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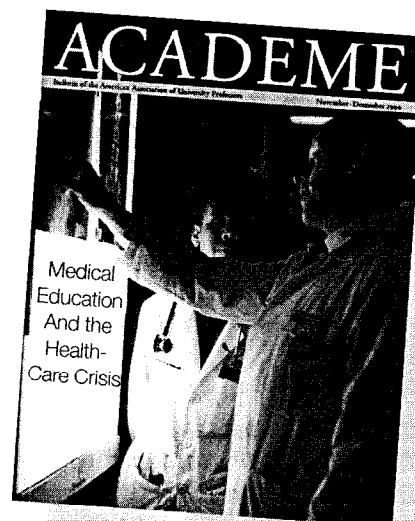
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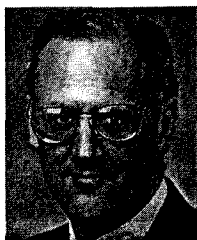
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University of Southern California

FEW PROFESSORS COME TO A UNIVERSITY looking to do battle over the allocation of the institution's resources. So long as resources inch upward, or at least do not decline, most professors focus on teaching and research, not on trying to democratize university governance. A loss of resources can, however, alter the faculty's center of attention. Such a change occurred at the University of Southern California's School of Medicine when the dean informed tenured faculty members that their salaries would be cut.¹ In a letter dated June 28, 1995, the dean wrote:

Following an intensive study of the budgetary crisis [of the School of Medicine], . . . it has been decided that all faculty within a basic science department . . . will be placed on an academic year schedule, rather than a year-round schedule, and compensated accordingly. This means that your duties

will be reduced from a twelve-month schedule to a nine-month schedule . . . and your current salary will be reduced accordingly by 25 percent. For those



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faculty with grants and contracts, income derived from such sources may be applied to supplement your salary beyond the nine-month contract term. . . .

. . . [The] Budget Advisory Committee is developing standards for a performance-based compensation system. . . .

. . . [T]he only employment the University can offer you beyond July 1, 1995, is as described herein. This letter followed by your 1995–96 faculty contract will supersede any other agreements between you and the University.

. . . Regrettably, no other course of action is available to us.

When the tenured faculty members received their contract documents, they found that the text stating that the university promised to pay them an agreed-on salary had been lined out and replaced elsewhere with the warning that it “may be necessary to modify the compensation terms of this Contract in the event that the availability of funding to the School of Medicine changes during the year.” Some of the tenured faculty read the contract language as meaning that they could rely only on their last paycheck, and their response was explosive.

A clarification from the provost did little to calm these faculty. It said that the purpose of the new contract was “simply to indicate that for that portion of a faculty member's salary paid by external money, if the university does not receive such funds, the university is not obligated to pay it.” This statement further upset the tenured faculty for two reasons. First, these faculty members considered their salaries to be an obligation of the university, regardless of whether they raised outside funds. Second, the statement reinforced the position that the previous contract had been superseded by a new one, despite the specification in the previous contract that the contracts of tenured faculty members would be renewed annually and that only a “written agreement between the Faculty Member and the University” could change the terms of the contract. No such agreements existed.

Breach of Contract

ALTHOUGH THE ADMINISTRATION CLAIMED THE SCHOOL faced a “budgetary crisis,” the superseded contract set a higher standard than “crisis” for termination of tenured appointments: it required demonstration of a bona fide fiscal exigency. According to the university, no such exigency existed. In fact, in an article titled “USC Tops \$1 Billion Endowment,” the university's official publication, the *USC Chronicle*, reported that for fiscal 1996 the “university's financial activities generated . . . an overall surplus of about \$171.6 million.”

Many tenured basic-science faculty members reached a sober conclusion: the faculty contract had been breached. They submitted a joint grievance to the Faculty Tenure and Privileges Appeals Committee, seeking a review of their concerns. The chair of the committee dismissed the grievance without a hearing, stating that it did not “constitute a grievable complaint under the university's rules and procedures.” In response, on May 31, 1996, some of the grieving professors grimly wrote the chair that unless they heard otherwise, they would proceed on the assumption that they had properly exhausted all internal procedures for resolving the dispute. The letter implied that the faculty members intended to go to court to enforce their contracts. The pro-

fessors sent a copy of the letter and the grievance to the president of the university, who did not respond. On November 15, 1996, seventeen faculty members (the group eventually grew to twenty-three) filed a complaint in California Superior Court alleging breach of contract.

The president remained silent, but the provost did not. In the *USC Chronicle*, the provost declared that "this small group of faculty claims the university has no right to require them to do their fair share in meeting the challenges facing the medical school—only the obligation to pay them. . . . We think it is irresponsible for this tiny fraction of our 1,075 medical faculty to expect us to bleed our College of Letters, Arts, and Sciences, or our other professional schools, just to maintain the status quo in the medical school."

With regard to the litigation, the provost made his position clear: "We won't back down from this lawsuit . . . because it isn't morally or ethically right for us to bail out the medical school by taking funds away from undergraduate education. That's shifting the financial burden to the backs of parents, and they're carrying a big enough load as it is." And although the faculty had been denied a hearing of their grievance, the provost asserted, "What is particularly disturbing about the tactic represented by this lawsuit is that it attempts to derail an orderly process to solve our problems responsibly."

The statement of the provost was not only published but also mailed to faculty university-wide. Like his previous statement, this one failed to calm the situation. Instead, it elicited a multipage letter signed by more than forty faculty members from the medical school. The letter stated:

The [administration's] restructuring process has been orderly in the sense that all authoritarian, dictatorial processes are orderly. The manner in which faculty have been treated reveals the administration's contempt for the principle of collegial governance, its insistence that the faculty fall into line behind a strong-willed leader, and its intent to destroy procedures and institutions which have heretofore protected the pursuit of knowledge and the cultivation of society's finest young minds.

Grassroots Action

THE ADMINISTRATION DECLINED to publish this letter, but a medical school Listserv made sure that faculty were well aware of it. The Listserv, along with a Web site that made governance documents accessible, sprung up to ensure that faculty participation

in school governance would be democratic. The vehicle for the effort was the Medical Faculty Assembly (MFA), a body elected by the faculty to represent it in the governance of the medical school.²

As the visibility of the MFA increased, administrators contested its role. The 1988 governance document of the medical school allowed the MFA to make formal recommendations, which could require the dean to provide written reasons for adverse decisions. Administrators asserted that the document had never been officially approved (although it had been presented as valid in accreditation proceedings), and that this provision violated the bylaws of the university. The board of trustees then unilaterally altered the governance document and eliminated the provision.

A useful outcome of the controversy was that it increased faculty awareness that governance documents could democratize governance of the medical school. During 1997 and 1998, a new governance document was approved after spirited debate and negotiation. It established a finance committee to advise the dean regarding "any or all areas of the budget process." The MFA obtained a seat on the committee, which creates an opportunity for faculty members to obtain financial information they can use in making recommendations to the dean. To support this process, the dean has agreed to provide the MFA with a consolidated budget document each year.

During the same time, the administration, in a move that surprised many faculty, reversed its decision to place basic science faculty on a nine-month schedule. The provost and the dean issued a letter stating that "teaching in the School of Medicine is best served by year-round participation of the faculty. That is, the change to a nine-month basis does not conform to the real demands of the teaching program. Consequently, we will return basic science faculty salaries to a twelve-month basis."

The litigation, however, continued, because the administration insisted that it had the right to change unilaterally the terms of the faculty contract from year to year. Then, in December 1998, the litigation was settled out of court. Little was revealed about the settlement.

A Story Unfinished

THE SETTLEMENT OF THE LITIGATION, TOGETHER WITH the trend toward democratizing medical school governance, encouraged many members of the faculty to hope that they could once again rely on the university's faculty contract and its faculty handbook. For some professors, three events dashed this hope.

First, in January 1999, after the Academic Senate (composed of faculty elected from all schools in the university) approved a revised faculty handbook for the university, the administration posted online a document labeled as the faculty handbook that contained language never considered or approved by the senate. Some of the language changes are not trivial. The online document could now be construed to assert that the handbook can be superseded by amending other university documents rather than only by a joint agreement between the Academic Senate and the administration.

Second, in March 1999, tenured faculty in clinical departments in the medical school received contract documents altered so that the source of their salaries was referred to as "external

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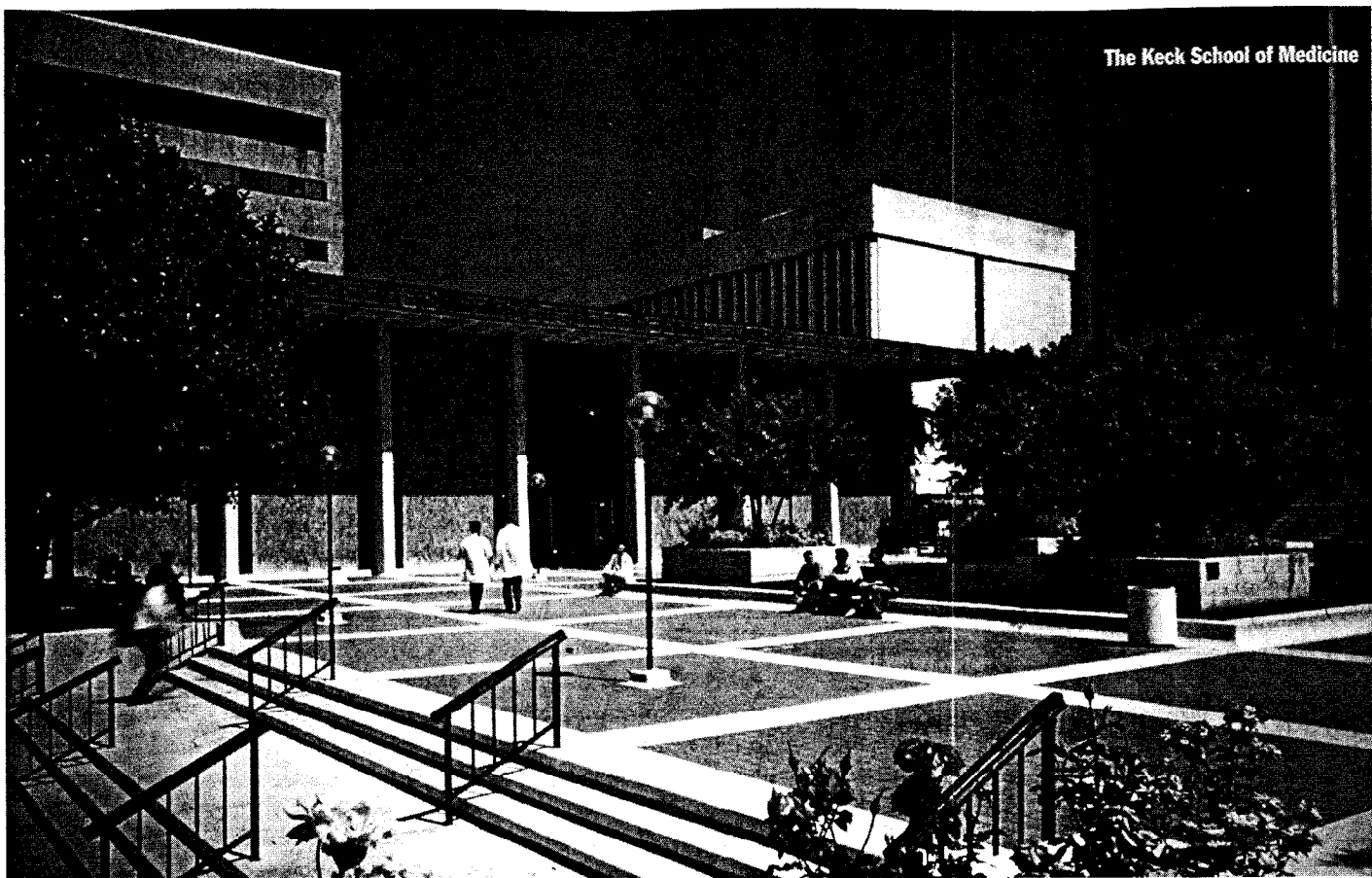


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funding” rather than “total USC funding,” as it previously had been designated. The contract documents also stated that “the University’s guarantee of the external funding portion of the Faculty Member’s compensation is contingent upon the availability of such funds from the external funding source(s).” Simply put, these contract documents resembled the 1995 documents that triggered the litigation by the tenured basic-science faculty. A major difference was that, unlike in 1995, no letter was issued indicating that the new documents contained the only conditions of employment available to these faculty members. Instead, faculty were urged to contact administrators if they questioned the terms.

Third, in June 1999, the MFA received evidence that candidates for faculty positions labeled “tenured” or “tenure track” were being offered contracts stating, “By signing below, you acknowledge that, whether or not you are tenured, your salary could go up, go down, or stay the same as the result of annual merit and budget review processes.” Clearly, such a contract would impose a far different standard from the one included in the contract held by other tenured faculty, which, regarding financial reasons for not continuing a salary, requires not a “budget review” but a “demonstrated bona fide financial exigency” in order to alter salaries.

These events make clear that the economic security promised by tenure remains under attack at the Keck School of Medicine at the University of Southern California. Some faculty members have suggested that this attack may spread throughout the university. In response, the Academic Senate issued a statement explaining that a “major concern . . . is the protection of tenure

university-wide, and the academic freedom that is based on the tenure system.” For some medical school faculty, the statement raises hope that the senate will somehow repel the attack. Others, however, doubt that democratic faculty input into university governance will soon be able to protect tenure and academic freedom at USC.

What can we learn from these events? In the United States, the economic security of tenure, which makes academic freedom real, did not arise spontaneously. It arose when professors left classrooms and laboratories and started a vigorous and exhausting struggle at the beginning of the century now ending. Events at USC show that this struggle continues and that, unless constantly defended, academic freedom once won can be lost. Faculty members must recognize that although democratization of university governance may help, the defense of tenure will, at times, take place in the courts and rest on the language of faculty contracts and faculty handbooks. To protect academic freedom, faculty must continue to improve and defend those documents. 

Notes

1. On July 29, 1999, USC announced a \$110-million gift from the Keck Foundation to support its School of Medicine, which was renamed the Keck School of Medicine of the University of Southern California.

2. In time, administrators made requests to the MFA to distribute messages over the MFA Listserv, since the administration did not have a list of its own. In an attempt to restore collegiality in the medical school, faculty and administrators then worked together to create an even more complete and useful Listserv, which is still in place and used by both the MFA and administrators.