

# R E P O R T

# ACADEMIC FREEDOM AND TENURE: NORTHWESTERN STATE UNIVERSITY OF LOUISIANA AND SOUTHEASTERN LOUISIANA UNIVERSITY<sup>1</sup>

(APRIL 2012)

The subject of this investigative report is the implementation of program discontinuance policies adopted by the University of Louisiana System Board of Supervisors in July 2004. In anticipation of budget shortfalls for the 2010–11 fiscal year, several UL System institutions implemented the system’s academic program discontinuance policies during the 2009–10 academic year. The result at Northwestern State University and at Southeastern Louisiana University was the elimination of some thirty academic programs and the termination of at least twenty tenured faculty appointments.

During the events to be discussed, the University of Louisiana System consisted of eight four-year public institutions of higher education, located in various regions of the state, that are part neither of the Louisiana State University System nor of the historically black Southern University System. The institutions, in order of the system’s listing, are Grambling State University, Louisiana Tech University, Nicholls State

University, Northwestern State University, the University of Louisiana at Lafayette, the University of Louisiana at Monroe, McNeese State University, and Southeastern Louisiana University. A ninth institution, the University of New Orleans, was relocated by action of the state government from the Louisiana State University System to the University of Louisiana System, effective in December 2011, when approval was granted by the regional accrediting agency, the Southern Association of Colleges and Schools (SACS). Most of the institutions had operated under the authority of the Louisiana State Board of Education until 1975, when a separate Board of Trustees for State Colleges and Universities was created. The board’s name was changed in 1995 to the University of Louisiana Board of Trustees and again in 1998 to the current UL System Board of Supervisors. Providing an additional level of authority for the UL System is the Louisiana Board of Regents, which oversees all four public higher education systems in Louisiana.

The UL System is the largest in the state, enrolling about 94,000 students. The members of its board of supervisors are appointed by the governor with the consent of the senate. The system employs a staff with offices in Baton Rouge headed by system president Dr. Randy Moffett, who had served previously as president of Southeastern Louisiana University.

Word of a program discontinuance through elimination of the undergraduate majors in French and French education and the termination of the appointments of three tenured French professors at Southeastern Louisiana University reached the Association in spring 2011. The AAUP staff wrote to President John Crain to express concern about apparent violations of AAUP standards. Reports of intended program closures at the

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1. The text of this report was written in the first instance by the members of the investigating committee. In accordance with Association practice, the text was then edited by the Association’s staff and, as revised with the concurrence of the investigating committee, was submitted to Committee A on Academic Freedom and Tenure. With the approval of Committee A, the report was subsequently sent to the faculty members whose cases are dealt with in the report, to the University of Louisiana System central administration and the administrations of the relevant system institutions, and to other persons directly concerned. This final report has been prepared for publication in light of the responses received and with the editorial assistance of the staff.

University of Louisiana at Monroe followed shortly thereafter. In a June 6, 2011, statement distributed by Committee A on Academic Freedom and Tenure, Michael F. Bérubé, chair of a Committee A subcommittee engaged in developing a report on program closures, warned of what by that time appeared to be an emerging pattern of disregard for tenure and of violations of AAUP principles within the UL System. Once the extent of program discontinuances and terminations at Northwestern State University became known, the Association's general secretary authorized the investigation that is the subject of this report.

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The UL System policies relevant to the issues that prompted this investigation are those governing tenure and program discontinuance. According to system policy, tenure is limited to the professorial ranks. A negative tenure decision in the sixth year of probationary service is followed by a one-year terminal appointment. Tenured status is retained until retirement, resignation, dismissal for cause, or termination resulting from financial exigency. It is granted and held only within an academic discipline, and retention is assured only within that discipline. The institution as a whole needs to be considered financially exigent for terminations to occur, and procedures for termination call for faculty participation.

The UL System's central administration and its board of supervisors adopted a separate policy for program discontinuance in 2004, apparently for the first time. The

policy states at the outset that the closing of a program can occur "for educational and/or budgetary reasons" and "after consultation with the appropriate faculty groups." "Displaced" faculty members are to be provided "appropriate professional retraining" and other assistance. The policy goes on to define discontinuance in more detail, saying that it can occur not only for educational reasons but also because of "strategic realignment," resource allocation, or budget constraints or for combinations of educational and financial reasons. "Faculty participation" in discontinuance decisions is encouraged, and members of the potentially affected program are to be heard on the matter. The institutional president's recommendation is to be made within 120 days of the initial recommendation, and all plans regarding appointment terminations are to be submitted to the board of supervisors within another sixty days. Terminations of tenured faculty appointments under this policy are made by the president "in consultation with appropriate faculty and administrators." The system president and the board review the recommended terminations prior to implementation. Absent compelling reason to do otherwise, no tenured appointment is to be considered for termination until nontenured appointments in the unit have been so considered. The policy also affords one academic year of notice, "every reasonable effort" to relocate the tenured faculty member elsewhere in the institution, and three years of recall rights. Affected faculty members may appeal a denial of specific rights "to a university committee."

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## Academic Freedom and Tenure: Northwestern State University

### I. Introduction

Northwestern State University, one of the two UL System institutions that are the focus of this investigation, was founded in 1884 as the Louisiana State Normal School. In addition to teacher training, it offered degree programs in nursing and business education. In 1944 the legislature changed the institution's name to Northwestern State College of Louisiana, in 1954 it became the first of the colleges to offer a master's degree, and in 1970 the governor approved another name change, for others of the system institutions as well, from "college" to "university." Student enrollment has declined considerably since reaching a high of approximately 10,500 in fall 2004, a drop attributed to enforcement of new

admissions standards. The president of Northwestern State University is Dr. Randall J. Webb. Dr. Lisa Abney became acting provost early in spring 2010 and was appointed provost shortly thereafter.

### II. Implementation of UL System Policies regarding Program Discontinuance

Beginning in summer 2009, the Northwestern State University administration undertook a program review with an eye to identifying "low-completer" or inefficient programs whose elimination would save the university money in the face of projected cuts of up to nearly \$11 million in state funding for the 2011–12 academic year. The program discontinuances were part of a plan

developed by the Louisiana Board of Regents to reduce overall costs by eliminating, condensing, or reorganizing “underperforming” programs. By the time the Northwestern State fiscal year ended in June 2010, the administration had discontinued a total of twenty-five programs, minors, and concentrations spanning three colleges, and the Association has identified sixteen tenured faculty members whose appointments were terminated with one year’s notice as a result of the program discontinuances.

The group initially charged with program review in summer 2009 was the Program Elimination Committee, a body appointed by the administration for the purpose of establishing criteria to identify at-risk programs on the campus. According to a faculty member who served on it, the committee did not make any recommendations for the elimination of specific programs. In January 2010, the administration set the committee’s membership at nine and changed its name to the Program Review Committee (PRC). Mr. Bill Brent, director of the School of Creative and Performing Arts, had chaired the Program Elimination Committee and continued as chair on the newly renamed committee. The committee met for a total of eight times beginning January 13, 2010, to carry out its charge, which it defined in the cover letter of its eventual report as “provid[ing] faculty input from a stepwise contingency plan for cuts to reduce expenditures in the event that our funding is not restored.” According to minutes from the committee’s initial meeting, Provost Abney had directed the committee to identify program eliminations that could result in savings of \$4 million to \$10 million.

The PRC’s report dated February 25, 2010, and addressed to Provost Abney lists seven types of data used by the committee to make its recommendations: completion rates, course efficiencies, program efficiency, faculty workloads, curricular templates, course enrollments, and program sustainability. “Other indicators,” unnamed, are cited as well. In all, the committee reviewed thirty-seven documents produced by the Office of Institutional Research before making its recommendations. The committee’s final report named a total of forty degree programs, minors, and concentrations that it recommended for discontinuance. Additionally, the report recommended that the president’s cabinet consider other cost-saving actions such as furloughs, a drastic reduction in release time, and the review and potential elimination of several academic support programs, including a new Office of Service Learning. Noting its belief that “the percentage of cuts to academics is excessive,” the committee also recommended the elimi-

nation of a vice president position and related administrative staff. The report’s attached spreadsheet of items ranked by priority for implementation shows three-year average completion rates for minors and majors in several programs, along with efficiency scores, the number of full-time equivalent faculty members, salary and benefits, operating expenses, and estimated total savings if discontinued. (Although the board policies define low-completer programs as any that do not average a graduation rate of eight students per year across a five-year span, the investigating committee notes that the data provided to the PRC are based on a three-year span.)

Faculty members who spoke to the investigating committee reported that they and their colleagues were not aware of how the PRC had been formed. Moreover, during the period when the PRC was preparing its recommendations for program discontinuances, the faculty as a whole was provided no meaningful information about the committee’s deliberations. Faculty members whom the investigating committee interviewed did not dispute that basic information about pressure from the UL System to review low-completer programs and about estimates of projected budget shortfalls had been announced numerous times in faculty forums and in e-mail communications from the provost, but the faculty members who met with the investigating committee provided entirely consistent accounts that no meaningful information about the PRC’s work and the way in which criteria were to be applied was revealed to them. The faculty’s only access to information during the evaluation process was through the PRC’s scant minutes, some of which were not made public until weeks after the process had been completed. The faculty senate president reported to the senate that neither he nor any other member of the PRC was at liberty to divulge anything about the committee’s deliberations beyond what was contained in the PRC’s published minutes. Adding to the faculty’s anxiety about the committee’s charge being carried out in relative secrecy was the fact that the PRC was composed primarily of administrators. Decisions about its recommendations would ultimately be made by the president’s cabinet, consisting solely of central administrators, including the provost. The minutes of the April 20, 2010, senate meeting report the provost as having said, in addressing a faculty senator’s concern about the absence of faculty representation on the cabinet, that inasmuch as she continues to teach, she herself represents faculty interests on that body.

A second excerpt from the same faculty senate minutes demonstrates the confusion surrounding the

Northwestern State faculty's understanding of the timeline of the discontinuance process. The PRC concluded its work on February 25 and submitted its report to the provost on March 8, but as of the April 20 meeting of the senate, the administration had yet to announce any decisions about program discontinuances. A senator expressed concern that, according to its charge, the PRC had to act with urgency so that Northwestern State could deliver its report to the UL System's board of supervisors in time for the board to pass on its recommendations to the state legislature by March 29. As events played out, the president's cabinet apparently did not discuss or act upon the PRC report. Nor did President Webb send a report to the board by the state legislature's March 29 deadline for all UL System institutions' proposed budget cuts. Once the PRC submitted its recommendations to the provost in early March, the Northwestern State administration provided no information about the recommendations until the end of the spring term.

In June, selected faculty members were called to meetings in the president's office, on short notice and with no advance explanation of the purpose of the meetings. President Webb; Provost Abney; Dr. Steven Horton, dean of graduate studies; and other administrators were present at these meetings. The faculty members in attendance were told that, as a result of their respective programs' elimination, their tenured faculty appointments had been eliminated and they were being served notice of a terminal 2010–11 academic year. In several instances, faculty members so notified report that their department heads did not know how their programs had fared in the review process and were therefore completely surprised by the actions against professors in the programs.

Following the notification meetings, Provost Abney sent an e-mail message to the campus faculty on June 18 reporting that the Northwestern State administration had been told, presumably by the UL System staff, to "move forward with the program elimination submissions in order to have these reviewed at the June meeting," rather than take the cabinet-approved recommendations to a special meeting of the board of supervisors scheduled for July. The e-mail listed which programs, concentrations, and minors were being discontinued: in all, one master's degree program, eight bachelor's degree programs, five concentrations, and eleven minors. Although rumors had circulated throughout the spring about programs that might be most at risk, news of the massive discontinuances and terminations came as a shock, not only to many of the affected professors but also to the faculty at large.

All of the affected professors who have communicated with the Association have stated that they received their official written notice of termination in late July. Those who received an offer for retention in an untenured, contingent appointment with a higher teaching load and reduced salary received the initial offer that August. The investigating committee has learned that six or seven of the affected professors chose to appeal their appointment terminations. All appeals were denied, with no explanation provided.

The sweep of the actions at Northwestern State University included the termination of the appointments of tenured professors in the discontinued programs in economics, journalism, political science, sociology, German, heritage resources, family and consumer sciences, aviation science, and other areas. The investigating committee views as one of the most astonishing actions in this catalog of discontinuances the Northwestern State administration's decision to eliminate completely the degree programs in the Department of Chemistry and Physics and to release all of the department's faculty members, including six with tenure. As noted earlier, the Louisiana Board of Regents' policies define low-completer programs as any that do not average a graduation rate of eight students per year across a five-year span. Nationally, the average graduation rate in both physics and chemistry is lower, about five to six graduates per year. However, according to the former chemistry and physics department head, whose position was terminated when the department was closed, this number may be misleading: because most undergraduate programs require students to complete lower-level coursework in hard sciences in order to graduate, physics and chemistry faculty members at non-Research I institutions carry heavy teaching loads despite not having many majors. Northwestern State's Department of Chemistry and Physics averaged slightly above the national average for degree completion rates in those fields, and the department's tenured faculty members all taught service courses, conservatively averaging about one hundred students apiece each semester. Tenured faculty members from the institution report that the department was productive and respected. Its faculty secured grant money, and a physics professor had brought a Nobel prize-winning physicist to the institution for an extended visit to lecture and work with students. In the fall term preceding the elimination of the chemistry programs, Provost Abney noted in an e-mail message to all faculty members that she had received a letter from the American Chemical Society commending two of the department's tenured professors

for their fine work with students and referring to the society's student chapter as "one of the finest in the country."

In June, the department's entire faculty was called to one of the meetings in the president's office, where faculty members were informed of the department's elimination and their resulting terminal year's notice. They were told they would have the opportunity to continue teaching lower-level courses as contingent instructors at a greatly reduced salary, but none of them expressed interest. (An April 2011 advertisement for an instructor position in physics at Northwestern State offered a salary of \$30,000.) Three of the released tenured professors have informed the Association that they found new positions at other postsecondary institutions, but they reported that two of their department colleagues reluctantly chose retirement over unemployment and that one has taken a job teaching at a nearby high school. One of the released professors noted that the administration made no attempt to relocate any of the faculty members into alternative suitable positions, even though they were variously qualified to teach biochemistry, mathematics, and other related subjects still being taught at Northwestern State University.

Despite the closure of the programs, concentrations, and minors and the related terminations of sixteen tenured faculty appointments, lower-level courses in nearly all of these fields continued to be taught when the 2011–12 academic year began, mainly by contingent instructors. In some instances, courses formerly taught by the released professors were assigned to people with clearly weaker academic qualifications. Although a few Northwestern State professors were relocated into other suitable positions in related fields following their program's discontinuance, none of the sixteen notified of the loss of their tenured appointments has reported being offered even the hope of a possible relocation if a suitable alternative position could be found. The extent to which projected budget shortfalls that reportedly prompted the administration's action may have been mitigated remains unknown to the investigating committee. The legislative session that would determine the 2010–11 budget, according to a May 6 e-mail message from Provost Abney, would not conclude until late June, yet faculty members received notice of program closures and of prospective appointment termination in early June. The chronology suggests the possibility that decisions to eliminate twenty-five programs or concentrations and to terminate sixteen tenured faculty appointments went forward before final budget figures for 2010–11 became known.

Details about the discontinued programs and the affected faculty members illustrate in depth the basis of the AAUP's concerns about faculty governance and the primacy of tenure at Northwestern State. The sixteen professors have in common the loss of their tenured positions, but the circumstances surrounding the terminations vary. Of the eleven affected professors who have sought assistance from the Association, seven have been laid off and either have found or are seeking positions elsewhere. Two others retired under duress because of financial considerations that made early retirement a less unattractive choice than unemployment, despite having been told that they were no longer eligible for the early-retirement incentive package offered by Northwestern State during the weeks prior to the announcement of the appointment terminations. The final two reluctantly agreed to retention in contingent year-by-year appointments as instructors, with increased course loads and substantially reduced salaries.

### III. Specific Cases: A Handful of Examples

The following paragraphs examine how the closure of programs at Northwestern State has affected individual faculty members.

#### A. PROFESSORS INVOLUNTARILY TAKING RETIREMENT FOLLOWING PROGRAM DISCONTINUANCE

##### 1. *Professor Mary Brocato*

Ms. Mary Brocato, a tenured associate professor of journalism, had taught at Northwestern State for eleven years as of June 2010, when the administration announced that the journalism program was being discontinued and her position terminated. Professor Brocato, who was within a few years of retiring without penalty, elected to retire, but it is undisputed that her retirement was entirely involuntary. She had intended to remain on the faculty for several more years and had therefore declined a university financial retirement incentive offer (an additional half-year's salary with a May 5 deadline for acceptance) only six weeks before she was told of the termination of her tenured appointment.

At the time of its elimination, the journalism program had more than one hundred majors, the highest student-retention rate on campus, and a solid record of highly successful graduates. Its Wise Endowed Chair in Journalism, one of only three endowed chairs in the university, helped to attract excellent students. The administration contended that the program was being discontinued because it was too expensive to maintain. According to Professor Brocato, however, the calculations

considered by the PRC did not take into consideration the facts that the program's budget included a significant percentage of two highly paid administrators' salaries and that the equipment needed to run the television and radio-production courses was used by programs across campus without cost to those other programs.

Although the Department of Journalism no longer exists, the production equipment, the sponsorship of the university's yearbook, and a number of journalism courses have been moved to the Department of Language and Communication. Former journalism courses, several of which Professor Brocato taught and for which she wrote course descriptions that continue to be used, are now designated as mass communication or mass media courses. Six former journalism courses were scheduled for fall 2011, and five were scheduled for spring 2012. Although UL System and Northwestern State policies require that every reasonable effort be made to relocate a faculty member being released on grounds of program discontinuance in another suitable position within the institution, Professor Brocato was not offered a position to teach her former courses. Instead of preserving the tenure of a long-serving faculty member, the Northwestern State administration reassigned Professor Brocato's courses and her sponsorship of the yearbook to a nontenured faculty member with an MA degree in English. A former adjunct instructor, whose undergraduate degree is in speech, has been given a full-time appointment.

Once it became clear that relocation to teach former journalism courses would not occur, Professor Brocato, who had been commended by her department for her skills in academic advising, approached Provost Abney about an advising position that Professor Brocato had been invited to consider accepting but had declined in 2009. When the provost declined to offer her the position, Professor Brocato decided to retire, despite having been informed that she would no longer be eligible for the previously offered retirement incentive.

#### 2. *Professor Frank Schicketanz*

Dr. Frank Schicketanz, a tenured associate professor of foreign language, had been the sole faculty member teaching German for fifteen years when the German concentration was eliminated and his position terminated. Like Professor Brocato, Professor Schicketanz was near retirement and had considered but ultimately rejected the financial retirement incentive offered at the end of the spring 2010 term. During that spring semester, Professor Schicketanz reported that there were

rumors about the elimination of low-completer programs but that no department meetings were held to discuss program discontinuances and no one informed him about the possibility of the elimination of German. According to Professor Schicketanz, the number of students in the German concentration was greater than the number of students in Greek, which is the concentration taught by the department head, a concentration that avoided elimination. Professor Schicketanz appealed the termination of his tenured appointment to both the institution's and the system's hearing bodies. Both appeals were promptly rejected, with neither body providing any explanation.

Professor Schicketanz held his tenure in the foreign-language concentration in the Scholar's College. In addition to teaching the German language courses, he taught a number of courses in German translation for the Scholar's College and courses in world literature for the language and communication department. According to Professor Schicketanz, courses he had taught or was qualified to teach continued to be offered in both the Scholar's College and the language and communication department, and he therefore requested that he be appointed to teach those courses. When his request was denied, he reluctantly decided to take retirement rather than lose credit for the significant amount of sick leave he had accrued. He told the investigating committee that, had he been informed that his position was being considered for elimination, he would have taken the early-retirement incentive of a half-year's salary when it was offered.

### **B. TENURED PROFESSORS LAID OFF ON GROUNDS OF PROGRAM DISCONTINUANCE**

#### 1. *Professor Bette H. Maroney*

Ms. Bette Maroney, a tenured associate professor in the Department of Family and Consumer Sciences, had been at Northwestern State for twenty-two years when the concentration in fashion merchandising and housing and interiors was discontinued and her tenured appointment terminated. She reports that she was not consulted about the data the PRC used in making its recommendation for discontinuance and that the way in which the data were presented did not fairly represent the health of the program. Although the administration asserted that its decisions to eliminate the concentration and to terminate her appointment were based on financial considerations, Professor Maroney told the investigating committee that she believes personal issues within her department may have been a factor.

Professor Maroney did not file a formal appeal, but she requested that the administration allow her to continue teaching other courses in the Department of Family and Consumer Sciences that she had taught in the past and that she was clearly qualified to teach. According to Professor Maroney, there were at least two additional possibilities for retaining her on the faculty: the department offered more than thirty credit hours of online instruction staffed by adjunct faculty members, and her graduate degree in vocational family and consumer sciences education qualified her to supervise student teachers and to teach Department of Family and Consumer Sciences courses. She reports that her tenured appointment was terminated while full-time and part-time nontenured faculty members in her area of competence were retained. Professor Maroney, laid off in June 2011, continues to seek a suitable position elsewhere.

## 2. Professor ElizaBeth Guin

Dr. ElizaBeth Guin, a tenured full professor and program director of heritage resources, had been at Northwestern State University for six years when her program was discontinued and her tenured position eliminated. She had been engaged in 2004 to guide the heritage resources program, an interdisciplinary BA and MA degree program that combined history, historic preservation, anthropology, and geography. Under her leadership, the program had grown and had attracted outside funding from a variety of prominent sources, including the National Park Service.

During the spring 2010 term, when programs were being considered for discontinuance, Professor Guin reports that she was never invited to join in any discussions with the administration or the PRC about the heritage resources program. Only after the administration announced the program's elimination, citing low enrollment as the basis for the decision, did Professor Guin discover that what she asserts were inaccurate data had been used to evaluate the program. She states that, even in its first year, the program graduated the minimum of five graduate students and that the number increased every year. Figures given to the PRC showed the upcoming fall semester's class to have only two incoming graduate students. Although Professor Guin produced an e-mail message to her dean confirming at least fifteen incoming students, with the possibility of more joining before the fall term began, the decision to discontinue the program was allowed to stand.

The heritage resources program had five members on its faculty who were tenured at the time of its discontinuance. One held a joint appointment in heritage

resources and history. When the program was closed, the professor holding the joint appointment was retained to teach history, and the other three tenured professors were retained to teach core courses in anthropology and in geography. The position held by Professor Guin was, however, terminated.

After the potential for the program's elimination was made public, historical preservationist societies, government agencies, and organizations that had collaborated with the program or had provided it with funding began a letter-writing campaign, asking the Northwestern State administration to save the program from closure. Professor Guin alleges that the administration blamed her for this campaign and, as a result, she was the only tenured heritage resources faculty member not relocated to another department. She had been promoted to full professor in spring 2010, and in every year of her affiliation with Northwestern State, she had received the highest merit evaluation for her teaching of cross-listed courses in heritage resources and history. Professor Guin appealed her appointment's termination and the elimination of the heritage resources program. Her appeal was denied with no explanation provided. After completing her terminal year at Northwestern State, Professor Guin, like Professor Maroney, continues to seek another position.

## C. PROFESSORS ENGAGED AS UNTENURED INSTRUCTORS FOLLOWING THE TERMINATION OF THEIR TENURED APPOINTMENTS ON GROUNDS OF PROGRAM DISCONTINUANCE

Two tenured professors whose appointments were terminated on grounds of program discontinuance were retained in untenured instructor positions at substantially reduced salaries. One of these two faculty members—Dr. Robert C. Jones III—sought the Association's assistance.

A tenured associate professor of economics in the College of Business, Professor Jones had taught at Northwestern State University for sixteen years when the economics concentration was eliminated and his tenured appointment was terminated. He filed an internal appeal, which was denied, and he subsequently initiated litigation in US District Court to seek reinstatement to his tenured appointment.

During spring 2010, Northwestern State faculty members in low-completer programs across campus had become concerned about rumors of possible program and position eliminations, but Professor Jones reports that members of the economics faculty did not have reason to believe their positions were in jeopardy. There had been no discussion in the college about

discontinuing the economics program, and economics was a solid component of the business curriculum. Although Professor Jones's letter of appointment termination from Provost Abney stated that "the decision to eliminate this program was arrived at after careful and lengthy examination by the Program Review Committee," Professor Jones asserts that the closure of the economics concentration was implemented without discussion or recommendation by the PRC. His assertion is confirmed by a statement from the president's cabinet in response to the PRC's report.

In both his campus appeal and his legal complaint, Professor Jones contended that the economics concentration did not exist beyond a paragraph in the catalog, that his position had always been considered a part of the business administration program, and that his position at Northwestern State therefore still exists. No courses for the concentration, except those required for the business administration curriculum, had been offered for the last thirteen years. The administration's decision to remove the economics concentration from the course catalog and to move economics courses out of the College of Business and into the Department of Social Sciences had no effect on the need for economics courses as requirements for business administration, computer information systems, and accounting majors. In short, according to Professor Jones, Northwestern State did not offer the coursework necessary for students to earn an economics concentration, and the administration's elimination of the concentration and transfer of economics courses to a different college served only to eliminate his tenured position and salary and to relieve the institution of an accreditation requirement of the Association to Advance Collegiate Schools of Business that economics courses be taught by faculty members with appropriate terminal degrees.

Professor Jones reports that the Northwestern State administration made no good-faith effort to identify another suitable position for him either in the College of Business (now the School of Business in the College of Science, Technology, and Business) or in the College of Social Sciences. In his request to remain a tenured professor of business, he stated that he had taught both lower- and upper-division courses in finance for a number of years and that he was also qualified to teach general business courses. The administration denied his request on grounds that he did not have sufficient graduate hours to be "credentialed" in any field other than economics, despite his having been granted tenure in the College of Business in 2000 while teaching upper-level finance courses.

Unwilling to uproot his family, Professor Jones accepted an untenured instructor position in the Department of Social Sciences at approximately half his previous salary. He currently teaches a heavier load of the same economics courses he had taught since 1994 in the College of Business, and every business major on campus is still required to take his courses to fulfill the degree requirements.

#### **IV. Issues of Concern at Northwestern State University**

Analyzed here are what appear to the investigating committee to be the central issues raised by the implementation of program discontinuance policies at Northwestern State University.

##### **A. FACULTY PARTICIPATION IN KEY DECISIONS**

###### *1. The Faculty's Role in Determining the Extent of the Financial Crisis*

In their November 11, 2011, meeting with the investigating committee, Northwestern State administrators confirmed their position that potential cuts in funding for the institution were substantial enough to necessitate the elimination of programs and the termination of tenured faculty appointments. As dire as the financial crisis was considered to be in 2009–10, to the point that the PRC expressed the hope that its recommendation would "allow the university to survive during the current period," the administration nevertheless chose not to declare a state of financial exigency. That determination, the administration explained, was out of concern for public perception of the institution. The decisions to avoid a declaration of financial exigency and to implement instead the UL System policy for academic program discontinuance to address budget concerns were ones in which the faculty played no role.

In the judgment of the investigating committee, the extent of the UL System's financial crisis makes Regulation 4c (terminations mandated by financial exigency) of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure* rather than Regulation 4d (terminations based essentially on educational considerations) operative in the Northwestern State and other UL System cases. Indeed, the elimination of core departments, as occurred at Northwestern State, can hardly be justified as action that enhances the institution's educational mission, as Regulation 4d would require. Regulation 4c calls for a faculty body to participate in the decision that a financial crisis exists or is imminent and that

feasible alternatives to terminating faculty appointments have been pursued. If there were any opportunities at Northwestern State for a faculty voice in these initial decisions, they have not been revealed. Discussions evidently took place among central administrative officers in closed sessions.

### *2. The Faculty's Role in Program Discontinuance*

The group responsible for making recommendations to the president's cabinet for program discontinuance was the PRC. Faculty members interviewed by the investigating committee reported that when the PRC began its work in January 2010, they and their colleagues were unaware of how the committee had been formed. The faculty senate president was appointed to it, but the faculty senate, which functions as the university's committee on committees, was not consulted about other faculty representatives to the committee. The PRC, in its March 8 executive summary, described itself as "a group of faculty members," but six of the nine members held administrative appointments. In the investigating committee's meeting with the administrators, Provost Abney reported that she, in consultation with other upper-level administrators, had appointed the committee. When the investigating committee expressed concern about administrators comprising two-thirds of the committee's membership, the provost defended the PRC's composition by explaining that Northwestern State academic administrators consider themselves faculty members and can therefore represent the faculty's interests.

The UL System academic program discontinuance policy states that "[a] recommendation for an internally initiated program discontinuance will be reviewed and discussed with the members in the department or program." Without exception, faculty members whose programs the PRC recommended for discontinuance reported to the investigating committee that no discussions took place with the relevant department or program faculty, nor were they afforded the opportunity to review the recommendations. Had those discussions and reviews taken place, affected faculty members told the investigating committee, they could have raised issues such as inaccurate program data and alternate methods of academic reorganization. The June meetings at which faculty members learned of the elimination of their programs and their tenured appointments were the first notice to them and to the rest of the faculty of what were by that time final administration decisions.

Among the concentrations receiving notice of elimination in June were food and nutrition, economics, fashion merchandising and housing and interiors, and

recreation administration, although none had been reviewed or recommended for closure by the PRC. A boldface addendum to the PRC's March 8 executive summary states that committee members were informed that administrators had identified the concentrations as ones the PRC had "overlooked" and that the president's cabinet had approved them for elimination. In the case of these concentrations, there was virtually no consideration that involved faculty participation.

### *3. The Faculty's Role in the Identification of Tenured Professors for Termination of Appointment*

Association-supported policy calls for faculty approval of the person or group charged with responsibility for identifying faculty members for release in cases of financial exigency. The UL System program discontinuance policy, however, gives authority to the president "in consultation with appropriate faculty and administrators" to identify tenured faculty members for release. The PRC was the only group involved in the discontinuance process that had faculty representation, however slight, but the committee's published minutes provide no evidence that President Webb or Provost Abney consulted with the committee about the termination of tenured appointments. PRC members were undoubtedly aware that their recommendations for eliminating programs would affect faculty positions, but they appear to have had no role in identifying which positions, if any, would be eliminated.

From its discussion with Northwestern State administrators about the termination of tenured faculty appointments, the investigating committee finds that Provost Abney and Dean Horton were the administrators primarily responsible for recommending which faculty members would face appointment termination. In a meeting with the committee, the provost, supported by UL System attorney Winston DeCuir, defended the identification of the sixteen tenured faculty members for release by referring to the UL System policy that a faculty member's tenure is held only in a program or academic unit. Relying on a narrow interpretation of this policy, the administration contended that if a program, or a concentration within a program, is discontinued, the faculty positions within that program or concentration cease to exist. In a later meeting at Southeastern Louisiana University, however, Mr. DeCuir acknowledged to the investigating committee that discontinuance of a program in the UL System did not make termination of tenured faculty appointments mandatory, only possible. The investigating committee is deeply troubled by what appears to be the administration's unnecessarily pinched

interpretation of UL System policy to justify the termination of the sixteen tenured appointments at Northwestern State University.

Directly related to the identification of tenured faculty members for release is the issue of preference to be given to tenure in terminating appointments. In this matter, AAUP and UL System policies are close. Under Regulation 4c, the institution, in terminating tenured appointments, will not at the same time make new appointments or retain a nontenured faculty member except in extraordinary circumstances in which a serious distortion of the academic program would otherwise result. Under the 2004 UL System's academic program discontinuance policy, "unless there is a compelling academic reason to do otherwise, no appointment of a faculty member with tenure will be considered for termination until the appointments of faculty members in the unit without tenure have been considered for termination." In three of the faculty cases described earlier, untenured faculty members were retained to teach courses that released tenured faculty members were qualified to teach.

#### **B. RELOCATION OF RELEASED TENURED FACULTY MEMBERS TO OTHER SUITABLE NORTHWESTERN STATE POSITIONS**

UL System policy in cases of terminations of tenured faculty members on grounds of program discontinuance is similar in wording to the Association's Regulation 4c in that it provides that "every reasonable effort will be made to find another suitable position for the faculty member within the university." The tenured faculty members who received notices of appointment termination and who spoke with the investigating committee all reported that they had hoped to remain on the Northwestern State faculty in suitable positions.

With so few tenured faculty members having been relocated to other suitable Northwestern State positions following the discontinuances, the investigating committee was particularly interested to know the administration's view of its obligations to tenured faculty members in this regard. In their meeting with the committee, officers of the administration defended the lack of success in relocating faculty members to suitable alternative positions on two bases: the limited availability of suitable positions and faculty members' credentials not meeting SACS standards for other positions.

As to the first basis, Northwestern State administrators asserted that a tenured faculty member could not be relocated to another tenure-line appointment elsewhere in the university unless an open tenure-line

position already existed in a department appropriate to the faculty member's credentials. Only if such a position were available, they contended, could the faculty member then be "rehired" into the position, and UL System policy would require that the appointment be probationary for tenure.

UL System policy also refers to the possibility of mutually agreeable "campus transfers" of faculty members from one department to another in cases of program discontinuance, a provision that suggests that a faculty member's position can be moved without requiring the faculty member to be "rehired" into a new position. How such transfers might be compatible with the relocation policy cited by the administration is unclear. What is known to the investigating committee, however, is that a transfer from a released faculty member's department to another on campus is precisely what a number of the affected faculty members said they desired. The investigating committee is not aware of any instances in which the administration made the possibility of "campus transfers" available to affected tenured faculty members. If some transfers did occur, the committee is not aware of why the provision for such transfers was not consistently applied.

As to the second basis for denying relocation, Dean Horton, who serves as SACS coordinator at Northwestern State, asserted to the investigating committee that his evaluation of faculty members' credentials found some faculty members unqualified by SACS accreditation standards to be relocated to other positions, even to positions where those faculty members would be teaching courses they had previously taught. Provost Abney, for example, informed Professor Jones that he lacked six of the eighteen graduate hours in finance required by SACS. The investigating committee's experience is that higher education accrediting bodies use a more nuanced approach to evaluation that considers teaching experience, research, and publication in a field.

The faculty cases cited earlier in this report reflect the various ways in which the institution did not meet its obligations to relocate tenured faculty members. The "rehiring" of released tenured professors into untenured instructor positions, however, raises the investigating committee's most significant concerns about the administration's lack of respect for tenure in the discontinuance process. According to the appeal of one of the professors who spoke to the investigating committee, his position was not technically eliminated when his concentration was discontinued, but in order to continue teaching his courses, he was forced to

accept a position that stripped him of his tenure, his rank of associate professor, and almost half his salary. The UL System policy speaks of relocating faculty members to “suitable” positions, but the investigating committee is deeply concerned that, by any objective standard, the instructor positions offered to released tenured faculty members cannot be considered remotely “suitable.” According to tenured faculty members who had the opportunity to apply for instructorships but who chose instead to leave the university—some of whom had found other positions and some of whom had not—the formerly tenured faculty members refused the instructor positions because they viewed them as an unwarranted diminution of their faculty status and entirely unsuitable.

### C. OPPORTUNITY FOR A HEARING

The 2004 UL System’s academic program discontinuance policy states simply that “a faculty member whose appointment is terminated for reasons of program discontinuance has the right to appeal denial of specified rights to a university committee.” Attached to the letters of termination from the Northwestern State administration to sixteen tenured faculty members were a copy of “Policies and Procedures for Separation Appeal Committee” and a form to be used in filing an appeal. The policy provides for an appeal committee consisting of two faculty members recommended by the faculty senate, three faculty members or administrators recommended by the president, and two persons recommended by deans of colleges not represented by the senate selections. The committee’s charge is to “review all materials submitted by the person who appeals, and administrators may submit rebuttal materials if the committee so requests. The committee submits its recommendation to the President and Provost, who may overturn or accept it. The President’s decision is final.” There is no appeal to the UL System.

According to Provost Abney, only six or seven of the sixteen tenured faculty members chose to file an appeal. In the investigating committee’s conversations with affected professors who did not appeal their appointment terminations, some reported that they believed filing appeals would be futile, and some said they feared that appeals might harm their chances to be relocated to other departments or programs within the institution. In the cases of the six or seven tenured faculty members who did file appeals, Provost Abney confirmed that all of those appeals were denied. She reported that the record of the appeals did not come directly to her for action but went “through the

provost’s office” to the president for a final decision. In the administrators’ meeting with the investigating committee, President Webb indicated that UL System attorney DeCuir reviewed the files before they were submitted to him.

In its review of the Northwestern State faculty handbook, the investigating committee found no description of the Separation Appeal Committee among the handbook’s provisions, and in its discussion with various faculty groups it found faculty members to be unaware that such a committee existed or that the faculty had ever played a role in developing or approving such a committee. Although two of the appeal committee’s members are to be appointed by the faculty senate, senate leaders confirmed that the administration requested no appointments to the committee and that no list of the committee members was made public. Faculty members appealing their terminations reported that they turned in their appeal forms to the secretary in the provost’s office, had no direct contact with the appeal committee, and received no report from the committee of its findings in their cases. Faculty members received only a letter from President Webb several months later notifying them that “[t]he University Appeals Committee [sic] has met and has recommended that your appeal be denied. I concur with their assessment, and the appeal of your termination as a result of the program elimination is denied.” The president provided no further explanation of the basis for either the appeal committee’s reported recommendation or his decision to deny the appeal.

At the time of this writing, the investigating committee has been unable to find a record of the appointment of a Separation Appeal Committee, nor any record of its meetings. Whoever the actual appointees, if any, the investigating committee finds it of great concern that the description of the committee allows for up to five of its seven members to hold administrative rank. As to the differently named University Appeals Committee to which the president refers in his letters of denial to faculty members, the investigating committee is unaware of who might have appointed such a committee, whether or not faculty members were represented on the committee, or what the committee’s operating procedures might have been. No description of a University Appeals Committee appears in any Northwestern State document to which the investigating committee has had access.

Even had the Separation Appeal Committee procedure been scrupulously followed, which the investigating committee gravely doubts, the committee would

nevertheless have similar concerns about its adequacy for due process. As the policy is written, the professor who appeals assumes the burden of demonstrating that the termination was improper and of doing so to a largely administration-appointed group. Because the terminations were the result of administrative action to eliminate the programs in which the tenured professors served, the faculty members who appealed their terminations found themselves in the impossible position of having to appeal the decisions to discontinue their programs without having direct knowledge of how those decisions were made.

According to UL System attorney DeCuir, the Northwestern State administration sought his assistance in drafting provisions for the Separation Appeal Committee in anticipation of additional program discontinuances and notification in 2010 of terminations of tenured appointments. The Northwestern State University faculty handbook, however, has long contained provisions for a grievance committee, a standing committee whose members are tenured professors or associate professors appointed by the elected faculty senate. Although not conforming to the Association's standard that the institution bears the burden of proof in involuntary termination of tenured faculty appointments, the Northwestern State grievance policy does afford the complainant a hearing before the committee, the ability to call witnesses and to have an attorney present in an advisory capacity, the opportunity to request a transcript of the hearing, and the right to appeal a negative decision by the president to the UL System's board of supervisors. The investigating committee finds it deeply disturbing that the administration chose to create a Separation Appeal Committee with its deficient procedures rather than to rely upon an existing standing committee with its considerably greater due-process protections.

## V. Conclusions

1. The administration of Northwestern State University showed disregard for the judgment of the faculty in virtually every aspect of the program discontinuance process. Decisions, so central to the educational mission of the institution that they determined which academic programs would be sacrificed and how tenured professors were to be affected by the elimination of programs, were made behind the scenes by chief administrative officers without meaningful consultation with the faculty.

a. The administration acted in disregard of the Association's Regulation 4c (termination of faculty appointments on financial grounds) by failing

to consult the faculty in decisions that a financial crisis existed or was imminent and that feasible alternatives to terminating faculty appointments had been pursued.

b. The administration's actions, in constituting an administratively appointed committee with minimal faculty representation to make determinations of program discontinuance and in failing to consult with the program faculty in the process of discontinuance, fell severely short not only of the expectations of the Association's Regulation 4c but also of the UL System's policy for academic program discontinuance.

2. The Northwestern State University administration showed utter disregard for tenure in virtually every aspect of the discontinuance process. There is no available evidence to indicate that the administration placed any priority on the protection of tenure rights. On the contrary, ample evidence indicates that the administration consistently made choices to avoid rather than to honor its commitment to tenure, even in cases where it was apparent that the quality of education would suffer.

a. In its action to create a special appeal procedure for terminations on grounds of program discontinuance that denied affected faculty members the right to an on-the-record adjudicative hearing before a faculty body, the administration failed to provide adequate due process as required by Regulation 4c.

b. By terminating the appointments of tenured faculty members before those of untenured faculty members, the administration acted in disregard of the Association's Regulation 4c and the UL System's own policy for academic program discontinuance.

c. The administration also acted in disregard of the Association's Regulation 4c and of the UL System's policy for academic program discontinuance by failing to make reasonable efforts to identify suitable positions for the affected tenured professors.

d. In retaining some of the tenured professors in untenured instructor positions and in its similar offer of retaining others, the administration negated its claim that the tenured professors' positions were not needed following program discontinuance.

3. Finally, because the Northwestern administration instituted a process in which senior tenured professors can be effectively forced into undesired retirement, in which tenured professors can be laid off without reasonable effort made on their behalf for relocation into

other suitable positions, and in which tenured professors can be left with no alternative but to take contingent untenured positions at drastically reduced salaries—all with a complete lack of transparency—meaningful

faculty tenure currently does not exist at Northwestern State University. Without a strong tenure system and chief administrative officers who respect it, academic freedom at the institution remains insecure.

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## Southeastern Louisiana University

### I. Introduction

Southeastern Louisiana University, the second of the two institutions of particular concern in this report, was founded in 1925 as Hammond Junior College. Its rapid growth immediately spurred by a substantial population increase in the area, the junior college in 1928 became Southeastern Louisiana College and was placed under the State Board of Education. The board soon authorized a variety of four-year programs, and in 1939 the institution conferred its first baccalaureate degrees. SACS, the regional accrediting agency, approved its accreditation in 1946. Following World War II, the institution underwent exponential growth, achieving the status of university in 1970. Student enrollment exceeded fifteen thousand by 1997 and has remained relatively stable. Southeastern's president is Dr. John L. Crain, who succeeded Dr. Randy Moffett in 2009. Dr. Tammy M. Bourg served as provost during the period covered in this report.

### II. Implementation of UL System Policies regarding Program Discontinuance

The focus of the Association's concern at Southeastern has been the discontinuance of the undergraduate majors in French and French education with notification to the French program's three tenured professors—Margaret Marshall, Katherine Kolb, and Evelyne Bornier—of the termination of their appointments after a final academic year (2010–11). The decision was communicated to those affected on or shortly after June 1, 2010. Upper-level French courses, taught by the affected professors, were largely to be phased out, but lower-level courses would still be offered. In the event, eleven French courses were offered in the fall semester of the following academic year (2011–12), including two at the upper level. At one time or another, all the affected professors had taught all of the courses that continue to be offered, though most lower-level sections had been taught by two contingent instructors engaged on a year-by-year basis. The Department of Foreign Languages and Literatures, the home department of the affected professors, also

offered a wide array of courses in Spanish, German, Italian, and Latin. In 2009 Professor Kolb taught primarily German courses with one French course as part of her four-course load.

By the conclusion of the professors' final year, one of the two contingent instructorships had not yet been filled for the academic year 2011–12, while all appearances pointed to plans to renew the appointment of the second instructor. Word reached the three tenured professors that one of them would be considered for the single instructorship at an instructor's rank with contingent status and pay and that they were to be invited to apply in order of seniority.

The June 1, 2010, announcement of the discontinuance of the majors to the department head, the affected professors, and the student majors arrived at an otherwise highly auspicious time for the French program. A comparison of that program with other French programs at Louisiana's state universities showed that it was ranked second, together with the program at the University of Louisiana at Lafayette, although the latter has a higher student to teacher ratio (the first-ranked program is that of Louisiana State University at Baton Rouge). Moreover, from information included in Professor Marshall's subsequent grievance and confirmed by other sources, the investigating committee learned of programs with a single declared major at other state institutions in the UL System that were not cut. At the time of the discontinuance of the majors, the Southeastern program had approximately twenty-five majors (an increase of about fifteen relative to ten years before) taught by faculty members holding two-and-a-quarter positions (the other three-quarters of one professor's time was dedicated to German)—a higher faculty-to-student ratio than that of the Spanish and Spanish education programs. Of the eleven courses offered in the 2011–12 academic year, one of the upper-level courses has about twenty-five enrollees, while sections of language courses, which previously enrolled from about fifteen to about twenty-five, currently are

enrolling about thirty students (the Modern Language Association recommends a maximum of fifteen). Student demand for French courses is increasing, with students receiving scholarships from CODOFIL (the Council for the Development of French in Louisiana) and from endowed funds solicited by the Southeastern French faculty. The program offered study abroad in several French-speaking countries, for which the faculty had also successfully solicited endowed scholarship funds and arranged student exchanges.

The faculty in the program maintained strong ties to the university and the general community by sponsoring public lectures, performances, and French clubs; by arranging sister-city agreements; and by serving as liaisons with the French consulate in New Orleans and the French-American Chamber of Commerce. In the only state in the union to be officially French-English bilingual, the program supplied the workforce and the public schools with French speakers and teachers, the current demand for which is significantly higher than the supply. In addition to the awards and honors that will be mentioned below, members of Southeastern's tenured French faculty were also recipients of a Fulbright Fellowship and of membership in the French Order of Academic Palms (French Ministry of Education) and held the positions of president of the CODOFIL Consortium of Louisiana Colleges and Universities, vice president of the American Association of Teachers of French, and president of the Louisiana Foreign Language Teachers' Association.

The program's three faculty members have distinguished individual professional accomplishments. Margaret Marshall—of the released tenured French professors the one with the most years of service at Southeastern—was in France conducting research and a university study-abroad program in June 2010 when she learned of the discontinuance of the French majors and of the termination of her tenured appointment. A full professor three years from expected retirement, Dr. Marshall was paid a salary of \$79,200. On April 19, 2011, she was offered an instructorship for the following academic year at a salary of \$48,000, an offer she refused.

At the time of the terminations, Professor Katherine Kolb had just completed a term as the holder of an endowed full professorship, had been granted Southeastern's President's Award for Excellence in Research, and had obtained a highly competitive Board of Regents Awards to Louisiana Artists and Scholars (ATLAS) grant to cover a rare sabbatical leave for 2010–11. In mid-May Professor Kolb received a call from

Provost Bourg, who informed her that Southeastern would not be providing sabbatical funds. The provost explained that giving sabbaticals to some faculty members was inappropriate at a time when other faculty members might be facing layoff. The possibility of retirement as an alternative to termination had by then become less attractive by the withdrawal of financial incentives offered in May 2009, which Professor Kolb had foregone at that time in order to undertake her sabbatical. Appalled, however, at the prospect of dismissal unless she accepted an untenured instructorship, Professor Kolb retired under duress effective May 2010. During summer and fall 2011, she held a visiting appointment in the Department of Romance Languages and Literatures at Harvard University, and she remains in close touch with her Southeastern French colleagues in joint efforts to obtain redress.

After Professor Marshall declined the instructorship, the invitation was extended in May to the third faculty member, Evelyne Bornier. Despite her strong preference to decline the offer, Professor Bornier ultimately accepted it out of economic necessity when her efforts to locate a position elsewhere did not bear fruit (according to at least one potential employer, the reason was that as an associate professor, she would cost more than a beginning assistant professor).

Professor Marshall appealed the decision to terminate her tenured appointment to the senate's Faculty Grievance Committee on November 1, 2010. Among her arguments, she pointed out that she had been granted tenure in 1989, when the grounds for terminating her appointment were confined to moral turpitude and financial exigency, with program discontinuance not added until 2004. The committee sent its report to President Crain on December 17, recommending unambiguously that the termination be rescinded and that she be retained in her department at her current salary and rank. Professor Bornier followed suit, also seeking reinstatement with retention of departmental tenure, rank, and salary. On April 6, the grievance committee unambiguously upheld Professor Bornier's appeal with its requested remedy, stating among its findings that the change in rank from associate professor to instructor constituted a demotion without demonstration of cause. On April 14, 2011, the three French faculty members sent a letter to the Washington office of the AAUP, seeking the Association's assistance. On April 28, after discussions with the three French professors and with Dr. Alvin Burstein, a retired department head at Southeastern Louisiana University and president of the AAUP's Louisiana conference, AAUP associate general

secretary Jordan Kurland wrote President Crain to convey the Association's support for the grievance committee's findings and recommendations.

A meeting of the faculty senate was convened on May 4, 2011, for open discussion of the discontinuance of the French majors and the termination of the three tenured appointments. President Crain by then had officially rejected both appeals. Professors Marshall, Kolb, and Bornier all spoke at the meeting.

On May 11, the three French professors jointly initiated litigation in the parish of East Baton Rouge, state of Louisiana, against Southeastern, the state's board of regents, and the UL System's board of supervisors. Their case is still pending as of this writing.

On May 12, the faculty senate adopted a resolution, incorporating eight "whereas" clauses identifying broken rules and disregarded recommendations, that concluded by strongly recommending reinstatement of all three faculty members with existing tenure, rank, and salary.

The previously mentioned June 6 Bérubé statement on UL System program discontinuance and resulting actions against tenure was greeted warmly by supporters of the French professors at Southeastern and by faculty members throughout the system (and indeed throughout Louisiana and beyond). On June 22, the three professors filed a complaint with Dr. Belle S. Wheelan, president of the SACS Commission on Colleges. On September 7, having acquired extensive information on potential additional actions against tenured appointments in the UL system, the senior AAUP staff met concerning the announcement of the investigation.

News of the impending investigation prompted President Crain, in a September 29 message distributed to "the campus community," to assert the AAUP's alleged lack of authority in the matter and to state that ongoing litigation would prevent those who participated in the decision-making process from speaking with members of the investigating committee. A follow-up letter advised that anyone from the AAUP with questions should send them in writing to UL System general counsel Dianne Irvine.

According to communications from UL System president Randy Moffett and others, President Moffett would be "out of state" during the investigating committee's stay in Baton Rouge, and he did not believe that a meeting of the committee then with members of his staff would be useful. He did, however, approve the meetings the committee was scheduling with the presidents and provosts of Northwestern State on November 11 and of Southeastern on November 15, at both of which an attorney from the UL System staff was present.

The system's general counsel Irvine was herself present at a meeting of the investigating committee with the president and the provost of the University of Louisiana at Lafayette. As a condition of their meeting with the investigating committee, the administrators concerned had stipulated the receipt of a sampling of questions in advance, which the committee provided them.

### III. Issues of Concern at Southeastern Louisiana University

Analyzed here are what appear to the investigating committee to be the central issues raised by the actions of the Southeastern Louisiana University administration.

#### A. FACULTY PARTICIPATION IN KEY DECISIONS

The AAUP's Regulation 4c, its recommended standards for terminating faculty appointments mandated by financial exigency, calls for a meaningful faculty role in the decision that such a financial crisis existed or was imminent and that feasible alternatives to such terminations had been pursued. It then places primary responsibility on the faculty for judging where within the overall program terminations should occur. To the best of the investigating committee's knowledge, the Southeastern faculty played no role in reaching the decision that a financial crisis of a gravity requiring the release of tenured faculty members existed. Faculty members told the investigating committee that feasible alternatives to the termination of faculty appointments, such as a general furlough, had been supported by the faculty but rejected by the president. In a communication to the faculty, the president went so far as to indicate that imposing a furlough was illegal. Indeed, the non-tenure-eligible faculty members were subjected to a furlough a few weeks later, although the ability to furlough tenured faculty members involuntarily has recently been a matter of dispute in Louisiana. A startling indication that Southeastern was not in the state of financial duress defined by the AAUP as exigency is found in the raises received by numerous faculty members, even in the Department of Foreign Languages and Literatures, in the very year that the appointments of their colleagues were being terminated.

The process of identifying the criteria for the cutting of programs apparently began in late 2008 and was directed by department heads, some of whom involved other faculty members in their responses and some of whom did not. According to President Crain, the data thus collected were referred to an ad hoc committee, which drew up a list of approximately twelve to fourteen desiderata for retained programs. Meanwhile, the

statewide board of regents had developed lists of low-enrollment, low-completer programs. This phase was concluded in December 2009. Faculty members informed the investigating committee that at that time President Crain stated that no faculty positions would be cut. In early 2010, the president established a Task Force regarding Criteria for Academic Program Retention and Elimination. Its membership and charge remained largely unclear during the period in which it was working, with even its existence unknown to many Southeastern faculty members. While the senate did know of its existence, the task force was not a senate committee. According to information provided during interviews, the task force consisted of two members from each college, the dean and a faculty member chosen by the president, who told the investigating committee that the selected faculty members were long-serving tenured professors. The task force's meetings were closed to non-members, and members were forbidden to discuss any of the deliberations except those contained in official minutes. Meeting with the provost for eight days, the task force developed criteria with which to determine the programs to be continued, with the final criteria corresponding largely with the list of desiderata. The task force then applied the criteria to Southeastern programs, adding further factors such as the availability at nearby institutions of similar programs, cultural impact, the ability to attract well-qualified students, and the course of the students' lives subsequent to graduation. The result of the task force's work was the division of programs into three categories ranging from "strong" to "weak," the latter of which contained seven programs. The task force did not make recommendations concerning the elimination of programs, a decision made by President Crain alone. Faculty members informed the investigating committee that in spring 2010 he made further statements to the senate that no faculty positions would be eliminated.

At the end of May, however, President Crain called an exceptional meeting of the task force and told its members that the French majors were being discontinued and the three professors released, despite the fact that the committee had not made such a recommendation and that the French majors met many of the criteria for continuance. No involvement of faculty bodies such as the senate or its committees occurred. Indeed, as noted above, both the senate's Faculty Grievance Committee and the senate itself continued to urge the administration to reinstate the three French faculty members. On June 1, 2010, the president's office notified the chair of the Department of Foreign Languages and Literatures,

the sole department to suffer terminations, of the discontinuance of the French majors and the three terminations. This step was taken without prior notice to or involvement by her or by the French faculty, in violation of a board of supervisors policy, as explained in the report and recommendations of the Faculty Grievance Committee. At the June meeting of the board of supervisors, board members told the attending students that they should have made their views known to the campus committee, the board apparently having assumed that this board stipulation had been observed, although it had not. Moreover, while the faculty members of programs identified in the subsequent academic year as candidates for reductions were permitted to present counterevidence to the administration, such an opportunity was not afforded to the three French professors or to their department chair. For example, when faced the following year with the prospect of discontinuance, the faculty in Spanish proposed combining the majors in Spanish and Spanish education, which produced an aggregate number of student majors higher than the minimum required for program continuance. The aggregation of student numbers in French and French education would have produced a similar result. When the investigating committee inquired of President Crain why, of the seven majors in the "weak" category, he had selected only the French majors for elimination, he replied, "Cost."

According to information obtained by the investigating committee, the board of supervisors, after reviewing the available information, initially moved to save the French majors. After a subsequent communication from President Crain, however, they were again slated for termination. When the investigating committee, noting that the French minor has been retained and that French courses continue to be taught both at the lower and upper levels, inquired of President Crain what constitutes a program and whether tenure resides in only the one-third of the program constituted by the majors, he responded that the university has to decide what constitutes a program when it makes a decision to terminate an appointment on grounds of program discontinuance. Upon a further question about the fact that one of the released faculty members taught only one-quarter of her courses in French and the rest in German, the attorney for the UL System intervened, instructing President Crain not to respond and advising the committee members to refrain from asking specific questions lest they be deposed in the faculty members' lawsuit.

The investigating committee finds, as was noted by the grievance committee, that the stipulation in the UL

System policy for academic program discontinuance that nontenured faculty members be released before tenured faculty members absent a “compelling academic reason” was not observed. The investigating committee finds further that with regard to the board of supervisors’ stipulation that “every reasonable effort will be made to find another suitable position within the university” for a tenured faculty member who has been released because of program discontinuance, the Southeastern administration handled the situation of the French faculty members quite differently from other programs. For example, when the administration eliminated programs in horticulture and economics (approximately fifteen and ten years ago, respectively), all of the affected faculty members were successfully relocated within Southeastern. The French faculty members were not offered positions at their current rank and salary to teach the French language and upper-level courses that continue to be taught. Moreover, it took eight months and numerous requests by the notified professors before the Southeastern administration in the person of the provost sent a letter to other administrations in the UL System asking if they had appropriate positions.

#### **B. IDENTIFYING PROGRAMS FOR DISCONTINUANCE AND TENURED PROFESSORS FOR APPOINTMENT TERMINATION**

The AAUP’s Regulation 4c assigns responsibility for identifying individuals for appointment termination to a faculty-designated person or group. At the beginning of June 2010, the Southeastern administration successively informed the head of the Department of Foreign Languages and Literatures, the three French professors, and the student French majors of the discontinuance of the two major programs and of the tenure terminations. A June 7 letter to UL System president Moffett from President Crain conveyed the latter’s intention to eliminate the majors and to offer instructorships, based on seniority, to those who would be losing tenure and their current rank and salary. Around June 17, President Crain sent a recommendation to the board of supervisors for discontinuing the majors. Around June 25, the board of supervisors approved the recommendation, and the tenured professors were so notified. The investigating committee finds that President Crain alone decided which programs would be discontinued and which faculty members would be released. An announcement of the elimination of the majors and the faculty positions, along with the observation that the remaining contingent instructor would have her hands full because of high student demand for French, was posted to the university’s website even before the board of supervisors

met to make its decision. This information was conveyed in a June 21 university press release that also stated that Southeastern would save \$400,000 through cuts. The board of supervisors’ June meeting was attended by numerous individuals and groups hoping to persuade the board to retain the French majors. These included the French consul general, the president of CODOFIL, the chair of the Department of French and Italian of Tulane University, and Southeastern students.

#### **C. OPPORTUNITY FOR A FACULTY HEARING**

On the issue of rights to a hearing, the two Southeastern professors who sought it, unlike their counterparts at Northwestern State, did indeed have the opportunity to be heard by a body of faculty peers. The Faculty Grievance Committee of the faculty senate received an appeal from Margaret Marshall on November 1, 2010, and convened to consider it before Thanksgiving. Provost Bourg represented the administration in the hearing. The grievance committee unanimously recommended that the termination of Dr. Marshall’s tenure be rescinded and that she be retained as a full professor in her department at her current salary. On March 2, 2011, Professor Bornier filed a grievance, also requesting reinstatement with tenure, academic rank, and salary unchanged. The administration did not have a representative at the Bornier hearing. On April 6, the grievance committee unanimously upheld the Bornier appeal and endorsed the remedy she sought. It expressed dismay that Professor Bornier, who had made and continued to make extensive contributions to Southeastern, had no choice but to accept the instructorship offered her. The Association’s staff wrote to President Crain on April 28 to convey support for the grievance committee’s findings and recommendations in the two cases. The faculty senate convened on May 4 for open discussion of the actions against the French majors and the three professors. President Crain had by then rejected both appeals.

Under the AAUP’s Regulation 4c, the burden is on the administration to make the case for its actions. Under the official Southeastern grievance procedure, the burden is on the appealing professors. Even under the local standards, Professors Marshall and Bornier, in the view of the grievance committee, had made a compelling case and received the grievance committee’s unanimous support. The investigating committee finds that the administration provided no rebuttal of the cases made by the two professors and of the recommendations made by the grievance committee. Moreover, President Crain asserted to the grievance committee that it had

mistaken its role when it “reconsider[ed] the propriety of the decision by the Board of Supervisors” instead of “providing a recommendation as to whether Dr. Marshall’s rights specified in the Program Discontinuance policy were denied,” and he requested the committee to advise him if this would accordingly change its recommendation. The committee reiterated its view that the university administration had violated Professor Marshall’s rights under applicable Southeastern policy and reiterated its recommendation for her reinstatement. In a March 4, 2011, memorandum to Professor Marshall, President Crain cited the board of supervisors as the entity that had terminated the program, concluding that therefore nothing further could be done; with regard to the remaining French courses, he indicated that the formerly tenured professors would be offered those positions but at a rank commensurate with the courses (that is, instructor).

Professor Bornier framed her grievance in terms similar to those of Professor Marshall’s grievance, and the committee also upheld her complaint unanimously. In its report on her grievance, the committee went beyond the observations in its report on the Marshall grievance by noting that, in a round of program reviews initiated in February 2011 at the insistence of the board of regents, members of the program faculty were involved in the compilation and explication of the relevant data and that President Crain had announced after the review had been finalized that there would be no recommendations to terminate tenured faculty appointments. The grievance committee viewed these more recent events as confirming its position that the French professors had been treated “inequitably” and as supporting its recommendations in the earlier grievance. The committee reiterated these recommendations in its report on Professor Bornier’s grievance, while noting particularly that the administration had given no “compelling academic reason” for offering Professor Bornier an instructorship rather than continuing her at her previous rank and salary and finding that the instructorship was not a “suitable position.” In rejecting the committee’s recommendations, the provost sent Professor Bornier an extremely succinct memorandum that simply reaffirmed the earlier decision to terminate her tenure. (The spring 2011 revisions to the program discontinuance policies of the UL System make it no longer possible to present a grievance on the substance of a decision, but only on whether procedures were followed, and the board of supervisors will not accept grievances against its own rules.)

#### **D. RELOCATION OF RELEASED TENURED FACULTY MEMBERS TO OTHER SUITABLE SOUTHEASTERN POSITIONS**

As the investigating committee has already explained in the “Issues” portion of the preceding section on Northwestern State University, “by any objective standard,” the non-tenure-track positions at an instructor’s rank and salary that the administration offered to some released tenured professors “cannot be considered remotely ‘suitable.’” In discussing the issues, the Northwestern State section also explains the investigating committee’s judgment of an interpretation there of the UL System’s “suitable position” policy as allowing relocation above the instructor’s rank only if an open tenure-eligible position already existed in a department where the new professor would have the academic credentials expected by the accrediting agency. Similar obstacles to relocation in another suitable position were experienced in some cases at Southeastern.

The investigating committee finds, at Southeastern as well as at Northwestern State, that the UL System requirement calling for “every reasonable effort” at relocating tenured professors elsewhere in the institution has, more often than not, been interpreted as calling for every effort to prevent relocation.

#### **E. COST AS A FACTOR IN PRESIDENT CRAIN’S ACTIONS AGAINST THE THREE PROFESSORS**

Pressed by the investigating committee to explain what led him to insist on the actions he took regarding Professors Marshall, Kolb, and Bornier, President Crain, an accountant by formal academic training, tersely attributed it to “cost.” Presumably he meant the financial savings for Southeastern as a result of his actions in the three cases. Other than the president’s response to the investigating committee, the committee is unaware of any explanation he provided to anyone at the university for persisting in his actions. The committee will proceed to discuss what Southeastern gained in cost savings through the president’s actions and then, through his persisting in them, what Southeastern lost in French-American relations, in public reputation, in faculty confidence in President Crain, and in its climate for academic freedom.

##### *1. Cost Savings through the President’s Actions*

The administration’s June 21, 2010, press release stated that Southeastern would save \$400,000 through the president’s actions in the three cases. In rejecting Professor Marshall’s wish to be retained for an additional three years, after which she would retire, the administration was spared paying her for the three years but at

the cost of having to defend itself against the litigation she initiated jointly with Professors Kolb and Bornier. In coercing Professor Kolb into an immediate resignation by declining to implement even a stripped-down version of a one-year sabbatical that had been granted her, the administration was spared paying her for the sabbatical or alternatively retaining her for a terminal year at her existing salary. As to Professor Bornier, allowing her retention only at an instructor's \$47,000 salary, rather than her current \$54,500 as an associate professor, meant a savings for Southeastern of \$7,500 for the 2011–12 academic year and a similar savings in subsequent years when Dr. Bornier remains on the Southeastern faculty. Offsetting this saving, however, is the cost of defending against her case in ensuing litigation in addition to the Marshall and Kolb cases.

### 2. *Cost in Damage to French-American Relations in Louisiana*

All too evident to almost everyone from the outset was the irony that the French and French education majors were being discontinued in a public university located in a state and a parish (Tangipahoa) that recognizes French as an official language. Southeastern is located in Hammond, which since 1999 has had a twin-cities relationship with France's Jouars-Pontchartrain. Immediately upon learning in November 2010 of the planned discontinuances, the mayor of Jouars-Pontchartrain wrote to President Crain "to express the dismay of all the citizens" of her city, saying she found it "hard to believe that the French language could be dealt such a blow" at Southeastern. The mayor of Hammond promptly followed with a letter saying that the discontinuances "will make it difficult for us to maintain our wonderful exchanges between France and Louisiana. The Hammond community as a whole enjoyed so many aspects of the presence of a strong French program. . . . This is a major loss of a cultural resource for the students and the community. . . . Promoting French in a state that prides itself on being bilingual should be automatic."

Subsequent protests against the discontinuances of the French majors and the termination of the three tenured French faculty appointments included those of the consul general of France, the chair of Tulane's Department of French and Italian, and officers of the American Association of Teachers of French and of the Louisiana Foreign Language Teachers' Association. The investigating committee finds that the cost in damage to French-American relations was severe.

### 3. *Cost in Damage to Southeastern's Public Reputation*

The news coverage of the actions against the three Southeastern French professors—through print and electronic publications, as well as through television and radio—was remarkable for its magnitude and for the consistency of its content. The *Hammond Daily Star* and other local media in and near Hammond bemoaned the impending loss, with the departure of the three professors who had been vigorous in their promotion of French-American relations and of programs such as secondary school student exchanges and cultural performances on the area's French-language television and radio stations. The major statewide media—the Baton Rouge *Advocate* and the New Orleans *Times-Picayune*—provided their audiences with steady print and electronic coverage of the latest developments regarding the released tenured professors and with frequent in-depth commentary on the issue. The major national media for higher learning—the *Chronicle of Higher Education* and *Inside Higher Ed*—were similarly thorough in their coverage of the issue. In this heavy coverage at the local, state, and national levels, the overwhelmingly consistent message was that the actions against the three tenured professors were dreadfully mistaken and demanded correction. President Crain, however, provided no substantive public response to the serious accusations leveled against him. For example, he was accused of disregarding the official UL System policy of prioritizing tenured appointments and of allowing majors in Art and Art education and Spanish and Spanish education, but not French and French education, to merge in order to escape "low-completer" vulnerability. On occasion, the president has referred to the pending litigation as the reason for his silence on substantive issues. More often, his response has been to the effect that authority for determining which programs should be discontinued and which tenured faculty appointments should be terminated rested with him and that he did not need to explain himself publicly. Being perhaps more diversionary than responsive, the president did conclude a late-September 2011 statement to the Southeastern academic community with the following sentence: "My position has been and continues to be that we must remain focused on the success of our students, and we must make whatever difficult decisions are required in order to allow us to sustain the healthy operation of our most vital and vibrant programs."

The investigating committee finds that the media coverage of the actions against the three tenured

French professors has caused devastating damage to Southeastern's public reputation.

#### 4. *Cost of Faculty Lack of Confidence with Accompanying Chill in the Climate for Academic Freedom*

A final issue, of particular concern for the American Association of University Professors, is the Southeastern faculty's manifest lack of confidence in the leadership of the Crain administration, with an accompanying chill in the climate for academic freedom at Southeastern Louisiana University.

As explained in previous parts of this section, the statewide board of regents had by fall 2009 developed lists of "low-enrollment, low-completer" academic programs for potential elimination as a cost-saving measure at various public institutions. President Crain informed the elected faculty senate in January 2010 that he was appointing a task force, which included some tenured professors, with the senate not involved. The task force reportedly met with the provost for eight days, but its precise membership and its charge remained unclear, and even its existence was unknown to many Southeastern professors.

The series of events relating to the three professors discussed in the previous pages reveal steadfast support for their rights, notably from the faculty senate and from the AAUP at its various levels. The events also reveal reluctance by some faculty members to be supportive, however, lest adverse consequences result from differing with the administration's position on a matter of academic importance. The senate's Faculty Grievance Committee in December 2010 recommended unanimously that Professor Marshall be retained with tenure and no reduction in academic rank or salary. Three months later, asserting that Professor Bornier's retention only as a contingent instructor was a severe sanction imposed without the administration's having demonstrated cause, the senate's grievance committee similarly called for her retention with tenure at her professorial rank and salary. The administration tersely rejected the faculty recommendations in both cases, whereupon the senate scheduled a public meeting on May 4 to discuss the administration's actions against the three professors. Some faculty members declined invitations to participate, however, indicating fear of retaliation by Southeastern's president.

The unswerving faculty senate support for the French professors has been matched by national AAUP, the campus chapter, and the AAUP's Louisiana conference. On June 6, the Bérubé statement was distributed by the

national office with Committee A's encouragement. On June 22, with assistance from the chapter and the conference president, the professors filed a complaint with SACS's Commission on Colleges. Early in September, the authorization of this investigation was announced. In November, many current and former members of the Southeastern faculty met with the investigating committee in Hammond and in Baton Rouge, but others who were in a position to provide information declined to cooperate, with some leaving the committee to infer that they did not think it prudent to do so and that academic freedom at Southeastern lacks adequate safeguards.

It was evident to the investigating committee, as indicated in this report's previous section, that the sorry state of protections for tenure following the administration's actions to eliminate or redefine academic programs and terminate sixteen tenured faculty appointments at Northwestern State has also brought about a chill in the climate for academic freedom. The investigating committee finds the damage to academic freedom at Southeastern as perhaps the more to be deplored. Only three tenured appointments were terminated, at costs to the institution that grossly exceeded any financial savings. Moreover, the president has insisted that he alone has the authority to make all decisions related to tenure and that he does not need to explain his actions to anyone.

Under what passes for tenure at both institutions, senior tenured professors can be effectively forced into undesired retirement, tenured professors can be laid off without reasonable effort made on their behalf for relocation into other suitable positions, and tenured professors can be left no alternative to taking contingent untenured positions at sharply reduced salaries—all within a process lacking any transparency. Meaningful faculty tenure thus does not currently exist at Northwestern State University and, even more so, at Southeastern Louisiana University.

## IV. Conclusions

1. As was the case with Northwestern State University, the Southeastern Louisiana University administration acted in disregard of the joint 1940 *Statement of Principles on Academic Freedom and Tenure* and Regulation 4c of the derivative *Recommended Institutional Regulations on Academic Freedom and Tenure* by proceeding unilaterally to define what constitutes an academic program for the purposes of tenure and to insist, in the Southeastern case, on terminating the appointments of three tenured professors.

2. Unlike the Northwestern State professors, the Southeastern professors did have the opportunity for hearings before representative bodies of the elected faculty senate, which unanimously called for reinstatement of departmental tenure rights at existing rank and salary. In rejecting the committee's recommendations, the administration offered no rebuttal, and it is evident from the record of the hearings that, as has been stated, any financial savings achieved through the terminations were grossly offset by the cost to

Southeastern Louisiana University's reputation.

3. Of grave concern is that an evidently increasing number of faculty members indicated fear of retaliation if they were seen as speaking or writing candidly in opposition to the current administration's leadership.

4. As is the case regarding Northwestern State University, without a strong tenure system and chief administrative officers who respect it, academic freedom at Southeastern State University will in all likelihood remain insecure.

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## Additional UL System Activity Relating to Academic Freedom and Tenure

### I. Introduction

The conclusions set forth in the two previous sections of this report are that the administrations of Northwestern State University and Southeastern Louisiana University acted in fundamental disregard of core principles of academic freedom and tenure by insisting that the termination in 2011 of twenty or more tenured professors be treated as an accomplished fact, no matter the strength of any argument to the contrary. The intent of the Northwestern State and the Southeastern administrations to rid their institutions of selected tenured professors through the vehicle of program change is manifest.

At two additional UL System institutions, the University of Louisiana at Lafayette and the University of Louisiana at Monroe, the institutional administrations found it necessary to concur in program discontinuance and resulting notification of tenure termination. Here, however, the intent of the Lafayette and the Monroe administrations has been to prevent any involuntary termination of a tenured faculty appointment.

Finally, although the case is somewhat removed from an investigation authorized to address financially mandated program closings, this section will provide comment on Nicholls State University, which has been on the AAUP's list of censured administrations since 2009 for having violated principles of academic freedom and tenure.

### II. University of Louisiana at Lafayette

ULL was founded in 1898 as the Southwestern Louisiana Industrial Institute, granting its first baccalaureate degrees in 1922. The 1940s and 1950s brought engineering, business administration, and nursing colleges, along with graduate programs. By 1999, when it

acquired its current name, ULL reported enrollments of some 15,000 undergraduate and 1,500 graduate students, served by 500 full-time and 200 part-time members of the faculty. The current president is Dr. E. Joseph Savoie, who was previously Louisiana's commissioner of higher education. The current provost is Dr. Carolyn R. Bruder.

The case of concern at ULL stems from a 2011 decision to discontinue its cognitive science program and more particularly a January 2011 decision to phase out the PhD degree in cognitive science. A subsequent report from the Lafayette AAUP chapter found that faculty involvement in these decisions was minimal. The latter decision was based on the failure of the degree program to exceed the unacceptable "low-completer" standard set by the board of regents for doctoral programs as "fewer than two completers per year or less than six graduates within three years." It was not until June 2011 that two tenured associate professors were notified of tenure termination, by which time revised UL System program policies adopted in February 2011 had gone into effect. These state that as much as two years of terminal notice is now possible and that the clock on notice does not begin to run until the commencement of an academic year, thus assuring the two notified tenured professors of protection against involuntary termination of their tenure at least through June 2013. That the ULL administration has allowed the extra three years to occur certainly suggests no hurry to terminate tenured faculty appointments. Wishing to have the administration's apparent willingness to retain tenure clearly on record, the investigating committee in September 2011 invited the president and the provost to concur in its position that retention of the two notified

professors in another suitable program with rank and tenure intact is an appropriate action under the policies of the UL System central administration and board of supervisors. The president and provost offered their concurrence.

Still to be accomplished was the determination of a suitable position for each of the professors and assurance to them of retention in that position, if that is their wish, following the discontinuance of their current positions. The fall 2011 semester, however, witnessed no concrete result. The professors, told that discussions were in process, complained that they were being kept in the dark while their own futures were being discussed. In October one of the professors submitted written requests for information and received a response that provided the professor with no specific substance. In December, the provost wrote to the other professor about an impending available nontenured position at the rank of instructor at a much lower salary, saying first that she was confident the professor would reject the offer and afterward that she was required to make its availability known. The Association's staff expressed regret that the letter had been sent when the available position was not remotely suitable. Characterizing a suitable position for the two professors as one with retention of tenure beyond 2013 at no diminution of current rank and salary, the staff urged the president and provost to take concrete action in the two cases in time for it to be so noted in the published text of this report.

Late in February, as the final version of this report was being prepared for publication, the provost informed the Association that "the administration at the university is working to identify tenured positions for these two faculty members in suitable alternative programs, and it anticipates being successful in those efforts."

### III. University of Louisiana at Monroe

In spring 2011, when the revised program discontinuance policy for the UL System was under consideration, it became widely known at ULM that the major in chemistry was a program likely destined for discontinuance in a round of new decisions that were expected once the new policies became effective. After the revised policy was officially adopted, it became publicly known that new program eliminations with resulting tenure terminations were under consideration, with August 2011 the date by which decisions needed to be made, and that the chemistry major was a strong candidate for program elimination.

The ULM chemistry department performs crucial services for the institution, which is known particularly for its pharmacy and health-care programs. These programs have sufficient enrollment to keep four tenured professors busy, yet under the actions being considered the tenured professors would have been released and replaced by non-tenure-track instructors at a much smaller salary. The deadline for notifications came and went, however, without any notifications having been issued to the four tenured ULM chemists or to anyone else at ULM. The ULM president, Nick J. Bruno, clearly had no interest in acting against tenure. He shrugged off what would have been a major assault against tenure as a "worst-case scenario" that proved not to be needed.

### IV. Nicholls State University

Nicholls State was placed on the AAUP's censure list as the result of a published report that concluded that the administration had dismissed an instructor after twelve years of full-time service, denying her the protections of academic due process that accrue with continuous appointment as set forth in the 1940 *Statement of Principles on Academic Freedom and Tenure* and derivative AAUP policy documents. The notice she received was deplorably scant. No plausible reason for her dismissal could be ascertained other than the administration's displeasure with her having assigned a large percentage of failing grades to her students in college algebra.

A representative of the Nicholls State administration wrote just recently to inform the AAUP of its interest in resolving the issues raised by the censure, indicating that specific proposals would be forthcoming in the near future.

### V. General Observations

1. The UL System policies discussed in this report were not implemented system-wide, in part because there is latitude within the system for a range of interpretations with respect to how stringently or loosely the policies must be followed.

2. Because the violations of tenure rights reviewed in this report are limited to two institutions whose administrations chose to employ the harshest interpretation of the policies with respect to program discontinuances and faculty layoffs, the committee does not find it appropriate to conclude that principles of academic freedom and tenure have been assaulted by the UL System administration as a whole.

3. While the relationship of the UL System central administration and board of supervisors to individual

administrations should not be overlooked in reviewing what happened at Southeastern and at Northwestern State—and indeed what still may happen at other institutions—the manner in which the UL System polices were overlooked could not have been accomplished without the assistance of the system’s central administration and governing board. A system administration and board that supported shared governance, transparency, and the primacy of tenure would function as a check on institutional administrations that do not.<sup>2</sup> ■

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University of Central Arkansas, *Chair*

LINDA L. CARROLL (Italian)  
Tulane University

TAMMY GREER (Psychology)  
University of Southern Mississippi

#### *Investigating Committee*

Committee A on Academic Freedom and Tenure has by vote authorized publication of this report on the AAUP

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2. President Randy Moffett of the University of Louisiana System, having received together with other concerned parties a preliminary draft text of this report with an invitation for corrections and comments, replied very promptly. He said he had just received word that the draft, although marked confidential to the recipients, was being circulated on one of the system’s campuses (which turned out to be Southeastern) and he wished to record his response to it before it became public knowledge. His letter then referred to three modest instances of differences in the manuscript’s early pages over what was said and not said, and it went on to assert that the fifty-page manuscript was replete with errors, with the system office lacking the resources to identify and explain all of them in the sixteen days the Association was providing for receipt of replies.

The Association’s chief staff officer for the investigation, replying to the Moffett letter, urged him at least to convey the UL System administration’s major concerns with the draft document, in which event another week (later extended to ten days) could be added to the time for producing his further response. President Moffett agreed, writing that the Association would certainly have it by the new indicated time. A few days before that time, however, he

wrote again, reverting to the matter of unwarranted circulation of a confidential document and enclosing as evidence an announcement in the minutes of a February 8 faculty senate meeting and a brief article from the February 10 *Hammond Daily Star*, both of which simply stated that a draft report of the AAUP investigation of the cases of the three French professors had been circulated at Southeastern without saying anything about the content of the report. The AAUP staff officer wrote back to express hope that the president’s continuing unhappiness with the draft’s circulation did not indicate second thoughts about his providing his further response, and on the final day for that response, February 23, the response arrived.

Chair: DAVID M. RABBAN (Law), University of Texas at Austin

Members: MICHAEL F. BÉRUBÉ (English), Pennsylvania State University; SHELDON KRIMSKY (Biomedical Ethics and Science Policy), Tufts University; DEBRA NAILS (Philosophy), Michigan State University; ADOLPH L. REED JR. (Political Science), University of Pennsylvania; ANDREW T. ROSS (American Studies), New York University; ELLEN W. SCHRECKER (History), Yeshiva University; CARY R. NELSON (English), University of Illinois at Urbana-Champaign, ex officio; ROBERT M. O’NEIL (Law), University of Virginia, ex officio; ERNST BENJAMIN (Political Science), Silver Spring, MD, consultant; JOAN E. BERTIN (Public Health), Columbia University, consultant; MATTHEW W. FINKIN (Law), University of Illinois at Urbana-Champaign, consultant; ROBERT A. GORMAN (Law), University of Pennsylvania, consultant; JEFFREY R. HALPERN (Anthropology), Rider University, consultant; HANS-JOERG TIEDE (Mathematics and Computer Science), Illinois Wesleyan College, liaison from Assembly of State Conferences.

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President Moffett’s February 23 response to the draft report, a page and a half in length, began by expressing appreciation for opportunity to recommend “much needed balance” to a draft, the quality of which he found “shocking and insulting to faculty members everywhere,” one “riddled with opinions, unsubstantiated allegations, and no documentation.” The letter then provided three recommendations. The first called for more information at the outset about the budgeting situation as it pertained to Louisiana and specifically to the investigated institutions (a loss since 2008 of more than \$360 million in state

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appropriations for public higher education and of nearly 1,800 full-time equivalent employees in the UL System, less than 1 percent of whom—about twenty-five—were tenured or probationary faculty at Northwestern State and Southeastern). Additionally, the number of people who participated in the investigation and their affiliation should be listed, as well as the documents that were examined.

The second recommendation, made because the draft did not include key information on governing board policies, was to provide appendices with the full texts of all the official documents referenced in the report.

The final recommendation was to remove from the report the section on the three institutions that were not the focus of the investigation because each of the UL System’s institutions is unique in budget structure and circumstances. Comparing two that were the subject of detailed investigation with others where in-depth analysis was lacking “would be erroneous at best.”

The February 23 Moffett letter then concluded as follows:

As I stated before, the quality of the work that went into this draft is disappointing. There seems to be no logic between the premise and the conclusion, and an essential sound environmental background is lacking. Recommendations are not supported by the evidence that the team reviewed, evidence that the reader does not have the ability to review if the report’s current structure is maintained. In the absence of this, one might even conclude that the team failed to review and/or understand the rules and associated documents.

If the AAUP wants to be taken seriously, it should ensure that this report reflects the standards of excellence expected by the faculty it purports to represent.

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Subsequently, with the final version of this report already prepared and with no advance indication that he would be replying, the Association received a March 1 letter from Southeastern Louisiana University’s President John L. Crain, just over a page in length, stating that it was his response to the draft text of this report sent to him on January 27 with a request for comments by February 13. Suffice it to say that he summarizes his reaction to the report by asserting that “fairness, honesty, and professionalism appear to have been completely disregarded by the AAUP” in its investigation. With respect to his actions terminating the appointments of the tenured French professors, President Crain’s letter simply reiterates his

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position that Southeastern “complied with its institutional policies, as well as the rules and policies of the University of Louisiana System Board of Supervisors.”