.

It turned out, for the third of the three faculty positions to be terminated in social science, that two faculty members were initially appointed on the same date. The two faculty members declined to participate in choosing between them by lot, whereupon both were permitted to retain their positions. The number of affected faculty members in continuing programs was thereby reduced to twenty.

During the months that followed, one of the faculty members in English, one of the faculty members in physical education, and the faculty member in dental assisting submitted resignations. The other faculty member in physical education asked not to be considered when retentions were later recommended. These developments reduced the number of tenured faculty members in continuing programs being laid off involuntarily to sixteen.

The regulations of the Metropolitan Community Colleges had no provision for hearings in the case of tenured faculty members placed on unpaid leave of absence. Concerned faculty members and the AAUP staff proposed that the Academic Senate establish a hearing body. The senate did so, and a six-member Faculty Hearing Committee, chaired by Professor Jean Scurlock, held hearings during the month of April, 1979. Several administrative officers were invited to provide documents and to appear before the hearing committee. The desired documents were given to the committee, but no administrator appeared at the hearings.

The hearing committee was charged with investigating the claim of financial exigency as a basis for reducing the size of the faculty, inquiring in the process into what attempts were made to reduce expenses in other areas. It was charged also with determining the validity of the educational criteria used to identify positions to be terminated, the impact of the terminations on the system's academic programs, and the validity of the criteria applied to each individual case presented to the committee.

The Faculty Hearing Committee issued a detailed report which included fifteen pages of findings and extensive documentation. With respect to the asserted financial exigency, the hearing committee found that there was sufficient revenue to fund all faculty positions that were scheduled for termination, that the decrease in total enrollment was insufficient to require the termination of full-time faculty positions (class sizes being almost identical to what they were in 1972, when enrollment was the same), and that there was now evidence (reflected in a report by the chancellor to the Board of Trustees on February 15, 1979) that enrollment had stabilized. The committee agreed that the program in dietetic technology should be terminated, but it found a continuing need for the program in dental laboratory technology. The committee found that there were enough continuing courses available for all full-

time faculty members who had been notified of layoff except for one position in English (but with no current faculty member now needing that position because of one faculty member in English who had resigned).

The hearing committee found that the system's financial problems resulted in significant measure from an insistence upon establishing four separate colleges in the district in addition to a separate administrative unit; from expansion of the administrative structure (over five years, a 21-percent increase in the number of administrators and a 36-percent increase in the nonacademic staff, while the size of the faculty suffered a 4-percent decrease); from a disproportionate increase in administrative costs (these had risen over the years by 101 percent, while instructional costs had risen by only 73 percent); and from mismanagement (the committee pointed to the Master Plan and to an ill-fated project known as "ACCESS"). The hearing committee observed that not only did enrollment seem to be stabilizing, but state support for the system was about to increase by \$2.50 per student credit hour more than the chancellor projected. The resulting increased income, if figured on a projected 190,000 student credit hours which allowed for a 10-percent decline in enrollment from the academic year 1978-79, would bring in an extra \$475,000. Noting that "the operational budgets for 1979-80 are almost back to normal, indications that the administration feels the financial exigency is at an end," the Faculty Hearing Committee concluded that "there was never a financial exigency at MCC. There was only a projected or hypothetical one based on predicted events which never occurred."

The hearing committee went on to question various figures provided by the administration to support its contentions of overstaffing in certain academic areas. It noted that the calculations assumed a full load being taught by division chairmen, although the system's official policies provided for released time for chairmen. It noted a projection of a 10-percent decline in enrollment in chemistry classes, even though enrollment in chemistry had increased during the previous semester. It noted that the administration's projections assumed an average class size of twenty-four in biology, chemistry, and physics classes, even though twenty-four had been certified as the maximum number which the laboratories were designed to handle safely. (The administration suggested that the average of twenty-four could be achieved by placing the extra students on stools in temporary locations until regular laboratory places became available through student withdrawals; faculty members remarked that this proposed solution was not conducive to laboratory experiments involving observation, analysis, and measurement.) The faculty committee noted that in such courses as philosophical logic the administration was now assuming an average class size of thirty-five as compared with a previous average of twenty-seven and one-half.

Further, and the foregoing findings of questionable calculations aside, the Faculty Hearing Committee noted that the administration's discipline-load study was based on an assertion by the administration that a maximum of 72 percent of the instruction in any academic area should be offered by full-time faculty members. The 72 percent was, of course, a higher percentage than the 65 percent that had been the premise of the "staffing parameters" subcommittee or the 55 percent that had early been the stated goal of the

Master Plan Advisory Committee. Still, the result upon applying the 72-percent maximum was to notify regular full-time faculty members of layoff and engage part-timers in their place. One example that the hearing committee specified was in physics, where the administration indicated that 5.52 full-time-equivalent faculty members were needed. The full-time members of the faculty who taught physics numbered five. The administration in its calculations multiplied 5.52 by .72, however, and set 3.97 as the number of full-time positions. Accordingly, one of the five full-time members in physics was notified of layoff on December 14. The hearing committee noted a similar case in biology. The desired full-time-equivalent number was set at 14.54, and the full-time faculty at that time numbered twelve. When 14.54 was multiplied by .72, the target number for full-time faculty became 10.47 and one full-time faculty member in biology was accordingly among the recipients of the December 14 notices of layoff.

The hearing committee found "without question that the administration intends to replace full-time faculty with part-time. Otherwise it could not have declared certain disciplines to contain an excess number of faculty." The committee noted, however, that the contemplated number of layoffs of full-time faculty members, together with the administration's asserting (to the Board of Trustees in a statement by Chancellor Hatley) that over 70 percent of the teaching load next year would be carried by full-time members of the faculty, would leave certain courses uncovered. The hearing committee observed that apparently "the administration fully expects regular faculty members to pick up at least some of the additional courses as overload, thereby reducing the number of part-time faculty who would have to be hired."

The Faculty Hearing Committee recommended the rescission of twenty notifications of layoff: the sixteen to tenured faculty members in continuing programs; two to probationary faculty members in continuing programs; and two to the faculty members in the dental laboratory technology program that the committee recommended for retention.

The full report of the hearing committee was sent to the Board of Trustees. Time was allowed for board members to study it, and then an oral presentation of the report was made at a board meeting by the officers of the Academic Senate, the hearing committee's sponsoring body. The past president of the senate said to board members in conclusion that the report "represents many hours of work by your faculty. We trust that you will consider it with respect, and respond in the same good faith, at your earliest opportunity." The Senate officers were briefly thanked on behalf of the board for coming. The minutes of the Board of Trustees for that meeting refer to the foregoing only as follows: "The District Academic Senate presented a report to the board regarding those faculty members that are to be released." The board never responded substantively, either orally or in writing, to the Faculty Hearing Committee's report.

The AAUP chapter at the Metropolitan Community Colleges had sought advice from the Association's staff when layoffs of members of the faculty were first threatened, and the staff had written to Chancellor Hatley prior to the actions of December, 1978, to caution against terminating the appointments of tenured members of the faculty and using part-time instructors in their place. Twelve of the faculty members who were

notified of layoff requested the Association's assistance. The staff conversed and corresponded with the chancellor and other administrative officers during the ensuing months about issues of Association concern. In a detailed letter to Chancellor Hatley of November 5, 1979, the staff referred to the findings of the Faculty Hearing Committee, reviewed the various issues in the context of the applicable standards recommended by the Association, and urged that the letters of notification be rescinded and that the affected faculty members with tenure be restored to their tenured status. The chancellor, responding on November 30, stated that the Faculty Hearing Committee, "having functioned with criteria different from those adopted by the Board of Trustees, . . . inevitably would arrive at conclusions different from those implemented." He asserted that the policies and "planning parameters" developed by the Metropolitan Community Colleges had been followed throughout.

A position in English at Pioneer College became open beginning with the second semester of the 1978-79 academic year. It was offered to one of the tenured faculty members in English who had been at Penn Valley College and had been placed on notice of layoff. She taught at Pioneer College during her year of notice as a regular tenured faculty member. At the end of that year, however, with her period of notice having expired, the administration informed her that she had lost her tenured status and henceforth, even though she continued to teach in excess of fifteen hours and to receive her regular salary, she was subject to termination of her appointment on two months of notice. The administration justified its action on grounds that all Pioneer College faculty members except one were in special programs supported by outside funding.

A position in music at Penn Valley College was scheduled to become open upon the conclusion of the 1979-80 academic year because the incumbent faculty member was at the age of mandatory retirement. A tenured Penn Valley College faculty member in music was among those who had received notice of layoff. The chairman for music later stated to the investigating committee that he wrote to the administration to ask about retaining the faculty member on notice to fill the vacancy in music, that he received no reply until after that faculty member's terminal period of service had expired, and that only then was he informed by the administration that part-time faculty members should be engaged to do the work.

In August, 1979, a faculty member in biology resigned, thus presumably opening a position in which the tenured biologist who had been notified of layoff could be retained. The chairman, in a letter to the administration, so requested. Toward the end of the fall semester of the 1979-80 academic year, the Board of Trustees approved the issuance of "limited employment contracts," which were offered to this biologist and also to two other tenured faculty members who had been placed on notice—the chemist and the geologist—in engaging their services for the second semester of the 1979-80 academic year and later for the academic year 1980-81. In addition, the faculty member in philosophy received "limited employment contracts" for that academic year, initially for the first semester alone and then another for the second semester. These new contracts were apparently intended to strip the faculty members of their tenure, since they were defined as "temporary only . . . with no right or

option for renewal hereof or for continued employment."

It will be recalled that two tenured faculty members in social science had received notice of layoff. By the end of the 1979-80 academic year, one social science faculty member in the Metropolitan Community Colleges retired, a second had suffered a stroke, and a third was granted a leave of absence to accept a visiting appointment elsewhere. The social science chairman at Maple Woods College asked the administration for authority to retain a tenured faculty member on that campus who had been placed on notice so that she could fill one of the vacancies. Weeks went by without a definite response. Finally, on a Saturday evening before the Monday classes for the 1980-81 academic year were to begin, the tenured faculty member telephoned the chancellor to ask if she should meet classes on Monday morning. The chancellor replied that a decision had recently been made, that she should meet the classes, and that the president of the college should be getting in touch with her. Some days later, she too received a "limited employment contract" for the 1980-81 academic year.

One of the tenured faculty members in English who were on notice of layoff was placed in a position on the administrative staff at a lower salary. Another tenured faculty member in English who was on notice was offered a temporary teaching position at another institution for the second semester of the 1979-80 academic year. With his teaching assignments and his salary at the Metropolitan Community Colleges ceasing upon the effective date of his layoff at the end of the first semester of that year, he requested a regular leave of absence without pay for the second semester. His request was denied on grounds that he did not have a contract at the Metropolitan Community Colleges for that semester and therefore was not eligible to receive a leave of absence.

Several of the tenured faculty members who had been placed on notice of layoff effective at the end of the first semester of the 1979-80 academic year acquired part-time teaching work at the Metropolitan Community Colleges beginning with the second semester, at the substantially lower salary scale for part-time teaching. Moreover, information compiled by the administration indicates that many other part-time faculty members were engaged and/or overloads were assigned in most of the disciplines from which tenured faculty members had either been placed on layoff or, while continuing to teach, had been removed from tenured status. A "Faculty Load Study, 1979-80" that was issued by the administration on April 15, 1980, showed for that year's spring semester, the first after the layoffs of the tenured faculty members had gone into effect, the following:

In BIOLOGY, with one faculty member stripped of tenure, 29.8 credit hours were being taught by part-time instructors or on overload;

In CHEMISTRY, with one faculty member stripped of tenure, 26.4 credit hours were being taught by part-time instructors or on overload;

In AVIATION MAINTENANCE TECHNOLOGY, with one tenured faculty appointment terminated, 35.4 credit hours were being taught by part-time instructors or on overload;

In ENGLISH, with four tenured faculty appointments terminated (after one subtracts two resignations), 92.7

credit hours were being taught by part-time instructors or on overload;

In PHILOSOPHY, with one tenured faculty appointment terminated, 22.4 credit hours were being taught by part-time instructors or on overload;

In MUSIC, with two tenured faculty appointments terminated, 44 credit hours were being taught by part-time instructors or on overload;

In SOCIAL SCIENCE, with two tenured faculty appointments terminated, 88 credit hours were being taught by part-time instructors or on overload.

With evidence accumulating that the administration of the Metropolitan Community Colleges had terminated tenured faculty appointments because of an alleged financial exigency and had proceeded at least in some cases to engage part-time teachers and assign overloads in the applicable areas of instruction, the Association's general secretary authorized an investigation.

The undersigned *ad hoc* investigating committee examined a large volume of material that had been compiled by the Association's staff and then visited the Metropolitan Community Colleges on September 18 and 19, 1980. The committee met twice with Chancellor Hatley and with the vice chancellor for operations, Dr. William J. Mann.<sup>2</sup> It met with two of the college presidents, with seven chairmen of the affected divisions or departments, with the current president and with two past presidents of the Academic Senate, with the chairman of the Faculty Hearing Committee, with the president of the AAUP chapter, with Professor Ogilvie, and with eleven of the tenured faculty members who had been placed on notice of layoff. The committee was courteously received by everyone and was assisted in its work with all needed facilities. The administrative officers provided various publications, documents, and statistics that the committee subsequently examined with care.

In the months following the investigating committee's visit, faculty leaders held discussions with Chancellor Hatley about the possibilities in particular cases of reinstating tenured faculty members. In April, 1981, the Board of Trustees acted on the recommendation of the chancellor to recall with tenured status, effective at the beginning of the 1981-82 academic year, the faculty member in biology, the faculty member in chemistry, the faculty member in philosophy, and one of the faculty members in English. The board also restored the tenured status of the faculty member in English who had transferred to Pioneer College. The faculty member in English who had been working in an administrative staff position was reinstated with tenured status in May, 1982. Remaining unreinstated, however, were eight tenured faculty members: one each in English, in aviation maintenance technology, in lodging and food service, and in geology, and two each in social science and in music.

## ISSUES

### *Financial Exigency*

The Board of Trustees of the Metropolitan Community Colleges, having received a statement from the chan-

<sup>2</sup>Chancellor Hatley died in September, 1981. The Board of Trustees appointed Vice Chancellor Mann to succeed him as the colleges' chief administrative officer.

cellor describing the system as being in a state of financial exigency, approved the termination of the appointments of tenured members of the system's faculty. The 1940 *Statement of Principles on Academic Freedom and Tenure*, which calls for the safeguards of academic tenure as a means of securing academic freedom, allows for termination of tenure prior to the age of retirement only upon demonstration of adequate cause or "under extraordinary circumstances because of financial exigencies." Termination because of financial exigency, according to the 1940 *Statement*, "should be demonstrably bona fide." The Association's derivative *Recommended Institutional Regulations on Academic Freedom and Tenure* define financial exigency, in the context of grounds for terminating the appointments of tenured faculty members, as "an imminent financial crisis which threatens the survival of the institution as a whole and which cannot be alleviated by less drastic means."

As was discussed earlier in this report, student enrollment and total credit hours in the Metropolitan Community Colleges had declined materially during the three academic years from 1975-76 to 1978-79. In the fall of 1978, the administration projected a very substantial drop in revenue for the year immediately ahead and called for a reduction of \$1,300,000 in the current budget and a reduction for the following year of \$2,000,000 below the original 1978-79 budget. The chancellor referred to \$300,000 of the desired reductions being obtained from the faculty budget through the elimination of twenty-seven faculty positions. The Faculty Hearing Committee, following the hearings it held in April, 1979, found that an announced increase in the amount of state support per student credit hour would lead to increased income and that the operation budgets for 1979-80 were nearly back to normal; the committee concluded that a state of financial exigency had not actually existed, "only a projected or hypothetical one based on predicted events which never occurred."

If, as the investigating committee believes to have been the case, there was a projected sharp decline in revenue that did not actually occur, what was to be done with the revenue to be obtained from the notifications to tenured faculty members (as of the summer of 1979 numbering sixteen) of layoff upon conclusion of the first semester of the 1979-80 academic year? The administration's documents for a workshop on June 21, 1979, planning for the 1979-80 budget, reveal an allotment of \$108,361 for the sixteen faculty members for their final semester. Something approaching that figure was therefore to be saved during the spring semester of 1980, after the appointments of the faculty members had terminated; indeed, counsel for the Metropolitan Community Colleges had asked for a \$115,000 bond if a temporary injunction compelled the retention of these faculty members for the spring semester. For that same 1979-80 academic year when the termination of tenured faculty appointments yielded a little over \$100,000 in savings on faculty salaries, the administration's budget documents reveal that \$150,000 was transferred into the system's facilities (construction) fund.

For the academic year 1980-81, with two semesters now involved, approximately twice as much as during 1979-80 could be saved on the faculty appointments that had been terminated. The Metropolitan Community Colleges operating budget for 1980-81

reveals that for that year \$200,000 was transferred into the facilities (construction) fund. In a memorandum of July, 1980, to the Board of Trustees, the chancellor stated that this fund was a reserve amounting to \$473,608 prior to the \$200,000 transfer, that it would be available for construction "if state or federal matching moneys become a reality," or that as an alternative "the board may want to invest the money in moderate construction projects on the suburban campuses."

In addition to moneys set aside in the two successive budgets for future construction, the 1979-80 budget plans placed \$100,000 in a new incentive fund, \$100,000 in a new enrollment reserve fund, and \$50,000 in a new contingency fund. These were extra funds; there was also a reserve for working capital and fund balance scheduled for \$1,500,000.

The 1979-80 and 1980-81 budgets also reveal that expenditures for the senior administrative offices were substantially increased. For 1980-81 over 1979-80, the salaries and expenses for the Chancellor and his secretary increased from \$84,920 to \$94,996. The salaries and expenses for the office of the vice chancellor for operations increased from \$75,252 to \$99,372. For the offices of the presidents of the four component colleges, the total amount increased from \$240,797 to \$261,289.

The 1980-81 Metropolitan Community Colleges budget projected a growth rate in production of student credit hours of 3 percent for each of the succeeding five years beginning that year. At the same time, however, the administration projected holding the number of full-time faculty positions through the 1984-85 academic year at the same 184 to which they had been reduced as a result of the appointments that the administration terminated.

The investigating committee finds that the administration of the Metropolitan Community Colleges, whether or not it had a reasonable basis for anticipating financial exigency when it issued notice of layoff to tenured members of the faculty in December, 1978, was taking actions by June, 1979, well before the layoffs went into effect, that indicated an absence of financial exigency by any reasonable definition of the term. During that summer and into the fall, however, although part-time teachers were engaged and overloads were assigned, not a single notice of layoff was withdrawn. The investigating committee finds that the administration acted in violation of the 1940 *Statement of Principles on Academic Freedom and Tenure* in terminating the appointments of tenured members of the faculty on grounds of financial exigency when a state of financial exigency did not exist.<sup>3</sup>

#### *Releasing Tenured Faculty While Engaging Part-Time Faculty and Assigning Overloads.*

Regulation 4(c) of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure* provides as follows:

If the institution, because of financial exigency, terminates appointments, it will not at the same time make new appointments except in extraordinary circumstances where a serious distortion in the academic program would otherwise result. The appointment of a

<sup>3</sup>Chancellor Mann, commenting on the draft text of this report submitted to him prior to publication, asserted that "the audited financial statements of the district are a matter of public record and confirm the existence of the financial exigency."

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.

Before terminating an appointment because of financial exigency, the institution, with faculty participation, will make every effort to place the faculty member concerned in another suitable position within the institution.

As was discussed earlier in this report, the Metropolitan Community Colleges Board of Trustees amended the institutional policies governing layoff of faculty members in order to permit the appointment or retention of part-time faculty members to teach in particular areas while full-time faculty members in those areas were released. The administration had for some time pressed for reducing the percentage of full-time positions from the existing 80 percent (with the large majority of the occupants of those positions having tenure) to, at different junctures, a maximum of 55 percent or 65 percent or 72 percent. It had called at an early juncture for achieving its desired maximum percentage through attrition. By the end of 1978, with the policies changed to allow replacement of full-time faculty members with part-timers and with financial exigency having been asserted, the administration proceeded to notify full-time tenured faculty members of layoff and, as a continuing need for instruction in their areas remained, to replace them with part-time appointments and the assignment of overload.

The investigating committee finds that the administration, which was not compelled by any condition of financial exigency to implement the termination of tenured faculty appointments, did in fact implement their termination in some sixteen cases because it wished to reduce the number and the percentage of full-time tenured faculty positions. That this was a long-term goal of the administration is clear to the investigating committee from all available evidence. Not only were the full-time faculty positions to be kept over the next five years, while student enrollment was expected to increase, at the reduced number of 184 achieved through involuntary terminations; a master plan issued by the administration in 1980 projected an increase in the percentage of credit hours to be taught by part-time faculty each year through the academic year 1984-85. The investigating committee finds the termination of tenured appointments in order to reduce the size and percentage of the regular full-time faculty and attendant commitments, with part-timers engaged instead, to be inimical to the principals of academic freedom and tenure.<sup>4</sup>

In some cases, tenured faculty members, whose appointments the administration terminated as of the end of the first semester of the 1979-80 academic year, were retained for the spring semester of 1980 and beyond at their regular salaries but were stripped of their

tenure: one faculty member in English, subject to release upon two months of notice; and one faculty member in biology and one in chemistry, subject to release at the conclusion of short successive term appointments. When the investigating committee met in September, 1980, with the late Chancellor Hatley and with Chancellor Mann, at that time vice chancellor for operations, it asked why, with these faculty members continuing to teach and with students and funds available, they were not retained in their tenured status. Chancellor Hatley replied that an annual growth in enrollment was estimated over the years ahead but that they could not be sure. For Dr. Mann, the issue was whether the Association would prefer to see the administration retain the faculty members on the terms that were offered or not retain them at all. The investigating committee finds that these faculty members continue to be entitled to the rights under academic tenure that they attained and that the administration, in no longer recognizing those rights, is acting counter to generally accepted principles of academic freedom and tenure.

#### *The Faculty's Role*

Regulation 4(c) of the Association's *Recommended Institutional Regulations*, in dealing with decisions relating to financial exigency and potential termination of faculty appointments, calls for faculty participation at all key stages: in determining whether financial exigency exists and whether terminations are warranted; in determining where within the institution terminations may occur; in determining the criteria for termination and the method of identifying individuals; and in holding hearings on controverted issues in the case of faculty members notified of termination.

As was discussed earlier in this report, during the months prior to the decisions leading to the terminations there was an abundance of interaction between the faculty and the administration in terms of sheer quantity. The future directions of the Metropolitan Community Colleges with respect to financing and staffing were discussed, with faculty participation, in numerous committees and subcommittees, at open meetings and hearings, and in exchanges of written communications. As it became increasingly apparent to faculty leaders that the administration was moving to release full-time faculty members and replace them with part-time faculty, however, the faculty leaders found themselves not participants but opponents.

The faculty's Academic Senate submitted detailed proposals designed to alleviate financial and staffing difficulties and avoid threatened layoffs. The administration did not pursue them. The senate warned against suspension of established policies governing faculty, and the senate's president warned specifically against laying off full-time faculty and replacing them with part-time faculty. These warnings went unheeded. The Board of Trustees, after suspending its regular procedures, adopted amended policy which enabled the administration to take actions that the faculty had urged it not to take. The enabling amendment, which manifestly would have a profound impact on the faculty as a whole as well as individual faculty members, was suddenly introduced and adopted without any opportunity for faculty comment. The investigating committee can appreciate why faculty leaders were appalled at the damage done by this abrupt ac-

<sup>4</sup>Chancellor Mann, in his prepublication comments, replied to this finding as follows: "The district did not terminate full-time faculty in favor of the employment of part-time faculty. The Master Plan dated 1975 clearly sets forth staffing parameters agreed to by the governance system through the participative planning process. This plan and subsequent annual Master Plans were adopted by the Board of Trustees three years prior to the financial exigency in 1978. These staffing parameters approved prior to 1978 were fairly and consistently applied to all disciplines consistent with District Policies, Regulations and Procedures."



tion to collegial relationships at the Metropolitan Community Colleges.

Because the institutional regulations did not specifically provide for hearings in the case of tenured faculty members placed on unpaid leave of absence, and because the administration did not offer opportunity for a hearing to the faculty members whom it notified of layoff, the Academic Senate agreed to establish a hearing body. A faculty hearing committee was given a comprehensive charge and dealt with it, in the investigating committee's judgment, thoroughly and responsibly. Extensive hearings were held. Administrative officers provided documents that were requested, but no member of the administration agreed to appear at the hearings. The hearing committee issued a detailed report, finding, as this investigating committee has found, that the layoffs could not be justified on grounds of financial exigency or insufficient funds or declining enrollment and that the administration's actions instead were motivated by its intention to replace full-time faculty members with part-time faculty. The committee, explaining in each case why it believed its recommendation could and should be followed, recommended the rescission of twenty notifications of layoff.

The faculty hearing committee's full report was accepted by the senate and submitted to the Board of Trustees. After allowing board members time to study it, officers of the senate made an oral presentation to the board, requesting that the faculty's report be considered with respect and that the board respond "in the same good faith" that had guided the faculty in developing and submitting its position. No substantive response, either written or oral, ever ensued.

The basic norms of sound academic governance in American higher education are enunciated in the *Statement on Government of Colleges and Universities*, formulated jointly by the American Association of University Professors, the American Council on Education, and the Association of Governing Boards of Universities and Colleges. This statement emphasizes the need for joint effort, the joint exercise of responsibility, and effective communication among faculty, administration, and governing board. Primary responsibility for the educational process and for faculty status is assigned to the faculty, as is primary responsibility in other areas assigned respectively to the administration and the board. The statement provides that the administration and the board "should on questions of faculty status, as in other matters where the faculty has primary responsibility, concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail."

The investigating committee finds that the faculty of the Metropolitan Community Colleges through its representative bodies, facing injury to its corporate status and to numerous individual members, aspired to implement the principles set forth in the *Statement on Government* and fulfilled its responsibilities in the best traditions of the academic community. The investigating committee finds that the Board of Trustees and the administration acted in a manner that is foreign to these principles of academic government, treating the full-time faculty with callous disregard.

#### *Corrective Action*

In the months following the investigating committee's visit to the Metropolitan Community Colleges,

as was discussed earlier in this report, the administration and the board took corrective action in several outstanding cases. Beginning with the 1981-82 academic year, four faculty members were offered reinstatement with tenured status and the tenure of a fifth faculty member was again recognized. In May, 1982, a sixth faculty member was reinstated with tenured status. The investigating committee welcomed these developments. There remained, however, eight tenured faculty members who were not reinstated. These faculty members had been released, according to the administration's letters of notification, "due to present financial exigency, because of insufficient funds in the district, and because of substantial decrease in total enrollment in the district." The investigating committee has found that each of these three reasons, if it had any validity at the time of notification as grounds for terminating tenured faculty appointments, had become invalid before the terminations went into effect. The investigating committee knows of no sound basis for the Metropolitan Community Colleges administration to have allowed these remaining cases to stay unresolved.<sup>5</sup>

#### CONCLUSIONS

1. The administration and the Board of Trustees of the Metropolitan Community Colleges acted in violation of the 1940 *Statement of Principles on Academic Freedom and Tenure* in terminating the appointments of sixteen tenured faculty members on grounds of financial exigency when a state of financial exigency neither existed nor was imminent at the time that the appointments were terminated.
2. The administration terminated these tenured faculty appointments in order to reduce the size and percentage of the regular full-time faculty in favor of engaging part-time faculty and assigning overloads. The administration's actions in this regard, specifically proscribed in the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure*, were inimical to the principles of academic freedom and tenure.
3. In ceasing to recognize the continuous tenure of faculty members who had attained tenure and who continued to teach, the administration acted counter to generally accepted principles of academic freedom and tenure.
4. The Board of Trustees, in abruptly adopting a change in official policy of key faculty concern without allowing opportunity for faculty comment, and the administration and the Board of Trustees, in greeting the report of the faculty hearing committee with silence, acted in a manner foreign to the principles of academic governance as set forth in the *Statement on Government of Colleges and Universities*.

HARRY F. SNAPP (History)  
North Texas State University; *chairman*  
JAMES MASSEY (Chemistry)  
Belleville Area College  
*Investigating Committee*

<sup>5</sup>In his prepublication comments, Chancellor Mann responded to this paragraph as follows: "The district did not take corrective action as described in the report. This accounts for the investigating committee's stated puzzlement over the 'remaining cases to stay unresolved.'" The district's rehiring of personnel affected by the reduction in force was a direct result of the district's requirements for additional personnel. It was only proper to recall faculty in the areas where enrollment increases justified that action."

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

MATTHEW W. FINKIN (Law), Southern Methodist University, *chairman*

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