

# ACADEMIC FREEDOM AND TENURE: NEW MEXICO HIGHLANDS UNIVERSITY<sup>1</sup>

This report concerns the actions taken by the administration of New Mexico Highlands University to dismiss Professor Gregg H. Turner and to deny tenure to Professor David J. Wiedenfeld.

New Mexico Highlands University (usually referred to as Highlands or NMHU) was established in 1893 by the New Mexico Territorial Legislature as New Mexico Normal School, admitting its first students in 1898. Bearing its current name since 1941, Highlands is a state-supported coeducational institution and a federally designated Hispanic-serving institution.<sup>2</sup>

The university is located on a 175-acre campus in the small town of Las Vegas, New Mexico, in the foothills of the Sangre de Cristo Mountains, some sixty-five miles east of the state capital, Santa Fe. Satellite learning centers are located in Rio Rancho, Santa Fe, Farmington, and Roswell.

Highlands offers undergraduate and graduate degrees in five departments in the College of Arts and Sciences and in schools of education, business administration, and social work. As of fall 2005, approximately 2,340 students were enrolled on the main campus, some 45 percent of them graduate students, served by a full-time faculty of approximately 115. Nearly 60 percent of the Highlands student body and nearly 30 percent of the

faculty are Hispanic. The university was first accredited in 1926 by the North Central Association of Colleges and Secondary Schools and, as chronicled by Highlands's official historian, the university has intermittently experienced problems with accreditation and faced allegations from its faculty of administrative interference.<sup>3</sup>

Manuel M. "Manny" Aragon became the sixteenth president of Highlands on July 1, 2004, succeeding Dr. Sharon S. Caballero. Prior to his appointment to the presidency, Mr. Aragon was for many years majority leader of the New Mexico Senate and well known throughout the state. Dr. Janice Chavez served as the interim provost during the 2004–05 academic year, when most of the events described in this report took place. She resigned in July 2005 and was succeeded by Mr. Placido G. Gomez, who has the title of vice president for academic affairs. Dr. Rolando M. Rael, a tenured member of the Highlands faculty in the Department of Natural Sciences, held the position of interim dean of the College of Arts and Sciences during the 2004–05 academic year.<sup>4</sup> The university's five-member board of regents, appointed by the governor, is now chaired by Mr. Javier M. Gonzales, a Santa Fe business executive who replaced former governor Toney Anaya as chair in January 2005.

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 at whose request the investigation was conducted, to the administration of New Mexico Highlands University, and to other persons directly concerned in the report. In light of the responses received, and with the editorial assistance of the staff, this final report has been prepared for publication.

2. Under Title V of the U.S. Higher Education Act, a post-secondary school with a Hispanic student population of at least 25 percent, at least half of which meets federal low-income guidelines, may be designated a Hispanic-serving institution.

## I. Background

Meeting in December 2003, the board of regents took two actions with important ramifications for the future of the university. In the first, the regents voted unanimously not to extend the two-year contract of President Caballero beyond its expiration date the following June and authorized a national search for her

3. Maurilio E. Vigil, *Defining Our Destiny: The History of New Mexico Highlands University* (Las Vegas, N. Mex.: NMHU, 1993), 49–51, 63, 69, 110–11, 116, 127.

4. Responding to a prepublication draft of this report, Vice President Gomez, writing on behalf of the Highlands administration, stated that "because the report concerns confidential personnel matters and pending litigation, we are not able to comment on it." Responses were received, however, from the former interim provost, Dr. Chavez, and from the former interim dean, Dr. Rael.

successor. In the second, they adopted a broad-ranging, thirty-three-page five-year strategic plan that included a mission statement with the following opening paragraph:

New Mexico Highlands University is a diverse comprehensive quality university serving the global community by integrating education, research, public service, and economic development, while celebrating our distinctive northern New Mexico cultures and traditions. We achieve this through a university-wide commitment to quality student-centered education, recognition of the growing importance of the Spanish language to our nation's interests, and an acknowledgment [of] our many responsibilities to residents of northern New Mexico as the principal educational institution in the region.

The eight-point strategic plan called for a series of new initiatives establishing strong partnerships with other academic institutions, including area community colleges, and identifying and vigorously addressing the educational, social, and economic needs of the region. Its chief priority, explicit in its prefatory vision statement, was to turn Highlands into "the nation's premier hispanic-serving institution." With respect to recruitment and retention of faculty, the strategic plan called for Highlands to do three things: build a "highly qualified diverse faculty"; "improve full-time-part-time faculty ratios and retain [a] high percentage of terminal degree tenure-track faculty"; and "recruit and retain faculty with demonstrated competencies for high productivity and outstanding performance." As will be made clear in the pages that follow, the interpretation and transformation of these three seemingly uncontroversial goals are crucial to understanding the tensions that were to develop in the first year after President Aragon's appointment.

With regard to the board's two actions, board chair Anaya was quoted as having stated at the same December 2003 meeting that "the regents decided a new direction was needed to help the university meet its mission and attain long-term goals. . . . We have adopted a very ambitious strategic plan for the university, and we feel strongly that we need to reach out for someone with the experience that will help ensure that we reach our goals." According to a report in the *Albuquerque Journal*, the regents indicated that they were seeking a "strong personality to raise money, increase enrollment, and build profitable partnerships."

The board engaged a local search firm to assist a seventeen-member search committee to recommend a new president. The five finalists in the search were all Hispanic males. The pool of candidates included two prominent state legislators, one of them Manny Aragon, who was reported to have long expressed an interest in the Highlands presidency. At their meeting on June 11, 2004, the regents chose Mr. Aragon over four other finalists, two of whom were academic administrators elsewhere. When he took office on July 1, he became the fifth president, including interim presidents, to serve in that position in a decade—a period during which the university had faced problems with renewal of accreditation, declining enrollments, and a multi-million-dollar budget deficit. Although the selection of Mr. Aragon had been anticipated in the local press and was therefore not a surprise, his appointment had been opposed by many members of the faculty, who favored another candidate with prior experience as an academic administrator.

On June 18, the new president signed a four-year contract, which was ratified at a meeting of the board of regents on July 16. As was customary, the meeting was held on the Highlands campus and attended by a number of faculty. The minutes of the meeting recorded two items of note: (1) the board's desire "to meet with the Faculty Senate to streamline the processes for faculty hiring"; and (2) a presentation on 2003–04 demographic data by Dr. Clarence Sanchez, then vice president for academic affairs, showing that the percentage of Hispanic faculty at Highlands was much lower than the percentage of Hispanics in northern New Mexico. Several faculty members stated to the undersigned investigating committee that the implication of the board's position, and especially of Dr. Sanchez's presentation of data, seemed to them to be that quality meant diversity, and that diversity meant that the ethnic make-up of the faculty should reflect the ethnic make-up of the students and surrounding population.

In his inaugural address on October 10, 2004, President Aragon reaffirmed the regents' commitment, set forth in the strategic plan, to provide more educational and economic opportunities for residents of northern New Mexico, especially its Hispanic, Native American, and other minority students, and to help Highlands become the country's premier Hispanic-serving institution. He also committed himself to the recruitment of more individuals from minority groups into the Highlands faculty and administration. Almost immediately after he took office, the new president set out to accomplish these goals, citing the strategic plan as mandating significant



changes at the university that he recognized might not be agreeable to everyone. He initiated changes in academic programs, removed several academic administrators, and appointed an interim provost and interim deans—actions undertaken without consulting the faculty. His changes in personnel stirred controversy both on campus and off. Faculty who had admired Mr. Aragon's effectiveness in the state legislature and his support of higher education there claimed they were chagrined when he used identical tactics in the university setting. According to an article in the *Albuquerque Journal* in late September 2004, "His shuffling of academic and administrative positions has sparked accusations that some promotions are paybacks to supporters and old political friends, and that good people have paid the price by being forced out or demoted." Meanwhile, the actual percentage of tenured and tenure-track Hispanic faculty declined.<sup>5</sup>

Highlands's governance problems had already been noticed in another quarter. The North Central Association (NCA) had given the university a provisional ten-year accreditation in 2000, noting eight areas in which improvement was needed. Visiting the campus again in March 2004, the NCA's accrediting team noted with concern the university's brief history of shared governance and advised a process of clarification and refinement of the roles of students, faculty, and staff. "These clearer definitions as well as processes," the review team said, "should be promulgated in an updated handbook or manual that defines and delineates the role of Senates, Administrative Officers, the President, and the Board." The board of regents responded in December 2004, focusing on recruitment and hiring. The board directed that the university

undertake a major review of the faculty handbook policies and procedures during the current academic year. Work will include enhancement of the handbook's language addressing equal opportunity procedures associated with the conduct of faculty and administrative staff recruitment and

5. Dr. Sanchez had reported the percentage of tenured and tenure-track Hispanic faculty as 19.23 percent, although "Faculty Diversity at NMHU," a report of the Faculty Senate that had appeared in March 2004, gave the figure as 29.6 percent. By October 2004, when the Faculty Senate reported data for the 2004–05 academic year, the figure had dropped to 25 or 24 percent, depending on whether faculty in administrative positions were or were not included in the total.

hiring as well as other important aspects of university decision making.

During his first six months in office, relations between President Aragon and a segment of the faculty, including the leadership of the Faculty Senate, had become increasingly strained. The depths of the conflict became clear—and very public—when a group of twenty-two tenured faculty members (representing almost a third of the university's tenured faculty) sent a three-page letter, dated February 24, 2005, to the NCA, setting forth their concerns over various actions taken by the administration since President Aragon's arrival at Highlands. The letter raised important issues relating to the appropriate role of the faculty in the governance of the university. These involved such matters as oversight of the curriculum and of academic policies and procedures, faculty personnel decisions, searches for academic deans, and appointments of interim administrators. "The ability of the faculty," they wrote, "to participate as a strong, effective, and collaborative voice in university governance is being systematically eroded." They charged that the president was disrespectful to faculty in their professional capacities, citing repeated "unwarranted attacks on faculty in public meetings." They complained that he had made several administrative appointments that "reflect his personal and professional relationships more than the demonstrated needs of Highlands University." They also complained about "an atmosphere of fear, hostility, and intimidation" for faculty at the institution, and they alleged a "pattern of harassment of faculty members in leadership positions." The letter called for "intervention on the part of our educational accrediting agencies, professional associations, and the weight of public opinion and concern." Professor Tom Ward, president of the Highlands University Faculty Association (the recognized bargaining agent for full-time tenured and tenure-track faculty at the university), was quoted in the press as having stated, "We feel we've gone through channels and that's not making much of a difference. Now we are going to agencies outside the state." According to the *Chronicle of Higher Education*, one signer reported that "an additional ten [faculty members] read the letter and told organizers that they agreed with its complaints but were afraid to put their names on it."

One of the immediate issues of concern cited in the letter to the NCA had to do with the administration's decision on February 23, 2005, to deny tenure to four of the seven faculty members whose candidacies were under review that year, including Professors Gregg

Turner and David Wiedenfeld, despite the positive recommendations of their faculty peers and their department chairs. “Our concern,” the letter stated, “is that there is no clear indication that tenure was awarded or denied based upon the merit of the faculty member, and that procedures were seriously violated.” The letter also cited the administration’s actions the previous month against Professor Jean Hill, chair of the Faculty Senate, who had been placed on indefinite suspension, denied further access to the campus, and threatened with dismissal from her tenured faculty position. Professor Hill’s case was subsequently resolved with her returning to her faculty position and the administration’s abandoning any plan to dismiss her.

## II. The Case of Professor Turner

Professor Gregg Turner received the PhD degree in mathematics from Claremont Graduate University in 1991 and spent a year at the University of California, Los Angeles, as a postdoctoral fellow in the Graduate School of Education. After holding a series of temporary appointments, both part time and full time, at several different institutions, he was appointed to a tenure-track position in the Department of Computer and Mathematical Sciences at Highlands beginning with the 2000–01 academic year. His specialty is mathematics education and curriculum development, and he has a background in working with students from underrepresented populations.

From the beginning of his appointment at Highlands, Professor Turner was engaged in helping to develop an interdisciplinary five-year dual-degree program in computer and mathematical modeling, designed to attract top Hispanic students with high mathematical aptitude interested in science and technology careers. The program had originally been scheduled to begin in fall 2005 and was to involve collaboration with half a dozen community colleges in New Mexico and elsewhere, paid summer internships at Los Alamos National Laboratory, and mentorship programs for high school students in northeastern New Mexico. Professor Turner reported considerable interest in the program through his efforts at publicizing it in New Mexico and beyond, and it had received the approval of the board of regents’ Academic Affairs Committee in spring 2004. According to an article in the May 3, 2005, issue of the Albuquerque *Crosswinds Weekly*, “[President] Aragon seemed to like the program until he realized [Professor] Turner would be recruiting Hispanic students from out of state as well as in state. Suddenly, Turner found his travel funding had been pulled, preventing him from traveling to be the keynote

speaker at a [California] minority education conference through which he believed he could reach thousands of top Hispanic students.” As the events discussed below unfolded, the program officially continued but had no one to run it.

While on the faculty at Highlands, Professor Turner served for two years as coordinator of the mathematics program and was appointed interim department chair for the 2004–05 academic year when the regular chair went on a temporary leave of absence. That year, he was a candidate for tenure. Three of Professor Turner’s departmental colleagues (two of them “discipline peers”) supported his tenure candidacy, as did his department chair. Interim Dean Rael did not concur with the department’s positive judgment. In a memorandum dated December 7, 2004, addressed to Professor Turner, with copies to the interim provost and the president, the dean emphasized deficiencies that he noted in Professor Turner’s performance, particularly in the area of research, and stated that he did not find “sufficient documentation to warrant [Professor Turner’s] self-evaluation scores and [those] provided by [his] peers and chair.” The dean concluded by stating, “As your portfolio stands currently, I cannot forward favorable support for recommending tenure to the provost.”

Professor Turner took sharp issue with Dean Rael’s assessment of his performance, especially the dean’s challenges to the relative weightings of 40 percent for service and 10 percent for research that Professor Turner had requested. In a memorandum to the Faculty Affairs Committee (FAC) dated December 12, Professor Turner offered a rebuttal to each of the negative comments made by the dean. After reviewing Professor Turner’s tenure dossier and his response to the dean’s assessment, the committee judged that he met the criteria for tenure and forwarded a positive recommendation to Interim Provost Chavez on December 14. In an e-mail message

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6. Dr. Chavez, in her response to the draft text of this report, commented on the tenure-evaluation process as follows: “Tenure dossiers were submitted in various states of disarray, including incompleteness, lack of evidence and documentation, and disorganization. In my twenty years of my review of tenure dossiers, I was surprised to see the poor quality and lack of attention by candidates placed on constructing a dossier. Even the best candidate can look inadequate if their dossier does not reflect the scope of their accomplishments. The levels of reviews follow a very reflective process. All candidates had very similar ‘glowing’ reviews from their colleagues. The deans provided more of critical and thoughtful analyses of the candidate’s dossier.

dated January 18, 2005, the provost notified Professor Turner that she would be “forwarding a denial of tenure to the president at this time,” but she did not state the reasons for her negative recommendation.

Professor Turner appealed the provost’s recommendation to the FAC, which convened a hearing board in early February to hear Professor Turner and his witnesses as well as Provost Chavez and to “provide the provost an opportunity to reconsider her recommendation.”<sup>6</sup> Dean Rael did not attend the hearing or otherwise provide an explanation for his position on the matter. A statement from former Highlands provost Glen W. Davidson was entered in evidence, however, to explain special conditions that had been negotiated regarding expectations of Professor Turner. Dr. Davidson, Dean Tomas Salazar, and Chair Wayne Summers had sought Professor Turner’s leadership in the mathematics initiative described above. “It was our unanimous agreement,” wrote Dr. Davidson, that

following the protocols of *The Faculty Handbook*, time required for such leadership would place Dr. Turner at risk for tenure consideration if it were not granted up front that the initiatives would count as the major part of his research and service components. It would be expected that in lieu of published research, Dr. Turner would focus on additional grant applications, project reports, and syllabi for the new offerings. In lieu of service, he would be expected to develop networks with high school and community college teachers of math.

Following the hearing, the chair of the FAC reported in mid-February that a plurality of the hearing board (by a vote of two in favor, one opposed, and one abstention) had voted to support Professor Turner for tenure. Nonetheless, Provost Chavez, by letter dated February 25, informed Professor Turner that his candidacy for tenure had been denied by the board of regents, which had met two days earlier. The letter gave no reasons for the negative decision.

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Because the deans knew the candidates better than I, and they exercised a more comprehensive analysis, in all cases I concurred with the dean’s recommendations. According to the Faculty Handbook, the provost is not required to provide specific reasons for making a recommendation. In the case of the tenure candidates, these reasons were disclosed and discussed during the faculty hearings attended by the provost, candidate, faculty board, faculty advocate, and any other witnesses the candidate calls upon.”

As already noted, the four tenure denials were among the major issues prompting the letter that a group of faculty members sent to the North Central Association. In the weeks after learning of the rejection of his tenure candidacy and the denials of tenure to three of his colleagues, Professor Turner made numerous public statements, both in the local press and through campus e-mail, questioning the adverse tenure decisions and criticizing the Highlands administration generally. He published op-ed pieces in area newspapers and granted interviews in which he discussed these and other recent events, including the earlier suspension and threatened dismissal of the Faculty Senate chair, Jean Hill. In one of the op-ed columns, published in the March 6 issue of the *Albuquerque Journal North*, he charged that President Aragon was

promoting an academic environment that is hostile to [the Highlands] faculty and injurious to its students. Instead of working closely with faculty to solicit input and to cooperatively pursue goals that will academically strengthen this university, he has chosen to treat his faculty as second-class citizens, to render tenure elusive or non-existent as a reward for dedication and commitment, and to ignore faculty input to resurrect the deepening crises of declining enrollment and impoverished academic standards.

The president’s relationship with faculty and staff, Professor Turner wrote, “is one of contention and intimidation.” Elsewhere, he accused the Aragon administration of having an “alternative agenda” and of engaging in “circumstantial racism,” alleging that ethnic bias, related to the regents’ goal of making Highlands the premier Hispanic-serving institution in the United States, figured significantly in the negative decisions. In one op-ed column, he charged President Aragon with having “chosen to go the low road and manipulate the demographic dynamics.” Interviewed for an article in the *Las Vegas Optic* that appeared on March 10 and in which he criticized the administration’s decision to deny him tenure because of concerns he had about its harmful consequences for the new mathematics and computer-science program he had helped to develop, Professor Turner was quoted as having stated, “The interim provost is a snake. They hired her to do [President Aragon’s] dirty work, and to axe careers.” In another interview in the Highlands student newspaper, *La Mecha*, Professor Turner was quoted as having accused Provost Chavez of being “a hired gun—someone working on a directive from above.”

In addition to his various statements in the press, Professor Turner became embroiled in an intramural controversy with one of the three Highlands faculty members who had been granted tenure that year, Professor Luis Ortiz from the business school. On March 11, Professor Ortiz circulated to the entire faculty by e-mail a lengthy article he had written entitled “One More Time—What Does It Mean to Be a Hispanic-Serving Institution?” The article praised the Aragon administration and the policies it had been following, suggesting that the president’s vision and leadership would take the university to a higher level of success. Professor Ortiz also defended the way in which the administration had handled the recent tenure evaluations. After receiving the article, along with an accompanying message, Professor Turner responded at length to the same list of recipients to whom Professor Ortiz had circulated his piece, attacking the article’s content and the author’s judgment and moral sensibility.

I am greatly relieved to know that you, as one of the faculty who has just received tenure, are in synch with Mr. Aragon’s draconian measures to exclude faculty from contributing to and participating in basically any process of co-governance [with] this administration; obviously, you are of the school of thought which endorses rule by fiat. . . .

But how disappointing that as the one Hispanic faculty [member] who received tenure, and as one of the Hispanic faculty on this campus, you apparently do not feel the moral obligation to speak out in support of your colleagues who were denied tenure. Not simply because we were denied tenure, and not even just as simply because the four of us were non-Hispanic or even just “your colleagues,” but because our denials were capricious and selective and mean spirited and wrong and this should not be tolerated by *any* faculty body subscribing to due process, fair treatment, and tenets of mutual respect. . . . These weren’t, if you are unaware, how should we say, borderline cases. You seem to context such career assassination with apologies to the past and excuses for the future. And even allowing for a future that you would like to believe is ordained now that Aragon is at the helm, does this current end justify the means? (I don’t recall in your long dissertation of great-things-to-come-at-Highlands that you, at any point, expressed even mild indignation [at] the violation of procedure that has occurred—that administrative “evaluation” of our tenure excluded all propriety

of the procedure and dictates of the faculty handbook, and that we were not even provided with ample reasons for denial. . . .

You do a disservice to your credibility and a disservice to all of your colleagues at Highlands to sidestep recognition of such blatant impropriety. Clearly, it is only a matter of time before Aragon begins to go after tenured faculty in the near future with (no doubt) new “rules” of (post-tenure) review and new standards of judgment. . . . I fortunately won’t be here to witness the next round of summary faculty execution as an expression of the contempt this Board of Regents has for its employees. Still, I hope your moral strategic compass, for consistency[’s] sake, remains immutable.

In a brief reply sent the next day, Professor Ortiz remarked, “Please don’t think for a second, Dr. Turner, that I do not respect the nontenured faculty—I know them [and] they, [like] you, are marketable. If I were with you (I could have been!)—I know that I would look back at this time an[d] find that it, too, was a very positive thing in the long run for my career. I do empathize.”

Professor Turner responded, again at some length, and this time he sent his message only to Professor Ortiz:

I do apologize for not writing you back directly. I did not intend to hit “reply all” and generate my indignation for all to necessarily consider. But I must tell you that I find your characterization of “looking back” as just *bizarre*. . . .

The point is, there’s a larger picture as to the reason and nature of the current harassment that current tenured and tenure-track faculty have been subjected to.

I am curious how you now understand the basis for the tenure decisions rendered? Do you feel that this was a completely arbitrary process? Do you think that there were hidden parameters of evaluation not comprehensible to the rest of us? Do you believe that this has been a just or fair process of award and rejection? Or maybe you have a Wizard of Oz philosophy—that Manny Aragon is the mysterious powerful man behind the curtain who is executing equally mysterious personnel manipulations for the benefit of everyone else incapable of fathoming such vision and insight, i.e., so we should have faith that he is addressing a bigger picture. . . . But is there a bigger picture than the ethical and proper professional treatment of

faculty? You may choose to be oblivious, or to trivialize the consequences, or to excuse the egregious and malicious behavior of the administration now in place for the greater good . . .

I think your public proclamation of faith in the future [under] Mr. Aragon . . . , with conspicuous absence of mention [of] the rampant and current abuses that have been taking place[,] is insensitive to all of us who now have to live with the ramifications of being professionally and ethically mistreated and stamped under the direction of Manny Aragon and his surrogates. I can only tell you that I (personally) felt this way, and I'm gambling I'm not the only one.

Professor Ortiz replied that night: "Thanks, Greg—I recall going with you and other[s] to Santa Rosa—I will call you in the a.m."

In the process of making his various public pronouncements, Professor Turner evidently incurred the considerable displeasure of the president and the interim provost. On the afternoon of March 17, 2005, he received an e-mail message from Interim Dean Rael summoning him to a meeting in the provost's office the following afternoon. The message did not state the reason for the meeting. Accompanied by Faculty Association president Tom Ward, Professor Turner arrived the next day at Provost Chavez's office, where Dean Rael was also present. After a brief conversation, the provost handed Professor Turner a letter that stated:

This letter is to inform you that your employment with New Mexico Highlands University is terminated for cause, effective immediately.

You have subjected your colleagues and students to angry outbursts, have sent your colleagues harassing e-mails, and referred to me publicly as a "snake." The university finds that, through these actions, you have violated provisions of the Faculty Handbook, specifically Section VI(1) Professional Ethics.

Any money due to you for hours worked or annual leave will be paid to you. You should contact the university's Human Resources office regarding any benefits you may be entitled to receive.

You have the right to grieve this termination through the Faculty Grievance and Conciliation Committee. To do so, you must send a written petition to the chair of that committee *within 30 days*. [Emphasis in original.]

According to Professor Turner, the provost ordered him to clear out his office within thirty minutes under the observation of Dean Rael and subsequently had the locks on his doors changed. He was paid no further salary, and his remaining personal effects, including his computer files, had still not been sent to him at the time of the investigating committee's site visit in mid-November 2005.

Although Professor Turner considered filing the grievance mentioned by Dr. Chavez, he ultimately decided not to pursue intramural redress. He reports that his decision was informed partly by the advice of his attorney, who pointed out that all state employees in New Mexico are legally entitled to due process, including a pretermination hearing on the charges, and that the courts would be the appropriate venue for his complaint. His decision was also informed by considerations of time. Corroborating the latter reason, Professor LaGrange, the chair of the Faculty Grievance and Conciliation Committee at that time, told the investigating committee that grievances are heard in the order received. Asked to speak to the issue of timely redress, she explained that, when Professor Turner's dismissal occurred, her committee already had a backlog of grievances in addition to the four tenure-denial cases, and that additional delays could be expected both because mediation was mandatory before any hearing and because the appointment of distinct subcommittees (hearing boards) would be required for each case at a time of year when members of the faculty had considerable demands on their time. Thus, any grievance Professor Turner might have filed in March could not have been heard before the following academic year.

During the two months after his dismissal, discussions took place between Professor Turner's attorney and counsel for the university looking toward a resolution of the matter. In a letter dated May 18, 2005, his attorney proposed terms of settlement and also laid out the legal case he was prepared to argue in court if the matter were not resolved. When the administration rejected the proposed settlement terms, Professor Turner's attorney filed suit in federal district court on August 1, 2005, alleging retaliatory actions against Professor Turner on the part of the Highlands administration for exercising his First Amendment rights when speaking out against what he saw occurring at the university. Attempts at mediation since that time have thus far proved unavailing.

### III. The Case of Professor Wiedenfeld

Professor David Wiedenfeld received the PhD degree in chemistry from Columbia University in 1993. In fall 1997, after having served two years as a postdoctoral

fellow and two years as a senior research fellow at the California Institute of Technology, he was appointed to a position as assistant professor of chemistry at the University of North Texas, where he remained for four years. In August 2001, he moved to New Mexico Highlands, accepting a tenure-track appointment as assistant professor in the Department of Natural Sciences, with a year of credit for prior service granted toward the probationary period. His primary teaching area is organic chemistry. He has developed an active research program while at Highlands, securing outside funding and publishing peer-reviewed papers in internationally respected journals. The chair's evaluation in April 2004 stated, "Dr. Wiedenfeld is making good progress toward tenure." Submitting his application for tenure in early fall 2004, Professor Wiedenfeld concluded the document with the following summary:

I have worked to bring the best educational opportunities to our students through rigorous course offerings and opportunities to conduct organic chemistry research, directed a vigorous research program that has received significant funding and yielded many peer-reviewed publications and also presentations, and given active service to the community, university, and my discipline.

Professor Wiedenfeld's tenure dossier passed to his disciplinary peers in chemistry, his colleagues in the natural sciences department, and his department chair. At each stage, both quantitative and qualitative evaluations gave his tenure candidacy strong and unanimous support. When the dossier reached Interim Dean Rael, problems arose that were not disclosed to the candidate. The faculty handbook stipulates that the dean "transcribe written comments verbatim and collate the peer evaluations within two weeks of receiving the packet," that is, the three previous sets of quantitative and qualitative assessments, and that these are to be "sent to the faculty member." This did not take place.

Dean Rael, in a memorandum to Interim Provost Chavez dated December 9, 2004, but not shared with Professor Wiedenfeld at the time, reported the unanimous support of Professor Wiedenfeld's colleagues for his tenure candidacy and went on to state that Professor Wiedenfeld had satisfied the faculty handbook requirement of an averaged score of at least 4 ("very good") in teaching and at least 3 ("satisfactory") in each of research and service. In fact, Professor Wiedenfeld had exceeded the requirement, with scores of 4, 4, and 3, respectively. Moreover, his scores had been 4, 4, and 4

when Dean Rael received them, but the interim dean assigned Professor Wiedenfeld a rating of 2.5 for service (2 means "needs improvement"), lowering the average for that criterion to 3. The interim dean did not provide these numbers to Professor Wiedenfeld, nor did he provide any qualitative assessment, even though both are required by the faculty handbook. The investigating committee noted the further requirement that any score of 2.5 or below be accompanied by a written justification, which the interim dean failed to provide. Dean Rael concluded his memorandum to Dr. Chavez by stating: "At this time, I reserve the right to abstain from making a recommendation in favor [of] or opposed to Dr. Wiedenfeld's tenure. I feel that I cannot make an administrative decision without allowing a personal bias to enter into that decision. Therefore, I pass on the recommendation of the faculty to [you] and the president."

Professor Wiedenfeld stated to the investigating committee that he was not aware of the interim dean's equivocal evaluation at the time it was made (nor, he reports, was he ever told the basis for the dean's "personal bias"), and he received no information from anyone in the Highlands administration about the progress of his tenure review in the months following the submission of his dossier. Thus Professor Wiedenfeld's first indication of a problem came on January 18, 2005, when—prompted by Professor Orit Tamir, chair of the Highlands Faculty Affairs Committee (FAC) at the time—Provost Chavez sent Professor Wiedenfeld an e-mail message in which she stated: "I reviewed your tenure dossier, the evaluation conducted by your faculty peers, and the recommendation from your college dean. Based on my own evaluation and in accordance with the Highlands Faculty Handbook, I am forwarding a denial of tenure to the president at this time." According to Professor Wiedenfeld, no substantive reasons were given at any stage of the tenure review process for the rejection of his tenure candidacy.

As soon as he learned on January 18 that his tenure was in jeopardy, Professor Wiedenfeld reports that he sought an explanation from the interim provost. None was forthcoming. Over the next several days written and telephone requests to the provost from the candidate, from his department chair, Professor Merritt Helvenston, and from Professor Tamir on behalf of the FAC were unavailing. Finally, together with Professor Helvenston, Professor Wiedenfeld went to the office of the provost on January 27 to make requests in person for the quantitative scores relating to his tenure review and the written comments of his evaluators. They remained in

her outer office as a series of events transpired. They report that the provost emerged from the inner office with Dean Rael's memorandum of December 9, which she gave them, saying that there were no peer comments in the file. At their insistence that this was not possible, she returned to her office, then came out again, this time saying that there were comments but that considerations of confidentiality prevented her from turning them over in their current form. Professors Wiedenfeld and Helvenston were told to return in forty-five minutes, by which time the secretary would have transcribed them. After forty-five minutes the transcription was ready but without the numerical scores, which were not provided until later. According to Professor Wiedenfeld, the impression strongly suggested to him by these events was that no transcription or collation of peer comments had been produced as required, and no substantive reasons formulated, by Dean Rael or Provost Chavez until then, that is, until *after* the provost's recommendation had gone forward to the president.

The possibility that Provost Chavez was unfamiliar with the materials in Professor Wiedenfeld's tenure file was confirmed when he appealed her recommendation to the FAC and obtained letters from various colleagues in support of his appeal. On February 10, a hearing board convened to hear Professor Wiedenfeld and his witnesses and to "provide the provost an opportunity to reconsider her recommendation." As in Professor Turner's case, Dean Rael neither appeared at the hearing nor submitted a statement to the board. In her February 14 report on the hearing, addressed to President Aragon, Professor Tamir stated that in the judgment of the hearing board, Professor Wiedenfeld "has exceeded the criteria for tenure based on the standards in the Faculty Handbook." The FAC also found serious procedural irregularities in the handling of Professor Wiedenfeld's review. "The board," wrote Professor Tamir, "unanimously and strongly supports granting tenure to Dr. Wiedenfeld." She also wrote that the provost, "based on what she learned about David Wiedenfeld's contributions and accomplishments, [indicated that] she would be willing to reconsider her original denial of tenure." Indeed, the day after the hearing, Professor Tamir informed Professor Wiedenfeld that she had spoken with Provost Chavez by telephone, and that the provost had stated that she had sent an e-mail message to President Aragon recommending that Professor Wiedenfeld be granted tenure. A week later, however, when Professor Wiedenfeld sought confirmation via e-mail from the provost that she had in fact changed her recommendation regarding his tenure application, Provost Chavez replied, "Although the Fac-

ulty Handbook does not allow me to change my recommendation, I did send my reflections following the FAC Board Hearing to the president for his consideration." At the board of regents meeting on February 23, the president recommended that Professor Wiedenfeld be denied tenure, and the board concurred. Three days later, Provost Chavez notified Professor Wiedenfeld officially of the negative decision, providing no reasons.

On March 8, Professor Wiedenfeld submitted to the Faculty Grievance and Conciliation Committee a twelve-part grievance, alleging that "multiple and severe" procedural irregularities had occurred at various stages in the review process between the time he submitted his candidacy for evaluation and the board of regents rendered its adverse decision, and that these errors "markedly influenced the outcome," resulting in the use of irrelevant and inappropriate criteria to assess his performance and in inadequate consideration of his qualifications. Professor Linda LaGrange, who served at the time as chair of the grievance committee, sought to schedule a hearing for Professor Wiedenfeld. "The intent," she wrote,

was to hold the hearing before the end of the academic year to avoid delays caused by the summer break. While the procedures call for mediation to be attempted before a hearing is scheduled, the committee members felt that the hearing already held before the Faculty Affairs Committee, prior to the formal denial of tenure by the regents, sufficed to demonstrate that mediation [had been] attempted and failed. The interim provost, the respondent in those hearings, insisted that mediation be held.

In April, the Wiedenfeld grievance was submitted to a mediator "to attempt conciliation or negotiation to resolve the grievance." After one session of mediation, however, at which both sides submitted their proposals for resolving the matter, Provost Chavez declared, "The administration has considered the proposals put forward at the last mediation session and has concluded that it will not consider these options further." Once the administration had brought the mediation process to a halt, Professor Wiedenfeld was free to request that his grievance be heard. At that point, however, he had to wait until the fall for a hearing.

In early July, Professor Wiedenfeld, through his attorney, filed a claim of discrimination with the regional office of the Equal Employment Opportunity Commission (EEOC), alleging that the adverse tenure decision

resulted in significant part from impermissible discrimination on the basis of race, national origin, and religion. The discrimination complaint had not been mentioned among the twelve “grievable actions” he had submitted on March 8 because, he told the investigating committee, he had not made it a part of the draft he had asked colleagues to review after February 23, and his colleagues had advised him that the twelve-item list was complete. Moreover, with the New Mexico media focusing on race issues during that time, Professor Wiedenfeld judged that mentioning discrimination would not be helpful and might be harmful. His EEOC complaint was pending at the time of this investigation.

Professor Wiedenfeld’s campus grievance hearing took place on September 30, 2005. According to its October 5 report to President Aragon, the hearing board, chaired by Professor Carolyn Newman, focused on three of the twelve “grievable actions” set forth in Professor Wiedenfeld’s March 8 grievance statement. It “unanimously agreed” that “violations of procedural guidelines” had occurred that “may have seriously impacted the ultimate decision in the administration’s recommendation for Dr. Wiedenfeld [not] to be awarded tenure.” Asked by the investigating committee why the hearing board had focused on only three of the grievable actions, Professor Newman said that the board found those three procedural and substantive rather than technical, that is, squarely within the faculty handbook’s grounds for appealing a tenure denial. The hearing board took no position at the time on the remaining nine items. In sustaining Professor Wiedenfeld’s claims, the report concluded, “Given the multiple violations of procedural guidelines as detailed in the Faculty Handbook for evaluation of faculty for tenure, the Grievance Committee recommends that Dr. Wiedenfeld’s dossier be given a careful review and evaluation following the procedures outlined in the Faculty Handbook for teaching, research, and service” at the point where his dossier is reviewed by the dean. (A new dean of the College of Arts and Sciences had been appointed over the summer.) A week later, President Aragon wrote to Professor Newman and informed her that he was rejecting the committee’s findings and would “not recommend that Dr. Wiedenfeld’s tenure application be reevaluated.”

Unexpectedly, on October 17, several days after President Aragon had rejected the grievance committee’s recommendation, the new provost, Mr. Placido Gomez, directed the committee to revisit the case and issue “explicit findings” on all twelve issues, instead of only the three to which it had previously limited itself, and to make further recommendations. “Although the president has indicated that he will not recommend a reeval-

uation of Dr. Wiedenfeld’s tenure application,” Provost Gomez wrote, “I will ask that he reconsider that position and not act until the Grievance Committee provides him with the explicit findings and opinions required by the Faculty Handbook.” The committee did so, and on October 28 it issued a second report, again addressed to the president, condemning even more strongly the procedural irregularities in the handling of Professor Wiedenfeld’s tenure case. Finding for the grievant in ten of the twelve items, the committee once more recommended that his candidacy be reconsidered, beginning at the dean’s level. “Such a review,” the committee wrote, “is a possible ‘win-win’ situation for all respondents. In addition, the review will provide an opportunity for administration and faculty to build new bridges for communication and understanding.” Professor Wiedenfeld reports that he was notified in March 2006 that President Aragon had declined to reverse his previous opposition to granting tenure.

#### IV. The Association’s Involvement

The March–April 1999 issue of *Academe* carried the report of an ad hoc investigating committee that dealt with the action taken by the New Mexico Highlands University board of regents in December 1996 to deny tenure to Ms. Catherine Clinger, an assistant professor in the Department of Communication and Fine Arts. The committee concluded its report as follows:

The decision by the board of regents of New Mexico Highlands University to reject the tenure candidacy of Professor Catherine Clinger on stated grounds that she lacked the terminal degree in her field, ostensibly because the regents believed that it was in the university’s long-term interest to have a faculty with the highest credentials, was facially legitimate. The board, however, acted against the judgment of all the academic recommending bodies at the university and brought the matter to closure without having returned it to those bodies for their further consideration—an action inimical to principles of academic governance. Professor Clinger was afforded no opportunity for institutional review of her allegation that the board’s decision was based on impermissible considerations, and the amount of notice given to her was inadequate when measured against generally accepted academic standards.<sup>7</sup>

7. *Academe* 85, no. 2 (March–April 1999): 99–108.

The Association's Committee A on Academic Freedom and Tenure, in the absence of any finding by the investigating committee of a violation of the 1940 *Statement of Principles on Academic Freedom and Tenure*, made no recommendation to the annual meeting, and no action was taken.

In the years since 1999, the AAUP staff has heard from time to time from members of the Highlands faculty regarding various matters relating to academic freedom and tenure and to faculty governance. Not until spring 2005, however, had the staff received any information or documents that called for an expression of Association concern. In early March, Professor Jean Hill, chair of the Highlands Faculty Senate, sought the Association's advice and assistance as a result of concerns that she and her colleagues had relating to perceived infringements by the Aragon administration of the faculty role in university governance over the course of the 2004–05 academic year as detailed in the faculty's letter to the North Central Association. On March 23, while the staff was in the process of gathering information and documents about conditions of governance at the institution, the staff learned from an article in the online *Chronicle Today* bearing the headline, "Professor Who Criticized President at NMHU Is Dismissed," of the situation of Professor Gregg Turner. The staff contacted Professor Turner and invited him to send pertinent documents if he was interested in the AAUP's potential involvement in the matter. Professor Turner informed the staff that Professor Hill had been suspended from her duties and was facing potential dismissal from her tenured faculty position. The staff contacted Professor Hill and invited her to send papers about her own situation as well.

Following its review of the documents, the staff wrote to the Highlands administration on April 8, 2005. After setting forth the Association's general concerns about conditions of governance at the university, the staff went on to focus primarily on the issues of academic freedom, tenure, and due process posed by the cases of Professors Hill and Turner. The administration did not respond. In a second letter, dated April 28, and written after a faculty hearing committee had unanimously found "no justification" to dismiss Professor Hill from the faculty and recommended her reinstatement, the staff urged the administration to follow the committee's recommendation. President Aragon replied on May 13. "As you are aware," he wrote, "the letter addresses several personnel matters that are both pending and confidential. Moreover, your letter acknowledges that the information relating to the matters addressed are 'primarily' from the individuals involved in the matters discussed. In view of the fact that your letter asserts factual conclusions based on these

contacts, further discussion of the factual basis surrounding these matters would not be fruitful."

With matters remaining unresolved, the general secretary authorized an investigation into the Hill and Turner cases, and the staff so advised President Aragon by letter of June 14. On August 19, the staff informed the president of the composition of the investigating committee and proposed dates in the early fall for the committee's visit to Las Vegas. A few days later, the staff learned that Professor Hill had been reinstated and returned to her teaching position, leaving the case of Professor Turner as the remaining principal ground for the investigation. The staff wrote again to President Aragon on August 24, urging that he seek a prompt resolution of the Turner case, thereby obviating the necessity of the Association's proceeding with its investigation. Responding that same day, the president stated that Professor Turner had filed a lawsuit against the university and that, as a consequence, the "administration is not at liberty to discuss him, his situation, or his university status" with the AAUP. A month later, in the absence of any indication that a settlement of Professor Turner's case was in prospect, the staff informed the president that the investigation would be going forward and proposed two sets of dates, while reiterating its previous request for the administration's cooperation with the work of the investigating committee. In reply, the office of the president faxed a copy of Mr. Aragon's letter of August 24. A further effort by the staff produced the same result.

In October, less than a month before the investigating committee's scheduled visit, the staff received a request for assistance from Professor Wiedenfeld with regard to the Highlands administration's decision to deny him tenure. His documentation was reviewed by the staff and added to the matters to be explored by the investigating committee. Because of the imminence of the committee's visit, there was no communication prior to the investigation between the staff and the administration regarding the situation of Professor Wiedenfeld.

The investigating committee visited Las Vegas on November 10 and 11, 2005. Vice President Placido Gomez had notified the staff the previous month that, on advice of university counsel and owing to the pendency of litigation involving Professor Turner, members of the Highlands administration would not meet with the committee. Because faculty members willing to meet with the committee believed, as one of them put it, that they "would be subject to serious expressions of disapproval from the administration" if they offered a room on campus where the committee could meet with faculty, the investigating committee conducted interviews in a

suite in the nearby Plaza Hotel. The committee met with eighteen current or former Highlands faculty, including several who have held (or currently hold) administrative roles, and with one current member of the administration who was appointed after the events related in this report. The committee also conducted one telephone interview with a faculty member who was unavailable at the time of the visit. In addition, interviewees provided the committee with written documentation sent by two members of the faculty who were out of town on the dates of the interviews. Despite its inability to discuss the cases of concern with key administrative officers, the investigating committee believes that the available documentation and the interviews that it conducted provide sufficient information to assess the issues of concern, make findings, and reach the conclusions that follow.

## V. Issues

In this section, the investigating committee addresses the central issues raised by the actions taken in the cases of Professors Turner and Wiedenfeld.

1. The Dismissal of Professor Turner: Procedural Issues  
The joint 1940 *Statement of Principles on Academic Freedom and Tenure* calls for the following safeguards of academic due process in cases involving dismissal for cause:

Termination for cause of a continuous appointment or *the dismissal for cause of a teacher previous to the expiration of a term appointment*, should, if possible, be considered by both a faculty committee and the governing board of the institution. In all cases where the facts are in dispute, the accused teacher should be informed before the hearing in writing of the charges and should have the opportunity to be heard in his or her own defense by all bodies that pass judgment upon the case. The teacher should be permitted to be accompanied by an advisor of his or her own choosing who may act as counsel. There should be a full stenographic record of the hearing available to the parties concerned. In the hearing of charges of incompetence the testimony should include that of teachers and other scholars, either from the teacher's own or from other institutions. [Emphasis added.]

These due-process requirements are elaborated in the complementary 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings* of the AAUP

and the Association of American Colleges and Universities and in Regulations 5 and 6 of the AAUP's derivative *Recommended Institutional Regulations on Academic Freedom and Tenure*. Of special relevance is the requirement of an adjudicative hearing of record before a committee of faculty peers, in which the burden is on the administration to demonstrate adequacy of cause.

The official regulations of New Mexico Highlands University include hearing procedures for the dismissal of a tenured faculty member. Where AAUP-recommended standards call for an elected faculty committee to conduct the hearing, the Highlands regulations call for an appointed three-person faculty hearing body, with the provost and the subject faculty member each selecting one faculty member to serve and these two selecting the third member. Where Association-supported standards provide that adequacy of cause will be related, directly and substantially, to the fitness of the faculty member as teacher or researcher, the Highlands regulations are silent on this matter. And where the AAUP's recommended standards state additionally that the burden of proof rests with the administration to demonstrate, with "clear and convincing evidence in the record considered as a whole," adequacy of cause for dismissal, the Highlands policy simply states that the administration "has the burden of proving its case."

While the procedures to be followed in the dismissal of a tenured faculty member may not fully comport with AAUP-supported standards, the university regulations do provide for an on-the-record adjudicative hearing in such a case. In contrast with the 1940 *Statement of Principles* and derivative documents, however, the Highlands policies set forth no pretermination hearing procedures in a case involving the dismissal of a nontenured faculty member within the term of an appointment. The only procedure called for under the faculty handbook is to petition the faculty grievance committee for a postdismissal hearing. Under this procedure, the faculty member has the burden of establishing the validity of his or her claims. Under Association-supported standards, however, as noted above, the burden of proof in a dismissal case rests with the administration to demonstrate adequacy of cause for its proposed action, rather than on the subject professor to show why he or she should not have been released.

As noted above, Professor Turner informed the investigating committee that he did not submit a grievance because his attorney advised him against doing so on grounds that he should have been afforded a pretermination hearing on the charges against him. In declining to avail himself of the grievance process, however, in the

investigating committee's judgment, Professor Turner did not waive his right to complain about a lack of due process. Professor Turner's dismissal should have been preceded by the opportunity for a hearing before an elected faculty body. The administration, in failing to accept or to assume the burden of demonstrating grounds for its action in an appropriate proceeding, dismissed Professor Turner summarily, thereby denying him his rights under the 1940 *Statement of Principles* and derivative AAUP-supported standards.

## 2. The Dismissal of Professor Turner: Academic Freedom

According to the 1940 *Statement of Principles*,

College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence they should at all times be accurate, should exercise appropriate self-restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution.

The Association's 1994 statement *On the Relationship of Faculty Governance to Academic Freedom* recognizes that "the academic freedom of faculty members includes the freedom to express their views . . . on matters having to do with their institution and its policies," and that academic freedom is an "essential [condition] for effective governance. . . . The protection of the academic freedom of faculty members in addressing issues of institutional governance is a prerequisite for the practice of governance unhampered by fear of retribution." The document goes on to state that "it is . . . essential that faculty members have the academic freedom to express their professional opinions without fear of reprisal." Regulation 5(a) of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure* further provides that "adequate cause for a dismissal will be related, directly and substantially, to the fitness of faculty members in their professional capacities as teachers or researchers. Dismissal will not be used to restrain faculty members in their exercise of academic freedom or other rights of American citizens."

The Highlands faculty handbook states, "Full freedom for the expression of differing opinions and the acceptance of the spirit of criticism are essential to the atmosphere of a university." The handbook further provides that "[t]here shall be opportunity within the organizational framework of the university for faculty participation and for discussion of problems and policies at all levels within the university." Among the faculty's primary responsibilities is the "maintenance of [a] climate of academic freedom."

It appears from the information available to the investigating committee that Professor Turner, following the rejection of his candidacy for tenure, incurred the displeasure of the university's chief administrative officers because of his repeatedly outspoken, public criticisms of their decision to deny tenure to him (and three of his similarly situated colleagues), some of which they may well have perceived as personal and vituperative attacks on them.

Professor Turner, in written communication with the Association's staff, denied the three alleged offenses or charges set forth in the interim provost's letter of dismissal. With respect to the first charge—"you have subjected your colleagues and students to angry outbursts"—he said that in the meeting with Provost Chavez (and Dean Rael) the provost "did not even address or attempt to substantiate [it]. This charge is a complete fiction." Other faculty members who met with the investigating committee, including some who were unsympathetic to Professor Turner personally, stated that angry outbursts from him would not have been in character. With regard to the second charge—"you have sent your colleagues harassing e-mails"—Professor Turner told the staff that the provost's reference was to the exchange of messages he had with Professor Luis Ortiz, described above. "The e-mail the provost is referring to," he wrote, "is my reply to the Ortiz mass e-mail-out. It was not harassing. I just took issue with the points he had made, and suggested that he injures his credibility and does a disservice to his colleagues by not referring to the trauma this campus and faculty [have] endured under the leadership of Manny Aragon." Given the recent experience of his tenure denial, Professor Turner seems to have considered Professor Ortiz's remarks highly provocative, and he reacted angrily.

The administration's stated reasons for dismissing Professor Turner and his responses to those reasons should, of course, have been considered by a faculty body in a full, on-the-record, adjudicative hearing, at which various matters could have been addressed. The investigating committee has examined the complete exchange of cor-

respondence between Professors Turner and Ortiz and questioned the principals about it and does not find Professor Turner's statements harassing, though it recognizes that Professor Ortiz states that he found them "intimidating." As for the remark reported in a newspaper about Provost Chavez's being a "snake," Professor Turner said that he does not recall having made it, and does not believe he did so. Whether or not he uttered the "snake" remark, Professor Turner clearly referred to Provost Chavez in derogatory terms, and the tone of his remarks directed at Professor Ortiz was vehement. The criticisms he directed at President Aragon's overall administration and leadership were certainly harsh, even caustic at times. Indeed, asked to explain the reasons for Professor Turner's dismissal, the president was quoted as having stated, "We can't have Mr. Turner tearing down this university when we're trying to bring it forward."

The investigating committee believes that a faculty member resisting the perceived injustice of a negative decision on retention should be afforded wide latitude for the expression of strongly held views. Dismissing a faculty member under such circumstances suggests an unacceptably low level of tolerance for dissent. In the judgment of the committee, Professor Turner's utterances, angry and harsh as they may have been, warranted protection under the principles of academic freedom. The committee finds that the charges against him constituted insufficient grounds for dismissing him, and that the dismissal violated his academic freedom.<sup>8</sup>

### 3. The Denial of Tenure to Professor Wiedenfeld: Procedural Issues and Alleged Discrimination

The Association's recommended standards for faculty

8. In her response to the draft report Dr. Chavez stated as follows: "The University does not take threats and attacks very lightly and will exercise immediate intervention and removal of a harassing university employee if they feel that others are in danger. *In this case, freedom of speech or academic freedom should not be confused with freedom to harass, intimidate, and threaten colleagues.*" [Emphasis in original.] Former interim dean Rael, in his reply to the pre-publication draft, commented as follows: "Academic freedom is about expressing your intellectual thoughts and to enlighten those that are narrow minded and unwilling to embrace new knowledge. It is certainly not about perpetuating narrow-mindedness and utilizing it as a safe-haven for the malcontent. How can the Association condone such action? For an individual to verbally and emotionally abuse another individual i[s] uncalled for."

members who have been issued notice of nonreappointment, set forth in its *Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments*, call for the person or body that has decided against retaining the faculty member to provide the individual, upon request, with a written statement of the reasons in explanation of that decision. These standards provide further that the affected faculty member should have an opportunity to seek review by a representative faculty committee not previously involved in the matter, which would consider a complaint that inadequate consideration had been given to the faculty member's qualifications, or that impermissible considerations—violations of academic freedom or discrimination—figured significantly in the negative decision. The *Statement on Procedural Standards* further provides that when faculty members "assert that they have been given notice of non-reappointment . . . because of improper discrimination, they are entitled to an opportunity to establish their claim in accordance with the procedures set forth in Regulation 10 of the *Recommended Institutional Regulations*." Under those specific review procedures, the faculty member should be afforded opportunity for faculty review of the allegation and a potential full hearing before an elected body of faculty peers.

The Highlands faculty handbook sets forth procedures for seeking independent faculty review of a complaint arising out of an adverse tenure decision, but the grounds for pursuing such a complaint appear to be contradictory. On the one hand, the section of the handbook that defines the jurisdiction of the Faculty Grievance and Conciliation Committee includes a list of several "examples of grounds for grievances to be considered by this committee," among which is the following: "Unlawful discrimination on the basis of disability, race, color, religion, national origin, age, sex, or sexual orientation." According to "Grounds for Appeal of Tenure Denial," however, which is a separate section of the handbook, "decisions . . . not to award tenure to a tenure-track faculty member (leading to termination) may be appealed based on allegations of a violation of academic freedom or a violation of procedural guidelines. *No other grounds of appeal will be entertained.*" [Emphasis added.] In short, the Highlands policies thus appear to make no provision for faculty review of an allegation by a faculty member that *the rejection of his or her tenure candidacy* resulted in significant part from impermissible discrimination.

Professor Wiedenfeld has complained that "multiple and severe" procedural defects in the administration's

consideration of his tenure dossier “markedly influenced the outcome” of his review. He has also alleged that impermissible discrimination figured significantly in the adverse decision. As for his complaints about procedures—complaints that other faculty members who were denied tenure have also made—they were reviewed by two separate faculty bodies at the university. The first such review was undertaken in mid-February 2005, when the Faculty Affairs Committee (FAC) convened faculty hearing boards to address the four recommendations of tenure denial made by Interim Provost Chavez, among them that of Professor Wiedenfeld. According to a February 21 memorandum that the chair of the FAC wrote to the chair of the Faculty Senate, “The hearing[s] provided each tenure candidate with an opportunity to shed light on his or her accomplishments and allowed the interim provost the opportunity to reconsider her previous recommendation.” In her “Summary of Hearings’ Concerns,” the FAC chair stated that the Highlands administration “exhibited indifference to due process and to the hearings.” In particular, the chair noted that the two candidates in the College of Arts and Sciences—Professors Turner and Wiedenfeld—“had not been afforded the due process of being notified of the negative evaluation or abstention of their dean, nor afforded the opportunity to respond to those before the evaluations were sent to the interim provost.” The FAC was also “troubled” by the failure of the interim dean to attend the hearings, to “send a written statement,” or to “provide any explanation” for the positions he took on the two cases. The chair concluded, “The Faculty Affairs Hearing Board members are gravely concerned that due to the administration’s demonstrated cavalier approach to the hearings, critical information that might have resulted in the administration[’s] changing its position about the candidates’ tenure (a position that could possibly make or break professional careers) was not heard.”

As noted above, Professor Wiedenfeld also addressed his concerns about various procedural irregularities to a second body, the Faculty Grievance and Conciliation Committee, which sustained his complaints. This committee found that the administration had given inadequate consideration to his qualifications for tenure and it recommended that the tenure review process in his case begin again from the point where the dean’s evaluation had occurred—in other words, the point at which the series of violations of handbook procedures and the denial of adequate consideration first took place. President Aragon rejected the recommendation without explanation.

The investigating committee has considered the manner in which the Highlands administration handled Professor Wiedenfeld’s candidacy for tenure and President Aragon’s response to the findings and recommendations of the grievance committee. In doing so, the investigating committee has taken into account the following discussion in the *Statement on Procedural Standards* on the subject of “adequate consideration”:

The term “adequate consideration” refers essentially to procedural rather than to substantive issues: Was the decision conscientiously arrived at? Was all available evidence bearing on the relevant performance of the candidate sought out and considered? Was there adequate deliberation . . . over the import of the evidence in the light of the relevant standards? Were irrelevant and improper standards excluded from consideration? Was the decision a bona fide exercise of professional academic judgment? These are the kinds of questions suggested by the standard “adequate consideration.”

If, in applying this standard, the review committee concludes that adequate consideration was not given, its appropriate response should be to recommend to the [individual or body making the decision] that it assess the merits once again, this time remedying the inadequacies of its prior consideration.

In the view of the investigating committee, the judgments of two independent faculty committees were quite credible: each body found that inadequate consideration had been given to Professor Wiedenfeld’s academic performance by both the interim dean and the interim provost. Thus President Aragon should have agreed either to support the grievance committee’s recommendation that the review be repeated, or at least to set forth reasons he found sufficiently compelling for rejecting its recommendation.

In addition to his complaints about procedural irregularities, which he was able to pursue through the intramural grievance process, Professor Wiedenfeld has also said that he was the victim of discrimination on the basis of race, national origin, and religion. This complaint, as noted above, was not subject to faculty review under the university’s policy relating to grievances over denials of tenure, and thus Professor Wiedenfeld could not raise this claim as part of his grievance. He did raise it, however, in a complaint he filed with the Equal Employment Opportunity Commission in July

2005. The investigating committee, noting again Interim Dean Rael's official and unelaborated statement of his "personal bias" against Professor Wiedenfeld and in the context explained below, finds the university's procedures for pursuing an intramural complaint of impermissible discrimination wholly inadequate.

Professor Wiedenfeld's claim of discrimination occurs in the context of a larger and often-heard complaint that the Aragon administration has made numerous personnel decisions, appointments as well as nonreappointments, reassignments, and suspensions—involving both faculty members and administrative officers—that favor Hispanics over non-Hispanics. The perception of many faculty members is that such decisions have run afoul of the very document often cited in their support by the administration, the Highlands Strategic Plan, the actual provisions of which appear to them to have been subordinated to a demographic interpretation of academic excellence that in fact undermines the board-mandated goal of turning Highlands into the country's leading Hispanic-serving institution. This perception of ethnic bias, whatever the reality, has cast a pall at Highlands noted by Hispanic and non-Hispanic faculty alike.

Nevertheless, the investigating committee also heard unwavering support for affirmative action and equal opportunity, going back decades for some faculty. The broad and sincere commitment to the recruitment of qualified minority faculty remains strong in spite of the events of the last two years, even among those who allege that they have been harmed personally by actions of the Aragon administration, and among some who have now left Highlands.<sup>9</sup>

4. Severance Salary in the Case of Professor Turner Under the 1940 *Statement of Principles*, "Teachers on continuous appointments who are dismissed for reasons not involving moral turpitude should receive their salaries for at least a year from the date of notification of dismissal whether or not they are continued in their duties at the institution." (According to Interpretive

9. Dr. Chavez commented on the allegations of discrimination as follows: "Seven candidates were eligible and chose to apply for tenure in the 2004–2005 academic year. Three candidates were recommended and four were not recommended for tenure. Of the three recommendations, one was Hispanic and the remaining two were white males. I find it unusual the not-tenured candidates can accuse racial or ethnic discrimination when two candidates who were tenured were from the same racial group as them."

Comment Number 9 on the 1940 *Statement of Principles*, "The concept of 'moral turpitude' identifies the exceptional case in which the professor may be denied a year's teaching or pay in whole or in part. The statement applies to that kind of behavior which goes beyond simply warranting discharge and is so utterly blameworthy as to make it inappropriate to require the offering of a year's teaching or pay. The standard is not that the moral sensibilities of persons in the particular community have been affronted. The standard is behavior that would evoke condemnation by the academic community generally.") The Highlands faculty handbook provides that "[f]aculty members who will not be tenured will be notified by March 1 of the same year. Persons denied tenure will be given a terminal contract for the following year." Professor Turner stated that he also had a contract to teach in the summer session of 2005 that the administration abrogated when it dismissed him. The Highlands regulations appear to be silent regarding notice or severance salary to be afforded in the case of a dismissal for cause of a non-tenured faculty member within the term of an appointment.

The university ceased paying Professor Turner any further salary effective with his separation from the faculty. As emphasized above, the administration's only stated grounds for summarily dismissing Professor Turner from the Highlands faculty had to do with the comments he made against members of the university community, particularly senior administrative officers. The investigating committee does not believe that his conduct in this regard could reasonably be construed as involving moral turpitude. Therefore, in failing to grant Professor Turner any severance salary, the administration acted in disregard of the applicable provision of the 1940 *Statement of Principles*.

5. The Faculty Role in Institutional Governance Generally accepted standards of academic government are enunciated in the Association's 1966 *Statement on Government of Colleges and Universities*. That document rests on the premise of appropriately shared responsibility and cooperative action among governing board, administration, and faculty in determining educational policy and in resolving educational problems within the academic institution. It also refers to "an inescapable interdependence" in this relationship that requires "adequate communication among these components, and full opportunity for appropriate joint planning and effort." It provides that the faculty, because "its judgment is central to general educational

policy,” “has primary responsibility for such fundamental areas as curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process.”

As noted above, in February 2005 a substantial group of tenured faculty members at the university approached the North Central Association with their concerns about a lack of respect for, and perceived infringements of, the faculty role in institutional governance. They charged the administration with having followed a pattern of “ignoring, bypassing, or overruling faculty decisions regarding academic issues.” “Mr. Aragon,” they wrote,

does not seem to have any understanding of the meaning or importance of shared governance in a university. [He] has repeatedly stated that the university is not a democracy, and that his decisions do not have to include or reflect faculty input. While the faculty recognizes administrative and presidential prerogatives, Mr. Aragon does not acknowledge that there are limitations to this approach, and that it is not in the best interest of the university to repeatedly overrule the faculty. For example, Mr. Aragon has stated to the board of regents that the faculty only play an advisory role in the matter of academic policy, and that the board and administration can set academic policy without the input or approval of the faculty. This is in clear violation of the faculty handbook.

In a second report to the NCA and the AAUP, dated May 17, 2005, which was written to supplement and update the first, the Highlands Faculty Association observed that there had been “no substantive response from the administration to our concerns. The administration acknowledges no mistakes or violations; insists that there are no grounds for objecting to decisions made by the administration and endorsed by the regents, since the regents hold ultimate decision-making authority for the university; and characterizes everyone who disagrees with their policies as malcontents, troublemakers, and perhaps mentally ill.”

The investigating committee found that the Faculty Association’s reports to the NCA and the AAUP had not overstated the deterioration of academic governance at Highlands in recent years. Several individuals who met with the committee reported the administration’s failure to consult with faculty about issues at the very heart of faculty responsibility and expertise: the closure of existing academic programs and the initiation of new

ones; administrative appropriation of faculty committee responsibilities (for example, academic petitions and appeals, grade changes); and arbitrary reassignment of individuals to departments in which they had no experience or knowledge, and their replacement in the classroom by less qualified faculty—sometimes after the teaching term had begun. There were also allegations that the administration had failed to consult meaningfully about the appointment of deans and higher university officers, that it had gerrymandered search committees, and that the terms of its offers to successful non-Hispanic candidates for academic positions were less favorable than those described in the positions advertised. Most of the allegations heard by the investigating committee included ethnic bias as a theme. Manifestly, such actions as those alleged, coupled with the widespread view that outspoken faculty involved in academic governance might suffer administrative retaliation, would, if proven, weaken the possibility for open and critical debate, and for an effective faculty role in the academic life of the university.

Some hope for the future expressed by faculty members at the time of the investigating committee’s visit grew out of an election to unionize the faculty that was then in progress. After some initial setbacks, the election proceeded with the backing of the administration and the board of regents as well as the sponsoring Faculty Association; 92 percent of the tenured faculty participated in the election, and 90 percent of those voting approved representation by a local organization affiliated with both the National Education Association and the American Federation of Teachers. Nevertheless, there seems to be agreement among the faculty that the Faculty Association is concerned about employment rights and compensation while it remains the charge of the Faculty Senate to address professional standards and academic programs.

A provision of the strategic plan adopted by the university’s board of regents in December 2003 points directly to the 1966 *Statement on Government of Colleges and Universities*: “Evaluate and redesign university governance consistent with [American] Association of University Professors (AAUP) and Association of Governing Boards (AGB) recommendations.” However, like the strategic plan’s admirable goals for recruiting and retaining excellent faculty, and like the advice from the NCA of March 2004 to promulgate shared governance in a new faculty handbook, what would constitute improvement in university governance structures is interpreted differently in different quarters. In a background report on the unionization effort carried in

the *Las Vegas Optic* of May 4, 2005, Professor Curtis Sollohub, an officer of the Faculty Association, said that, as matters stood, the board of regents could “say, ‘We’re just not going to follow the faculty handbook.’ We want to make a process that both sides will understand and follow.” In the same article, President Aragon is quoted as pointing to a major structural obstacle: “We are one of the few states that the Constitution says this board [of regents] has total control of management.” As he went on to explain, “Even with shared governance, the board can always say no. They have total, undeniable, absolute, legal, 100 percent control of management. The [state] Constitution is bigger than anybody in this room.” Governing boards generally do have extensive—if not unlimited—legal authority, but that does not make delegation of powers to appropriate administrators and to faculty bodies any less desirable as a matter of sound academic practice. Not surprisingly, given the attitude reflected in President Aragon’s quoted remarks, the prospects for improved conditions for academic governance at Highlands do not seem strong.

#### 6. The Climate for Academic Freedom

The NCA, the strategic plan, and the Faculty Constitution all cite the 1940 *Statement of Principles*. Nonetheless, members of the Highlands faculty have complained about an inhospitable atmosphere for criticizing the administration and its operation of the institution and a sense of insecurity among the faculty about what might happen to them should they speak out. Faculty discussed with the investigating committee their concerns about being found insubordinate, of being disciplined or forced out of Highlands. Several said that the four tenure denials to white, non-Hispanic faculty confirmed their worst fears. “Until that, I was hiding out in my office, just trying to keep my job,” said one. “I’m not proud of it.” Many were explicit in connecting their fears of retaliation to the perception that administrative decisions about appointment, reappointment, evaluation, tenure, and promotion were based on ethnicity, not performance.

The Albuquerque *Crosswinds Weekly* quoted a Hispanic faculty member’s comment: “Basically it looks like racism, it smells like racism, it quacks like racism—it may not be racism, but it sure works and looks like racism. We’re getting rid of really good people and we’re going to lose a lot of students.”

President Aragon is not unaware of the problem. He called an “urgent meeting” on May 5, 2005. According to a report in the *Las Vegas Optic*, he told the gathered students, faculty, and administrators, “I see a lot of good

faculty where there’s a fear because they’re not Hispanic. It keeps festering. That needs to stop. It really sucks. The faculty work so hard and feel so beaten because they’re not in the group. It needs to be addressed. I’m getting tired of it.” But the president, on whose authority the board of regents had decided the four tenure cases, and who rejected the findings of the faculty committees that reviewed those decisions and summarily dismissed a faculty member for reasons that affronted academic freedom, has thus far done nothing to alleviate the perception of injustice or to improve the climate for academic freedom at Highlands.

## VI. Conclusions

1. The administration of New Mexico Highlands University acted in violation of the 1940 *Statement of Principles on Academic Freedom and Tenure* in dismissing Professor Gregg H. Turner prior to any demonstration of cause in a hearing of record before a faculty committee, and also by failing to provide any notice or severance salary.

2. To the extent that the administration acted to dismiss Professor Turner because of displeasure with his public criticism of its policies and actions, it violated his academic freedom.

3. The administration of New Mexico Highlands University acted in disregard of the Association’s *Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments* by not providing Professor David J. Wiedenfeld a statement of reasons for its decision to deny him tenure and by setting aside without substantive comment the favorable judgments of two faculty appeals committees.


4. The chief administrative officers of New Mexico Highlands University have acted in disregard of the principles of shared governance articulated in the 1966 *Statement on Government of Colleges and Universities*. ☞

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BENJAMIN BAEZ (Education), Florida International University  
*Investigating Committee*

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

Chair: DAVID A. HOLLINGER (History), University of California, Berkeley



Members: LINDA COLLINS (Political Science), Los Medanos College; JEFFREY HALPERN (Anthropology), Rider University; MARY L. HEEN (Law), University of Richmond; EVELYN BROOKS HIGGINBOTHAM (Afro-American Studies and Divinity), Harvard University; STEPHEN LEBERSTEIN (History), City College, City University of New York; ROBERT C. POST (Law), Yale University; ADOLPH L. REED (Political Science), University of Pennsylvania; CHRISTOPHER M. STORER (Philosophy), DeAnza College; PAUL H. STROHM (English), Columbia University; DONALD R. WAGNER (Political Science), State University of West Georgia; JANE BUCK (Psychology), Delaware State University, ex officio; ROGER W. BOWEN (Political Science), AAUP Washington Office, ex officio; DAVID M. RABBAN (Law), University of Texas, ex officio; ERNST BENJAMIN (Political Science), Washington, D.C., consultant; JOAN E. BERTIN (Public Health), Columbia University, consultant; MATTHEW W. FINKIN (Law), University of Illinois, consultant; ROBERT A. GORMAN (Law), University of Pennsylvania, consultant; LAWRENCE S. POSTON (English), University of Illinois at Chicago, consultant; JOAN WAL-LACH SCOTT (History), Institute for Advanced Study, consultant; MARTHA MCCAUGHEY (Interdisciplinary Studies), Appalachian State University, liaison from Assembly of State Conferences.