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End to the NYIT Merger

Nova Finances: 1975–1985, Prelude to the Dissolution of the NYIT Merger

From 1964 to 1985, when Nova first earned a surplus, the university faced critical funding shortages and was always looking for new sources of income. Part of the difficulty in juggling budgets came when, to pay the bills, Abe Fischler had to siphon money from the law school or the Educational Leadership Program, the only successful earners in the early years. There was resentment and tension on the part of the centers, which expected to keep most of the money they earned. Throughout the 1970s and early 1980s, Nova's cash-flow problems moved from severe to critical. Many bills were not paid on time, and on one occasion the school was within one week of having its electricity turned off because of past-due bills.

One example of Nova's tardiness in paying bills was a letter from B.K. Dorsey of Boone Industries in North Carolina to President Fischler requesting payment for a \$123.62 invoice that was six months overdue. Dorsey wrote that she had been informed that a Mr. Rosenberg (she meant Rosenblatt), vice president for financial affairs, had already mailed a check, but "[e]ither the Pony Express is extremely slow or Mr. Rosenberg has not attended to this matter. . . . In all our years of business I have never had such a problem in collecting unpaid invoices. I am sure that this is not the image you wish Nova University to project."¹ This was one of many such missives. If Nova had trouble paying a bill for just \$123.62, one can imagine

the headaches when Nova was faced with paying off substantially greater amounts.

At the board of trustees meeting on September 12, 1975, President Fischler reported that the extremely tight cash flow was partly due to capital expenditures for the law school. The university had been unable to reimburse its off-campus lecturers for out-of-pocket expenses and owed them a total of \$65,000. This failure to pay the lecturers caused unrest and many problems among the affiliated faculty, who were reluctant to continue teaching without being paid. The off-campus programs were a main source of Nova's income, and if the school could not pay the instructors, then the program would collapse and that income would be lost. The university also had accounts payable of \$910,000. Where would it get the funds to pay those past due bills?²

Nova officials, of course, continued to look for ways to reduce expenses, but the costs of renovating campus buildings like the Parker Building and the Rosenthal Center and a reduction in expected income from the off-campus programs overwhelmed their good intentions. The university continued its capital fund drives and urged local citizens to contribute, but without great success.

A fairly typical budget was for the 1976–1977 fiscal year. The percentage allocated to each center was divided up as follows: law school, 7.8 percent; University School, 8.6 percent; debt service, 8.2 percent; behavioral sciences, 7.5 percent; EdD community college program, 7.6 percent; Human Performance Research Institute, 9.5 percent; physical plant, 5.9 percent; university administration, 6.2 percent; Nova College, 4.9 percent; public administration center, 4.9 percent; oceanography, 4.7 percent; life sciences, 4.5 percent; criminal justice, 3.6 percent; library, 1.6 percent. Other percentages were scattered among the printing office, the computing center, and development.³ A quick reading of the list indicates that the university administration and the physical plant took very little of the university's expenses, demonstrating that the personnel in these two areas worked frugally and efficiently. Most of the other centers received similar percentages, although the amount spent to expand the University School seems high since the school provided very little revenue and was usually in the red. The university constantly reduced expenses by decreasing the size of the development office, curtailing an alumni program, and making significant cuts in life sciences.⁴

In 1983–1984, the deficit ballooned to \$3 million and Nova had to borrow \$4 million just to cover its expenses. To counteract these

losses, Nova increased tuition 8 to 12 percent depending on the program. The university eliminated all pay raises while refusing to reduce salaries. Nova consolidated programs, reorganized staff, and cut back on travel. Secretaries and faculty members were reminded to turn off lights and adjust thermostats.

Despite the continuing financial difficulties, Fischler realized that he needed to invest in additional administrative support. He strengthened his top-level administration team with the appointment of James Guerdon as vice president for administration and finance; Ovid Lewis, the former law dean, as vice president for academic affairs; and Helen Graham, the first woman chosen for an upper-level administrative position, as director of human resources. The board of trustees recognized the need for the university to have knowledgeable and effective representation in legislative matters in Tallahassee, as it coveted increased financial support from the state. Realizing the dire need for creating an endowment, the university, after cutting back personnel in the development office, reversed field and appointed Stephen Goldstein as the university's first vice president for corporate and foundation development. Nova had to ramp up its capital funds drive as it had acquired only \$100,000 in donations the previous year. Nova asked its trustees to increase their own level of giving and to find one other person to do the same. Fischler understood that publicity about the university's deficit hurt contributions, but the president wanted to show Broward County residents that Nova could "function in a more businesslike manner."

Community support often depended on visibility, but most of Nova's students did not live in Broward and Nova had not been around long enough to build up a core of loyal alumni. The *Miami Herald* summed up Nova's dilemma: "Without a large undergraduate presence and the collegiate atmosphere that comes with it, Nova can't muster the kind of alma-mater sentiment that can move a community to open its heart—and its pocketbook."⁵

Throughout the period from 1970 to 1985, NYIT frequently loaned money to Nova. The university paid off some of its loans but continued to pile up new loans with interest payments to NYIT. Acutely aware of Nova's financial problems, Chancellor Schure offered to make a \$2 million loan to Nova, but as several board members pointed out, that would just prolong and extend Nova's debt to NYIT. By 1985, they realized that there was no way for Nova to sustain itself and grow to financial stability without extricating itself from an ever-growing financial obligation to NYIT.

The End to the NYIT/Nova Federation: 1985

Nova University's desire to part with NYIT had emerged as early as July 1978, when trustee Cy Young urged Nova to sever its ties with NYIT immediately. Young contended that NYIT continually siphoned off cash from the financially hard-pressed institution. The cash that Nova paid to NYIT included interest on loans, revenue sharing on any of Nova's profitable programs, and the \$65,000 annual salary plus benefits for Chancellor Alex Schure. Young asked, "If the New York crowd shares in the profits, why can't they share in the losses?" Young said that Nova already owed NYIT more than \$2.6 million and that sum would surely grow, putting Nova under the total control of NYIT. On the other hand, David Salten and others at NYIT expressed displeasure with the Nova's inefficient administration and its constant demand for money. The school "has always been in need of money—usually desperately, occasionally urgently."⁶

The *Fort Lauderdale News* editorialized that the agreement with NYIT was bad for Nova because NYIT dominated the federation and did not have Nova's interests at heart. The paper fervently hoped that Nova could be saved from the federation so that it could serve the interests of Broward County and not NYIT.⁷ It became obvious by 1978 that there was increased tension between the two schools, and by the end of 1985, both NYIT and Nova wanted to end the association.

Earlier, during the period from 1976 to 1978, both parties had tried to salvage the agreement. At that time Chancellor Schure wanted the relationship between the two universities strengthened and expanded, and he made several suggestions to the board of trustees in that regard. Schure advocated the expansion of Nova College, the development of a school of architecture, an MA and PhD equivalent in criminal justice, courses in social work and engineering management, and cable television for publicity.⁸ Nova University's response to these ideas was muted at best, showing no great desire to take on Schure's suggestions.

Abe Fischler, who admired Schure and was deeply indebted to him for saving Nova on several occasions, tried to put the best face on the deteriorating relations with NYIT. In a statement to the board of trustees on April 25, 1978, Fischler noted that the relationship with NYIT had been "a great asset to Nova University." He pointed out the importance of the original \$1.2 million that NYIT made available

and the other instances when the New York school had lent money to Nova. NYIT had put up its resources and guaranteed the viability of the law school to the ABA. In addition to financial help, NYIT had made available “human resources” and expertise to guide Nova through some difficult times. Fischler said the arrangement must be beneficial for both institutions and that he planned to do his best to make it work.⁹

Schure regularly cautioned the Nova administrators that they had to curtail some of the building program and eliminate those courses that did not make money. Nonetheless, in the spirit of cooperation, NYIT listened to Nova’s complaints that they were paying the overhead for the programs (faculty salaries, secretaries) while NYIT reaped the benefits. Over a period of years, NYIT agreed to give Nova 10 percent, then 20 percent, and finally 50 percent of the net gain from the successful programs. This gesture helped out, but to Nova, NYIT was still taking out more money than they were putting in. By 1985, President Fischler estimated that, as the on-campus programs increased enrollment and earned more money, NYIT’s take had increased from \$200,000 a year to \$500,000 a year. Nova could not build and innovate if NYIT continued to absorb such a large amount of money.

On September 10, 1985, the administrations of both schools tried to resolve their governing and financial differences during a series of meetings intended to create a revised relationship between NYIT and Nova. A combined task force of Nova and NYIT faculty met on several occasions in an attempt to resolve the issues, but finally decided there was not much they could do together. Frank DePiano recalled one of the meetings where little common ground was found and both parties left the unpleasant gathering with negative emotions.¹⁰

On September 24, 1985, in an effort to preserve the 1970 agreement, Alex Schure sent a proposal to the Nova University Board of Trustees. In his letter, Schure indicated that the 1970 agreement had worked well and had built an exceptional educational institution at Nova. He declared that NYIT had advanced significant amounts of money to Nova during the past fifteen years and had devoted “substantial, time, energy, and guidance in the development of Nova from a PhD degree-granting institution of 127 students and twenty-four faculty in 1970 to a broad university granting bachelor’s, master’s, and doctoral degrees” and a student body of 6,000. NYIT and its officers had provided their academic experience to Nova and had guaranteed the establishment of the law school. In calling attention to the

significant benefits afforded to Nova in its arrangement with NYIT, Schure appeared to claim credit for all of Nova's advances in the previous fifteen years, much to the displeasure of the Nova adherents on the board of trustees.

Schure's September 24 proposal reaffirmed the 1970 agreement and declared that NYIT retained the right to appoint one-half of the members of the board of trustees at Nova University and one-third of the executive committee. Further, it would take a three-fourths vote of the Nova Board of Trustees to adopt the annual Nova budget, sell real estate, or change the terms of the contracts between Nova and NYIT. Net revenues of the shared programs would be divided equally by NYIT and Nova. Schure hoped that the university federation between Nova and NYIT would be strengthened through new academic programs and new technology. Finally, once Nova agreed to the new proposal, the document prevented Nova University from ever challenging the original July 1, 1970, agreement with NYIT.¹¹

A casual observer could see how Schure's excessive demands would offend Nova supporters. First, he once again seemed to be claiming all the credit for Nova's success, especially the founding of the law school. Second, and perhaps most troubling, NYIT could exercise complete control over Nova by virtue of its right to choose half of the members of the board of trustees. Since a vote of three-quarters of the board would be necessary to adopt a budget, sell real estate, or change any contracts, NYIT could block any decision it did not like. The three-fourths majority requirement was a direct insult to Nova. Schure made it appear that the Nova trustees were incapable of making wise decisions on any matter and that this new requirement would lead to even greater control by NYIT. Schure's desire to keep half of the income from shared programs upset Fischler and others since they had already objected to NYIT taking too much money out of Nova. Perhaps most important, by signing this agreement, Nova could never get out of the July 1, 1970, association, which it wanted to do, and could not later legally challenge Schure's 1985 addendum.

Schure's September 24 proposal followed a contentious meeting of the Nova Board of Trustees in Davie on September 12, 1985. The main topic for discussion was a \$1.5 million loan from NYIT to Nova. A sum of \$750,000 would be immediately available for Nova's use to catch up on accounts payable. NYIT, however, had not released that money. A previous document showed that there had apparently been a proposal that Nova could end the federation with a payment of \$10 million. Now the Nova trustees accused Schure of

forceful coercion. They thought he was holding up the delivery of the \$750,000 in order to get Nova to come up with \$10 million to dissolve the federation.

Schure replied that the earlier document requesting \$10 million had not been intended to influence the \$1.5 million loan and that the earlier amount was merely a starting point for discussion. Chancellor Schure, angry and offended by what he considered unfair charges from the Nova Board of Trustees, expressed his displeasure at being summoned from New York to attend a board meeting in Florida. He reminded the group that he had saved the university at least four times and fought for Nova with the NYIT board, which had frequently expressed impatience and displeasure over the association with Nova. The NYIT board had long demanded that the chancellor have more control over activities at Nova University since NYIT was spending large sums of money to keep it solvent. There had been resistance to the federation from the NYIT board from the beginning, but Schure always defended the association. Schure proclaimed that over the federation's fifteen-year period, he had never made a demand of Nova—a dubious statement at best, since Schure had forced Nova to establish a law school (a good decision, but a demand nonetheless) and exerted influence in other areas.

Schure apologized if the first draft of his September 24 proposal, requesting \$10 million to end the 1970 agreement, ruffled some feathers. He admitted that some of the language had been intemperate and he did not intend to force the document on Nova. He reminded the trustees that he was one of Nova's most faithful supporters and did not appreciate being put in a position of having to defend his leadership of NYIT and Nova.

Some Nova board members, angered by Schure's comments, decided that one way to end the federation was to question the legality of the original 1970 agreement. The Nova supporters on the board tried to come up with any legal loopholes whereby they could extricate the university from its association with NYIT. Robert Steele, a Nova board member, could not see why Nova University would send \$1.5 million to NYIT as payment for a loan since NYIT had taken more than that sum from money earned entirely by Nova. Steele characterized the \$10 million offer to end the association as "ludicrous." Nova did not have nor could it raise \$10 million. Nova could not even pay back the \$1.5 million loan from NYIT. This large amount of money that Schure demanded from an insolvent school struck some observers as being the height of arrogance and greed.

Schure responded testily to Steele's comments and to the implied threats of legal action against NYIT. He insisted that NYIT should retain 50 percent of the shared programs since, in his judgment, "Nova had neither the talent nor the capability to sustain the field-based programs," and because of this ineptitude, the revenue from those off-campus programs would diminish. Schure did not think it was in Nova University's best interest to publicize its squabbles, but "if the trustees wanted to go to war, so be it."

August Paoli, another board member, demanded that Schure apologize for threatening the trustees and the university. Schure replied that while he felt he was being treated shabbily, he was not threatening anyone.

In a last-minute attempt to broker some sort of settlement, Abe Fischler revealed that the Nova University Board of Trustees proposed that NYIT's take from shared programs be capped at \$500,000, no matter how much money had been earned. Schure, by now vexed and displeased with the Nova board, refused to agree to a cap on NYIT's revenues. Fischler believed that if Schure had accepted this solution, even at that late date, the issues that confronted the two institutions might have been resolved and the association saved.¹²

At this point, however, relations between the two universities had been irreversibly broken. The confrontation between Schure and Nova devotees at the board of trustees meeting hastened the end of the federation, but there were other reasons for Nova to curtail the relationship with NYIT. The major issues were money and control. As Tinsley Ellis recalled, many supporters in Broward County wanted Nova to be a local university, not dominated by a New York institution. The founders of the university had spent years building up Nova and did not want it to be a satellite of NYIT. Nova backers favored a split from NYIT partly because many potential local contributors saw Nova as an out-of-state-managed institution and refused to contribute to Nova's fund-raising efforts.

The cost to Nova of the NYIT association had accelerated to the point where it was restricting Nova's growth. To survive and prosper, Nova had to proceed as a completely independent institution. The Nova administration had for some time resented the fact that NYIT was taking out more money than it was putting in. The money exchange was excessive and becoming increasingly unfair. Nova was not flourishing but just getting by, and Nova saw NYIT as an exploitive partner.

Abe Fischler gave credit to Alex Schure for saving Nova numerous times from bankruptcy and for creating the law school. He remarked

several times that Nova would not be having these conversations without that help and support from Schure. Despite his friendship with Schure, by 1985 Fischler knew that the relationship had to end and Nova had to develop on its own. Fischler also realized that the agreement was not working from an intellectual point of view. The two faculties did not mix well, and NYIT operated under different conditions than Nova. NYIT was unionized, whereas Nova was not. Schure, as chancellor, had authority over Fischler, the president, and Schure began to view himself more as the employer and Fischler as the employee. With Schure's intent to expand NYIT's influence over Nova, it became more difficult for Fischler to run the university as he saw fit, so Fischler reluctantly accelerated his efforts to bring the association with NYIT to an end.¹³

Changed circumstances at NYIT exacerbated relations between the two schools. NYIT, under pressure to increase its income, did not want to give up the funds it was receiving from Nova. The NYIT board looked on Nova as a drain on NYIT resources and thought Nova was ungrateful for the many long-term benefits from its association with NYIT. NYIT was exercising its financial muscle because it had superior economic strength at the time and NYIT wanted to push Nova in a direction favorable to NYIT. Nova board members did not like that kind of pressure and worked harder to end the agreement with NYIT.

To complicate matters, Alex Schure was no longer president of NYIT. After a series of conflicts with his faculty and the NYIT board, he turned control over to his son Matthew, leaving Alex Schure with little day-to-day authority. Schure realized, however, that he still "owned" a university since he was still chancellor of Nova. He thought he could turn his full attention to Nova University and implement some of the programs he had always envisioned.¹⁴ Fischler and others sensed that Schure wanted to increase his influence at Nova and moved quickly to thwart that possibility.

Another issue that caused some hard feelings was Schure's attempt to persuade Nova to purchase some computer equipment, a VAX 11/750 computer system, from Computer Graphics Lab in New York. Computer Graphics was a for-profit company and a wholly owned subsidiary of NYIT. Schure sent Nova some computer software packages and informed Nova that the university had "to use these systems." Ed Simco, director of the computer center, wanted to cancel the order because delivery of the VAX computer system had been delayed

by fourteen months, the hardware was too expensive (\$131,000), and Simco could get better equipment for a much lower price.

On August 15, 1985, Simco received a telephone call from Chancellor Schure demanding immediate payment of the \$131,000 for the VAX 750 because the bill was fourteen months overdue. Simco replied that all of the equipment on the invoice had not been received. Schure responded that other equipment had been substituted, Nova had everything it was supposed to have received, and the price of the VAX system was fair.

Schure also said that he was getting heat from NYIT auditors and the NYIT board over nonpayment of the bill. Schure reminded Simco that he and NYIT had helped Nova many times over the years and “had helped Nova by giving them educational programs which were money makers and which Nova kept the largest portion of the income, and how thankless Nova was for all this, and this is what he gets for everything he has done for Nova.” Schure added that he was tired of being “punished and beaten” by Nova, as they continued to make statements that were half-truths. Schure disliked the attitude of the people at Nova, and felt that this computer incident had “done more to sour him on Nova than any other incident in fifteen years.”¹⁵

Although Schure expressed anger and displeasure with Nova over the purchase of computers, there was no assurance that he would willingly give up his salary and perks as chancellor. Nonetheless, the acrimony over the computer purchase had embittered Schure on any future interaction with Nova University.

Fischler and others, unable to work out a compromise with NYIT, decided to fight NYIT in the courts. Nova thought a legal confrontation with NYIT would be the best way to pressure the school to end the agreement. In a legal draft that was never filed, Nova asked for declaratory and injunctive relief from Alex Schure and NYIT. Nova’s attorney, Terry Russell, argued that in the 1975 shared programs oral agreement, NYIT agreed to transfer control of certain bachelor and master’s programs to Nova and to divide the net income fifty-fifty. Russell asserted that since 1975 Nova had distributed some \$1.7 million to NYIT via the fifty-fifty split. Florida statutes declared that a not-for-profit corporation may not distribute its profits to contributors, whether they be members, shareholders, officers, or directors. Any profits must be devoted to the corporation, and since NYIT contributed to the administration of the shared programs to Nova, NYIT could not seek to profit from this contribution.

Over the years, continued Russell's legal draft, Nova became solely responsible for the development and maintenance of the shared programs. Nova had been burdened with the responsibility for the overhead and expenses, including faculty salaries and insurance costs, while NYIT had been entirely relieved of such responsibility. Due to the unequal bargaining posture between NYIT and Nova, the 1975 oral agreement imposed disproportionate obligations on Nova.

In addition, in a 1982 employment agreement, Schure had been given an excessive package. His salary as chancellor of Nova University was \$80,000 a year, in addition to his salary as president of NYIT. He received pension plan benefits, an automobile with all auto expenses paid by Nova, an entertainment expense account of \$10,000 per year, and a housing allowance of \$12,000 per year because as chancellor he was required to reside part-time in Broward County. Russell accused Schure of receiving substantial benefits when he instructed Nova to purchase computers from the NYIT Computer Graphics Lab at above-market prices. Another key issue Russell cited was the NYIT Board of Trustees' decision to demand payment of the exorbitant sum of \$10,000,000 to dissolve the agreement. That payment was, in effect, a bribe. The NYIT members of the Nova Board of Trustees had consistently acted in NYIT's best interests, not Nova's, and used their position of influence to benefit NYIT, not Nova.

The plaintiffs, Nova University, had, over a period of several years, sought relief within the corporate structure of NYIT, but without success. Since the plaintiffs had suffered irreparable injury and had no adequate remedy at law, the legal document asked for the original 1970 agreement to be declared invalid and the 1975 oral agreement terminated. The brief argued that the acts of Alex Schure constituted adequate cause for terminating the exorbitant 1982 employment agreement.¹⁶

These legal challenges were dubious at best, especially the view, not expressed earlier, that the money from the shared programs that Nova paid to NYIT was illegal. Nova had never questioned the 1975 shared agreement or Schure's executive package as excessive until it began looking for a way out of the 1970 agreement. Had these legal issues ended up in court, it would have been difficult for Nova to challenge for cause the legality and the sanctity of the original contract. A contract was a contract, and Nova had agreed to the stipulations and paid Schure the designated sums for the entire fifteen-year period. It would have been difficult to explain in 1985 why suddenly the contract was invalid.

Of course, Nova had no desire to file the lawsuit, because it would have taken several years and would have cost the university thousands of dollars. It wanted to use the threatened lawsuit as leverage to persuade Schure to end the association. The defining moment came when Mary McCahill went to Schure's office and gave him a copy of the legal brief that Nova was going to file. She told him that Nova had someone waiting at the courthouse to file the brief immediately if he did not agree to end the federation. Schure read the document and allegedly said, "Make me an offer." Schure did not want to defend a lawsuit; it would have been disruptive and expensive for both parties.¹⁷ The carrot/stick approach worked. Nova would pay off its debt to NYIT, take care of Alex Schure, and drop the threatened lawsuit. Schure agreed because he had tired of the relationship with Nova and did not want any more conflict.

NYIT and Nova quickly hammered out a final agreement that was signed on October 31, 1985. This document formally and legally ended the relationship between NYIT and Nova University. Nova agreed to pay its debts to NYIT with an immediate check of \$250,000, and then nine payments of \$125,000 each and a final sum of \$875,000. The total of \$2 million would be paid off by June 1988. As part of the agreement, Alex Schure resigned as chancellor of Nova, all NYIT trustees agreed to resign from the Nova board, and Abe Fischler and Mary McCahill left the NYIT board. Outside of the formal agreement, Nova stipulated that the university would pay Schure a full salary of \$80,000 for one year and then half salary for five years, for a total of \$280,000—an expensive buyout.¹⁸

One person on the Nova board, Tinsley Ellis, opposed the threatened lawsuit against NYIT. Ellis did not object to ending the association; he simply disliked the methodology. He thought any disclosures in court would embarrass Alex Schure and Nova University. Ellis said that Schure had allowed Nova to run its own programs and rarely interfered with the university's operation. Schure had come to the rescue at a time when Nova would have failed; he had been a very honorable man in his dealings with Nova and should not be demeaned in a legal action.¹⁹ Fischler agreed with Ellis that Schure and NYIT had saved Nova on several occasions and that Nova would not be extant without their help. In that context, Fischler thought the original 1970 deal with NYIT was a good decision. Although there was some criticism of the generous payoff to Schure, Fischler thought it was a worthwhile cost as it helped free Nova from its federation with NYIT. The final understanding made certain that Schure and NYIT were

paid back for their help and support.²⁰ In the final analysis, it appears that Nova repaid all of the money loaned to it by NYIT.

Nova University was on its own again. The school had weathered numerous storms from 1964 to 1985, and it appeared on many occasions that the university would not survive. But thanks to the tenacious leadership of Fischler and the board of trustees, a determination to succeed, and a series of saviors, Nova would now embark on twenty years of growth and prosperity.