

Report

Academic Freedom and Tenure Albertus Magnus College (Connecticut)¹

I. Introduction

In two letters dated October 21, 1997, President Julia M. McNamara of Albertus Magnus College in New Haven, Connecticut, notified Professor Michael J. Hartwig, a nontenured faculty member in the Department of Philosophy and Religious Studies, that his appointment would not be renewed beyond June 1999 and that, except for a prearranged study trip the next month, he was being relieved of further teaching duties. The events of the period from June through October 1997 and the academic principles and standards implicated by these events led to the appointment of the undersigned ad hoc investigating committee.

The committee visited New Haven on February 5 and 6, 1999, and met off campus with Professor Hartwig and other Albertus Magnus College faculty members. President McNamara declined to meet with the committee upon instruction of college counsel, "not because of any disrespect for the AAUP or its concerns," so counsel informed the Association's Washington office, but "because of pending litigation" commenced by Professor Hartwig. While the investigating committee no doubt would have benefited from meeting with President McNamara and other administrative officers who may have been involved in the case, it considers the available record sufficient for the preparation of this report.

It is difficult, however, not to conclude that the administration of Albertus Magnus College chose to do more than simply not cooperate with the Association's investigation. In response to the Association's announcement that the general secretary had authorized an investigation of Professor Hartwig's case, counsel for the college advised the Association that "any activities [the investigating committee] undertakes and any statements or other information

gathered by it will be subject to pretrial discovery, that the members of the committee may become witnesses, and that their investigation may become subject to judicial scrutiny." The investigating committee learned that the administration had distributed copies of counsel's letter to the faculty prior to the committee's visit. Members of the faculty were understandably concerned that the wider distribution of the letter was intended to discourage them from participating in the Association's investigation. The investigating committee shares the concern that the administration may have sought to impede its work in this way.

Albertus Magnus College is a Roman Catholic institution named after St. Albert the Great, the Dominican friar and philosopher who taught St. Thomas Aquinas and who first recognized Aquinas's genius. The college was founded in 1925 by Dominican nuns as a college for women and was initially accredited by the New England Association of Schools and Colleges in 1932. It began admitting men to its programs in 1985. The founding Dominican Congregation of St. Mary of the Springs has its mother house in Columbus, Ohio, where it is also the sponsoring order for Ohio Dominican College. A half-dozen Dominican sisters reside at Albertus Magnus.

According to the college's Web site, there are 36 full-time faculty members and approximately 1,500 students (300 in the traditional day program and 1,200 studying either full or part time in evening courses). The college began offering graduate degrees through a master of arts in liberal studies in 1992 and, more recently, a master of science in management, the latter through its collaboration with the for-profit Apollo Group. In its mission statement, the college identifies itself as independent and "faithful to the Judeo-Christian tradition and to its Catholic heritage."

Dr. McNamara has been president of Albertus Magnus College since 1982, having served the college previously as dean of students. She has a B.A. degree from Ohio Dominican College, an M.A. degree from Middlebury College, and an M.Phil. and Ph.D. in French literature from Yale University. At the time she became the college's thirteenth president, Dr. McNamara was a Dominican sister, but she has since left the order. The college's board of trustees currently has twenty-four members, of whom four are Dominican sisters. Mr. Robert F. Behan, a retired bank executive, was serving as chair of the board at the time of the events in question.

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 member at whose request the investigation was conducted, to the administration of the college, and to other persons directly concerned in the report. In light of the responses received and with the editorial assistance of the Association's staff, this final report has been prepared for publication.

II. Professor Hartwig's Case

1. Early Developments

As a young man, Michael Hartwig aspired to the Roman Catholic priesthood. Following receipt of his B.A. degree in theology and philosophy from the University of Dallas in 1977, he studied at the Gregorian University in Rome, where he received a bachelor's degree in sacred theology in 1978 and a licentiate in 1980. He was ordained a priest in July 1979. He later received the M.A. (1988) and Ph.D. (1992) degrees from Southern Methodist University in religious studies with a specialty in ethics.

In 1983, after he had returned to Dallas, Professor Hartwig was appointed vice rector of Holy Trinity Seminary, an affiliate of the University of Dallas. He also began teaching at the University of Dallas as an adjunct professor of moral theology. In 1985 he was appointed continuing education director for the Dallas diocese, and during the 1986–87 academic year, he served as academic dean of the seminary.

This biographical information is contained in the curriculum vitae that Professor Hartwig included with a June 24, 1991, letter of application to Albertus Magnus College for an opening as assistant professor in the Department of Philosophy and Religious Studies. At the time of his application, Professor Hartwig had already served as an adjunct instructor at the college that spring.

The second page of the curriculum vitae had the following entry:

(Took permanent leave of absence from active ministry in Roman Catholic Priesthood at end of 1987 for personal reasons. Was ordained in July 1979.)

While Professor Hartwig has stated that he was not asked during his interviews in 1991 what he meant by "personal reasons," he later explained, in a memorandum to President McNamara dated June 24, 1997, that: "During 1985 to 1986, I began to face up to issues of my own sexual orientation. Through a good deal of prayer and study, and a formal discernment process with a spiritual director, I grew to appreciate that I was gay. I also concluded that what I had thought was a vocation to celibacy was really only the absence of desire for heterosexual marriage." Between 1991 and 1997, Professor Hartwig and his partner attended Albertus Magnus campus functions together without controversy. Professor Hartwig told the investigating committee that in the interviews in 1991 he had discussed his status as a priest on leave with the vice president for academic affairs, Sister Charles Marie Brantl, OP. Members of Professor Hartwig's department likewise recalled discussing his clerical status with him. He was offered and accepted a full-time probationary appointment to the Albertus Magnus faculty.²

2. Although not an issue in the present case, it should be noted that the college's official policies allow a maximum probationary period of ten years contrary, to the maximum seven-year term called for in the 1940 *Statement of Principles on Academic Freedom and Tenure*.

Professor Hartwig was promoted to the rank of associate professor in 1996. His teaching and service to the college, which had begun in 1991, were described by Vice President Brantl as outstanding; she found him to be "most supportive of the ideals and mission of Albertus Magnus College." The Faculty Status Committee, in its positive report to President McNamara, stated that student evaluations of Professor Hartwig's courses were "universally laudatory," that despite a heavy teaching schedule he was publishing in his field, and that he was an active member of the college community. In addition to his faculty duties, Professor Hartwig served as associate dean of continuing education and director of the Master of Arts in Liberal Studies Program.

Professor Hartwig applied in September 1996 for a paid leave of absence for the fall 1997 semester in order to work on a long-standing book project in sexual ethics, an area of his scholarship and teaching for more than a decade. His application included the preface and table of contents for the book. He wrote in the preface:

Its thesis is controversial: long-term sexual abstinence is harmful and if not warranted by concerns about equally serious harms, is immoral. The practice of sexual abstinence leaves young adults ill equipped to make informed and sustainable sexual commitments. The assumption that it is not harmful legitimizes inhumane Church expectations that certain individuals practice long-term or life-long abstinence, most notably gay men, lesbians, divorcees, and single adults.

The Faculty Status Committee approved the request, as did President McNamara (who called the book's topic "timely and intriguing") and the board of trustees. In March 1997, Professor Hartwig's appointment was renewed for another two years through the 1998–99 academic year.

In sum, there is abundant evidence that students, faculty colleagues, and administrators viewed Professor Hartwig's first six years at Albertus Magnus College as highly successful. The events that ensued in 1997 were to change matters, however.

2. The Events of Summer and Early Fall 1997

On June 22, 1997, Professor Hartwig met with President McNamara to discuss an article that had appeared in the June 19 issue of *The Wanderer*, a national Roman Catholic newspaper, that a trustee of the college had brought to her attention. The article focused on a civil suit brought against the diocese of Dallas and a former priest of the diocese named Rudy Kos. The suit alleged that, in the years between 1981 and 1992, priests from the diocese had sexually abused boys. As suggested by the article's title, "Diocese's Rotten Underbelly Exposed in Pedophile's Trial," the text was highly critical of diocesan church officials and of Holy Trinity Seminary, where Professor Hartwig had been vice rector and then academic dean. The seminary was blamed for "deconstructionist" policies that the article claimed had eroded traditional discipline in the training of priests.

The article linked the Kos trial to Holy Trinity Seminary through a passing reference to Professor Hartwig that had appeared in an earlier *Dallas Morning News* story about the city's Gay and Lesbian Alliance. The story had featured one of the alliance's founders and mentioned that he lived in Boston with his partner of ten years, Michael Hartwig, who was described as a Roman Catholic priest and former academic dean at Holy Trinity Seminary. Near the end of *The Wanderer* article, the author stated that Professor Hartwig had been accused by an unnamed priest of having "abandoned his vocation to 'marry' the president of the Dallas Gay and Lesbian Activists' Alliance." This priest was quoted as having stated, "That gives you an idea of what was happening to Holy Trinity." The article then identified Michael Hartwig as a current faculty member and administrator at Albertus Magnus College.

In a memorandum to President McNamara dated June 24, 1997, Professor Hartwig sharply disputed the article's references to him. He adverted to his status as a priest as he had in 1991: "In December of 1987, I decided that I should take a leave of absence from active priestly ministry." Although Professor Hartwig had not hidden from the college community either his sexual orientation or his relationship with his partner, he provided President McNamara (who had met his partner on at least two occasions) a chronology of this relationship. He explained that once he came to the conclusion that he could not remain celibate, he left the active ministry and thereafter began living with his partner, whom he described as a "deeply religious person" and a leader in the gay and lesbian community in Dallas. They moved to New England in 1988. He noted, "As you mentioned in our conversation, I have been discreet and prudent about my personal life. I neither try to hide my personal life nor draw attention to it." He ended, "The 'Wanderer' article notes that I came to the seminary in Dallas after Rudy Kos left. This is true, but despite this, the author of the article tries to link me to the trial/case by association. This is totally unfounded. I was not part of a clique or conspiracy to 'deconstruct' the Diocese." Professor Hartwig did not hear further from President McNamara until he met with her on August 11 to discuss a second article that was published in *The Wanderer* on August 7.

The second article had been brought to the president's attention by the same trustee who had sent her *The Wanderer* article of June 19. In the deposition the president gave in connection with Professor Hartwig's subsequent litigation, she stated that, before she met with Professor Hartwig, she had discussed the second article with the chair of the board of trustees, Mr. Behan. The article, entitled "Ex-Seminarian Recounts Problems at Dallas' Holy Trinity," was "prompted," according to an editor's note, by the newspaper's previous "revelation" that "ex-priest Michael Hartwig is now teaching at a Dominican-run college in Connecticut." The author of the article, a former seminarian, had requested anonymity "to protect his employment," and identified his Catholicism as that characteristic of the period before 1965 and the Second Vatican Council.

He blamed Professor Hartwig, then his teacher and academic dean, for recommending his removal from the seminary "because I could not accept the new theology." The article ended with the writer's complaining that people like him were being forced out of the priesthood, while the American Catholic leadership was promoting people like Professor Hartwig in their schools and seminaries. "Just think," he opined, "Hartwig's chairing a religion department at Albertus Magnus College in New Haven. How many parents sending their children to that private school know that their children's teacher is 'married' to another man. Does anyone care?" In her court deposition, President McNamara indicated that an auxiliary bishop of the Hartford diocese had spoken about the article with Vice President Brantl. Professor Hartwig said that he would clarify and correct what had been stated about him in the article.

The next day, August 12, Professor Hartwig presented President McNamara with two memoranda. The first began, "I regret that the College and I have been so maligned by the recent articles in the 'Wanderer,'" and then provided a point-by-point rebuttal of statements in the article about the policies and practices of Holy Trinity Seminary, about his own sexual orientation, and about his professional experiences as a priest and a teacher in Dallas. Countering the anonymous ex-seminarian's claim that homosexuality was tolerated at the seminary, Professor Hartwig noted that seminarians, gay or straight, were dismissed from Holy Trinity if they demonstrated an unwillingness to make the necessary commitment to celibacy. As to his own situation, Professor Hartwig stated that "it was with extraordinary sadness that I felt that I could no longer serve the Church as an active priest. I began to realize that I did not have a vocation to celibacy." Noting that he did not "marry" his partner in "any sort of ceremony," Professor Hartwig again reminded President McNamara, "As you have remarked repeatedly, I have been very discreet about my personal life. I do not think that my personal life is relevant to my teaching effectiveness at Albertus." He concluded, "As an individual with three degrees in Catholic theology and as a successful priest and as a gay man, I think I am in a unique position to facilitate a serious study of contemporary sexual ethics issues."

In the second memorandum, Professor Hartwig reflected on the various topics touched upon in his previous day's meeting with President McNamara. He offered to "speak with anyone on the Board of Trustees or from the Diocese of Hartford when and if you think it is appropriate." He offered further, "If you think some formal response or letter to the 'Wanderer' is in order, I will be happy to get under way with it."

In addition, he expressed reservations about teaching another subject at the college, a matter raised by President McNamara in her first meeting with him and, according to Professor Hartwig, now again. In a document filed by the administration with the Connecticut Commission on Human Rights and Opportunities, in response to a complaint filed by Professor Hartwig, President McNamara said that while she agreed that his performance as a

faculty member had been “exemplary, . . . there might be some who would view the situation differently.” She referred specifically to Professor Hartwig’s teaching of religious studies and the possibility that “external pressure would be brought on the College regarding his status.” The president and Professor Hartwig “briefly discussed the possibility of [his] working in a different academic department or in administration.”

Professor Hartwig wrote in his second memorandum that “I am very concerned about any precedent which would imply discrimination based on sexual orientation or restriction of academic freedom, and I assume that my colleagues would be uncomfortable with that as well.” Referring to his book project, Professor Hartwig wrote that he had “a responsibility (and a right) to publish the fruits of my research and work” and offered to share with the president a draft of the book.

The memorandum concluded on a different subject, however: “On my way home yesterday, I thought I would share with you a copy of an ‘op-ed’ piece [by me] that was published in the ‘Dallas Morning News.’ It is unrelated to the issues surfaced in the ‘Wanderer,’ but just in case someone mentions it, I don’t want you to be off guard.” The title of Professor Hartwig’s essay, published on August 3, was “Message Received? Catholic Church Must Give Laity a Greater Voice,” and it began with the words, “As a priest of the Dallas Diocese (now on leave), I have a lot of mixed feelings about the recent trial and verdict finding the diocese responsible for the abuse the plaintiffs suffered under Rudy Kos.” The essay argued that an end to monopolistic clerical control of the Roman Catholic Church through lay involvement in church decision making would produce greater accountability of the clergy and would, accordingly, help to prevent pedophiles like Rudy Kos from preying on children. The editorial note at the end of the column read, “Michael J. Hartwig is a former vice rector of Holy Trinity Seminary and is now an associate professor of religion at Albertus Magnus College in New Haven, Conn.”

President McNamara spoke with Professor Hartwig on August 14 and expressed concern about his description of himself in the *Dallas Morning News* as a “priest” who was “now on leave.” On August 26 President McNamara met with Professor Jeremiah Coffey, chair of Professor Hartwig’s department, to whom she gave copies of the two articles in *The Wanderer* and also a copy of Professor Hartwig’s newspaper essay. President McNamara expressed to Professor Coffey her concern about Professor Hartwig’s calling himself a priest who was now on leave. Professor Coffey suggested that she meet with Professor Hartwig to resolve her concerns. The president, in her court deposition, recalled telling Professor Coffey that “I was concerned that Albertus Magnus College was mentioned in ‘The Wanderer’ articles and that bad publicity could be a very bad thing for a small college.” She did not talk with Professor Coffey about the possibility of the administration’s taking action against Professor Hartwig.

President McNamara also stated in her deposition that a “week or two” before she met with Professor Coffey she had received a

telephone call from Richard Lee, a former mayor of New Haven and a member of the college’s board of trustees. He reportedly expressed concern about “bad publicity for the college and it was a shame.” The president stated further that she was told by Mr. Lee that Virgil Dechant, president of the national Catholic men’s organization the Knights of Columbus (whose headquarters are in New Haven) and a former member of the board of trustees, had expressed concern to him about the negative publicity experienced by the college. President McNamara described the Knights of Columbus as “significant benefactors of the college over time.” The president stated that she had telephoned Mr. Dechant and told him, “I’m calling to let you know that I’m aware of [the] articles in ‘The Wanderer’ and I want you to know that I’m investigating the matter.” Two months passed before Professor Hartwig heard again from President McNamara.

On the evening of October 20, 1997, President McNamara telephoned Professor Hartwig and asked him to meet with her the next day to discuss a “grave matter.” Because of scheduling problems, the meeting could not be arranged for the following day. In a letter to Professor Hartwig dated October 21, 1997, President McNamara informed him that his faculty appointment would not be renewed beyond June 30, 1999. In a second letter of the same date, President McNamara notified Professor Hartwig that he was being relieved immediately of his teaching duties (except those associated with his leading a student trip to Rome in November) and his administrative responsibilities. He would continue to receive his salary, and the sabbatical leave of absence previously granted to him for the fall would be extended by the college an additional eighteen months through June 1999. As for the reasons for these actions, the second letter stated, “As you know, I have been very concerned about your publicly representing yourself as a priest of the Roman Catholic Church, which came to my attention when you sent me a copy of your *Dallas Morning News* column on August 12, 1997.” The president made no mention of *The Wanderer* articles.

The next day, October 22, an article appeared in the *Dallas Morning News* and in the *New Haven Register* reporting the actions against Professor Hartwig. In both articles, a spokesperson for the college was quoted as stating that Professor Hartwig “had not been completely honest on his job application,” explaining that Professor Hartwig’s description of himself in his *Dallas Morning News* essay as “now on leave” not only contradicted his earlier description of himself as a “former priest” but also suggested that he was still active as a priest. Professor Hartwig’s sexual orientation was “never an issue.” According to the spokesperson, Professor Hartwig had indicated to President McNamara in 1991 that he “was a member of the Episcopal Church. It is a very serious matter to represent yourself as a layperson.”

In addition, President McNamara issued a statement to the college community to rebut the article that was published in the *New Haven Register* under the title, “Albertus Dismisses Gay Associate Dean.” The article was “misleading” and the college’s position

“misquoted,” the president stated. Neither Professor Hartwig’s sexual orientation nor outside pressure had anything to do with the decision not to renew the appointment. Instead, President McNamara was “shocked and greatly troubled” by Professor Hartwig’s “publicly proclaiming himself to be a priest of the Roman Catholic Church because when he was hired by the College in 1991 he represented that he had left the priesthood and resigned.” He had, she said, confirmed in his telephone conversation with her on August 14 that he “does still consider himself to be a priest.” His “recent decision to identify himself as a priest has placed the College in a difficult position because of our fundamental identity as a Catholic College.” The president declared that she “gave the situation careful and prayerful consideration for several months before reaching decisions which I believe to be in the best interest of both the College and Dr. Hartwig.”

3. Subsequent Events

In an October 28 memorandum to Professor Coffey in his capacity as chair of the college’s Faculty Council, Professor Hartwig filed a grievance alleging that “the reasons identified by the President are [not] adequate grounds for my non-reappointment and relieving me of my duties.” With respect to the representation of his clerical status, Professor Hartwig wrote, “Since I came to Albertus in 1991, I have been consistent in portraying myself as a priest on leave, both verbally and in the curriculum vitae I submitted in 1991.” He sought reinstatement and other unspecified remedies. On November 4 Professor Coffey himself filed a grievance in which he claimed that the actions against Professor Hartwig were inconsistent with several provisions of the college’s *Faculty Handbook*, including the college’s policy with respect to suspension. This policy provides that if the administration believes the conduct of a faculty member “is grave enough to justify suspension from service for a period up to one year, the procedure shall follow that prescribed for dismissal for adequate cause.”

In its report to the Faculty Assembly dated December 1, the faculty committee that had been convened to consider Professor Hartwig’s grievance spoke as follows to the issue of his status as a priest:

Is then the difference between the statement contained on Dr. Hartwig’s curriculum vitae and his statement in August 1997 sufficient grounds for nonreappointment? Are the differences semantical or substantive? The Committee recognizes both statements as honest, good-faith efforts by Dr. Hartwig to express in a few words the complex nature of his clerical status, a clerical status that is unchanged since he wrote the original statement in 1991. The Committee does not see the statements as necessarily in conflict.

It stated further:

At the same time, however, this Committee recognizes that phraseology and context can sponsor alternative perceptions

and understandings on the part of the reader. It is clear from President McNamara’s letters that the two manners in which Dr. Hartwig sought to explain his clerical status did produce different understandings and reactions on her part. In addition, it is clear that discussions between Dr. McNamara and Dr. Hartwig in August 1997 confirmed rather than modified this new understanding. The more recent understanding, in her view, was sufficient grounds for nonreappointment.

The grievance committee’s report thus took no independent position on the merits of the nonreappointment decision. As for the suspension, the report stated that to “assign or not to assign faculty to teach classes is clearly an administrative prerogative,” even as it concluded:

Members of the Grievance Committee debated concerns that the President followed an extraordinary rather than the usual reappointment procedure; that she did not provide a fuller explanation of how Dr. Hartwig’s statements conflicted with the identity of the College; that the nonreappointment also entailed cessation of teaching responsibilities without collegial involvement of the faculty; and, that more dialogue between the parties did not occur. Th[ese] fact[s], however, do not alter our agreement on the major points of the present report.

The separate faculty committee that considered Professor Coffey’s grievance issued its report to the Faculty Assembly on December 16. This committee found that none of the procedures set forth in the *Faculty Handbook* for suspending a faculty member had been followed in Professor Hartwig’s case, and it expressed concern that the “actions of the college regarding Dr. Hartwig set a dangerous precedent.”

The college’s Faculty Assembly also expressed concern to the administration and the board of trustees about Professor Hartwig’s case. A resolution of January 21, 1998, declared that the “decisions made by President McNamara to relieve Dr. Hartwig of his teaching and administrative responsibilities and to deny him reappointment should be rescinded.” A resolution of February 18 stated that the “Faculty Assembly is gravely concerned about the process that [led] to the decision to relieve Michael Hartwig of his teaching responsibilities.” In a meeting of March 23, the college’s “AAUP Faculty Association” passed a resolution questioning the actions against Professor Hartwig, which it described as “fundamentally unjust and clearly antithetical to the basic tenets of academic freedom.”³ The resolution called upon the college’s trustees to revoke the actions taken against Pro-

3. At the time, there was no AAUP chapter at Albertus Magnus College. The AAUP Faculty Association was established in 1997 by several faculty members as an alternative forum for the discussion of college issues. The March 23 meeting was attended by approximately a dozen faculty members.

fessor Hartwig. Neither the administration nor the board of trustees responded to these several resolutions.

On December 11, 1997, Professor Hartwig filed an "affidavit of illegal discriminatory practice" with the Connecticut Commission on Human Rights and Opportunities. He alleged that he had been removed from his position "because of my sexual orientation and my religious beliefs."⁴ He filed suit the same day in Connecticut state court, but did not object to the college's subsequent petition to have the suit removed to federal court.

In a June 25, 1998, letter to President McNamara, the Association's staff questioned Professor Hartwig's removal from teaching duties without his having been afforded safeguards of academic due process. Receiving no response, the staff wrote again on August 19 and on October 28, 1998. With the Association's concerns remaining unresolved, the general secretary proceeded to authorize an investigation, and President McNamara was so informed by letter of December 2, 1998.

III. Issues

Four issues are addressed: the procedures used by the administration to decide that Professor Hartwig was not to be reappointed, his suspension, the reasons for the actions against Professor Hartwig, and the implications of these reasons for academic freedom.

1. President McNamara's Decision Not to Reappoint Professor Hartwig

The Albertus Magnus *Faculty Handbook* calls for notice of non-reappointment to be issued at least twelve months before the expiration of an appointment after a faculty member has served more than two years at the institution. This standard for notice complies with the Association-supported standard. The notice issued to Professor Hartwig on October 21, 1997, effective June 30, 1999, was more than adequate, since it was given eighteen months before the expiration of Professor Hartwig's appointment.

The Albertus Magnus *Faculty Handbook* also provides that the "primary responsibility for reappointment or nonreappointment of nontenured faculty rests with the Chair of the faculty member's department," and it prescribes a series of steps for reviewing the performance of the faculty member involved, including an evaluation by the Faculty Status Committee. These procedures accord with the Association's standards, as set forth in the *Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments*, which state that "[a]ny recommendation regarding renewal or tenure should be reached by an appropriate faculty group in accordance with procedures approved by the faculty." The evidence available to the investigating committee indicates

that before October 1997 Professor Hartwig had been reviewed for reappointment in a manner consistent with the college's regulations and Association-supported standards.

When President McNamara notified Professor Hartwig in October 1997 that he would not be reappointed, she acted, however, without regard to the college's regulation that gave Professor Hartwig's department chair "primary responsibility" for recommendations concerning faculty appointments. President McNamara did not communicate with the chair about her intention to issue notice of nonreappointment to Professor Hartwig. The president also acted without regard to the college's regulation requiring a subcommittee of the Faculty Status Committee to review departmental recommendations and to evaluate probationary faculty members for reappointment. Moreover, Professor Hartwig was not told by President McNamara in advance of the October 21 notice that his reappointment was unlikely. The president did not, accordingly, afford Professor Hartwig the opportunity, as called for in the college's regulations, to respond to her evaluation of him, which, in turn, would have been reviewed by the Faculty Status Committee before a final decision was reached. Professor Hartwig was issued notice of nonreappointment without benefit of a review by his faculty peers, and thus denied procedural safeguards in violation of the college's regulations and AAUP-recommended standards.

2. President McNamara's Decision to Suspend Professor Hartwig

According to the Albertus Magnus *Faculty Handbook*, if the administration believes that the conduct of a faculty member "is grave enough to justify suspension from service for a period up to one year," it will follow the procedures "prescribed for dismissal for adequate cause." The college's dismissal procedure states that proof of adequate cause rests with the institution and "shall be satisfied only by clear and convincing evidence in the record, considered as a whole, of professional incompetence, moral turpitude, or conviction on criminal felony charges," such evidence to be presented to the Faculty Status Committee for "determination" whether "dismissal proceedings [should] be undertaken." Under Association-supported standards, as stated in its *Recommended Institutional Regulations on Academic Freedom and Tenure*, a "suspension which is intended to be final is a dismissal, and will be treated as such." Interpretive Comment 9 on the 1940 *Statement of Principles* provides that a "suspension which is not followed by either reinstatement or the opportunity for a hearing is in effect a summary dismissal in violation of academic due process."

Professor Hartwig was removed from his duties on October 21, 1997, an action that President McNamara described as extending his approved fall 1997 leave through June 30, 1999. Professor Hartwig was given no choice in the matter and had no prospect of returning to his duties. President McNamara's actions thus effectively separated Professor Hartwig from his teaching duties for some eighteen months. The investigating committee finds that,

4. The college's *Faculty Handbook* states that "every aspect of personnel policy and practice" will be "without regard" to, inter alia, sexual orientation and religious creed.

however President McNamara described it, her action to relieve Professor Hartwig of his duties constituted a suspension, and that, as such, consistent with the college's *Faculty Handbook* and AAUP-supported standards, the controlling procedural regulations should have been those "prescribed for dismissal for adequate cause." The administration clearly did not afford Professor Hartwig anything resembling those procedures, however. There were no oral or written warnings, suggestions for correction, or discussions with the department chair and the academic vice president "looking toward a mutual settlement." There was no review and determination by the Faculty Status Committee. Had the Faculty Status Committee determined that dismissal proceedings should have been undertaken, then President McNamara was further required to have provided Professor Hartwig with a statement of reasons, "framed with reasonable particularity," that spoke to adequate cause as defined by the college's regulations. Professor Hartwig would then have had the opportunity to respond to the charges and to have a hearing before a body of his faculty peers.

The faculty committee that heard Professor Hartwig's grievance concluded that President McNamara had the authority to relieve Professor Hartwig of his teaching responsibilities because the assignment of faculty to teach classes was "an administrative prerogative." The committee that heard Professor Coffey's grievance came to a different conclusion. It reported that Vice President Brantl had confirmed that the college's procedures for suspending a faculty member had not been followed with respect to Professor Hartwig, and it thus concluded that there had been a "failure" on the part of the administration "to follow the proper procedures set forth in the Faculty Handbook." The investigating committee agrees with this conclusion.

This committee does not know why President McNamara chose not to afford Professor Hartwig academic due process before she acted on October 21, since he was on leave and did not expect to return to the campus until the start of the next semester. In any event, following the suspension, the Albertus Magnus College administration neither reinstated Professor Hartwig nor provided him with opportunity for a faculty hearing to determine adequacy of cause for its actions. The investigating committee finds that the administration's suspension of Professor Hartwig from further teaching was in effect a summary dismissal in violation of academic due process.

3. The Reasons for the Actions Against Professor Hartwig

In her letter of October 21, 1997, to Professor Hartwig, President McNamara gave as the reason for not renewing his appointment and for relieving him of teaching and administrative responsibilities her concern that he had publicly identified himself as a priest of the Roman Catholic Church. The next day, in her statement to the college community, she added that she had been "shocked and greatly troubled" by Professor Hartwig's "proclaiming to be a priest" in the *Dallas Morning News* article because, when he was

appointed in 1991, "he represented that he had left the priesthood and resigned," and that his "recent decision to identify himself as a priest has placed the college in a difficult position because of our fundamental identity as a Catholic College." President McNamara emphasized that Professor Hartwig's recent statement identifying himself as a priest and not his statement of six years earlier had led to the actions against him. She denied that Professor Hartwig's sexual orientation or outside pressures influenced her decisions.

The first reason, then, for President McNamara's actions against Professor Hartwig centered on her claim that he had misrepresented his clerical status. President McNamara, according to her deposition in connection with Professor Hartwig's lawsuit, called the office of the Dallas diocese some time after her conversation with him on August 14, 1997, and was told that there is no canonical status of a priest on "permanent leave of absence," and that the leave of absence granted to Professor Hartwig some ten years earlier had been for only six months. She therefore concluded that Professor Hartwig's descriptions of himself in 1991 and 1997 as being on "permanent leave of absence" or "on leave" were untrue. Despite the president's statement to the college community that no one had accused Professor Hartwig of being dishonest when he applied for his position in 1991, her view, as the investigating committee understands it, seems to have been that Professor Hartwig misrepresented himself both in his 1991 application and in his *Dallas Morning News* column, not because he claimed in the former to have left the priesthood and in the latter publicly to be a priest, but rather because in both he had claimed to be on leave.

The Roman Catholic Church does not make it easy to describe accurately the status of a "former" priest. The position of the church is that ordination to the priesthood makes one a priest forever. A priest who wishes to cease serving as a priest can apply to the Vatican for "laicization," that is, official approval of his decision no longer to function as a priest. Following the Second Vatican Council, the church was generous in granting laicization, and many priests sought and received it. Church policy changed in 1980, restricting conditions for successful laicization and thereby greatly limiting the likelihood that it would be granted. This change in policy, however, has not stopped priests from leaving active priesthood; they simply do so without applying for laicization. When still in the process of making his decision, a priest might apply to his bishop for temporary leave. Every diocese has the power to grant such a short-term leave from active ministry. Some priests decide to return to active ministry after this period; others do not.

What, then, was Professor Hartwig's status at the time he applied for a faculty position at Albertus Magnus College? The individual who wishes to resign his duties as a priest normally asks his diocese for a leave. The Vatican does not authorize a bishop and his diocese to grant indefinite leaves of absence from the priesthood because, as noted above, ordination is permanent. A "priest on leave" for a tem-

porary period who decides to make the leave permanent accurately refers to himself, not as a former priest, but as a priest on permanent leave, as Professor Hartwig did in 1991. Moreover, he was accurate when he stated that he “took” a permanent leave of absence from the active ministry rather than having been “granted” one. Likewise, “priest on leave,” Professor Hartwig’s self-description in the 1997 *Dallas Morning News*, was accurate, for it described a priest without the faculties, or priestly privileges, that only a diocese can confer. In addition, Professor Hartwig’s vicar general while he was still an active priest in Dallas wrote to him in March 1998 that it was his “clear recollection” that Professor Hartwig “did not intend to return to active ministry” and that he was continuing his leave of absence, and that he, the vicar general, should have sent him a letter confirming these facts.

The evidence available to the investigating committee indicates that, during his six years at Albertus Magnus College, Professor Hartwig had not claimed that he was no longer a priest but neither had he identified himself as an active priest. He had not claimed priestly authority in his teaching, nor had he performed or sought to perform priestly functions such as hearing confessions or saying Mass either at the college or elsewhere. In its report on Professor Hartwig’s grievance, the faculty committee stated that his statements in 1991 and 1997 were “honest, good faith efforts . . . to express in a few words the complex nature of his clerical status,” and the statements were not “necessarily in conflict.” In the view of the investigating committee, Professor Hartwig’s descriptions of himself as “priest on permanent leave” and “priest on leave” were not untrue.

In further support of its position that Professor Hartwig had not accurately identified himself in relationship to the priestly ministry while at the college, the administration, in court papers, alleged that in his application to the college he had represented himself to President McNamara in 1991 as an Episcopalian. The administration pointed to an entry on the last page of Professor Hartwig’s 1991 curriculum vitae under the category, “Personal Interests/Involvements,” in which Professor Hartwig listed such items as the musical instruments he played and the sports he enjoyed. This entry read: “Local parish involvement (Grace Episcopal Church, Stafford Springs [Connecticut]): liturgy committee, parish life committee, and special events coordinator.” The college appeared to be claiming that not only did Professor Hartwig not consistently represent himself as a Catholic priest, but also that he did not even identify himself as a Catholic.

In his memorandum of June 24, 1997, to President McNamara written in response to the first of *The Wanderer* articles, Professor Hartwig stated that, since his partner was an Episcopalian, they had become active in Grace Episcopal Church when they had lived in Connecticut. In the same memorandum, Professor Hartwig told President McNamara, “We are active members of the Jesuit Urban Center, a Roman Catholic Church in Boston.” Several members of the college’s faculty told the investigating committee that Professor Hartwig had always been among the

faithful participating in Catholic liturgical celebrations at Albertus Magnus. He did not avoid them. They also told the committee that he regularly received communion at these events, that President McNamara, often present, might easily have observed this, and that as a Catholic and former nun she would have known that only Catholics are welcome to receive communion at a Catholic Mass.

The second reason President McNamara gave for her actions against Professor Hartwig was that his public claim to be a priest “placed the College in a difficult position because of our fundamental identity as a Catholic College.” The mission of the college is stated as follows in its course catalogue and faculty handbook:

[It] is to produce well-prepared, capable, forward-looking, and liberally-educated men and women, fully able to work productively in a career and live enriched and enriching lives. Albertus Magnus College remains faithful to the Judeo-Christian tradition and to its Catholic heritage, aware of and ready to respond to the evolving needs of its own students and society at large.

The handbook also provides that the college’s faculty “accepts the responsibilities as well as the privileges contained in the definition of academic freedom” in the 1940 *Statement of Principles on Academic Freedom and Tenure*, and it reprints verbatim the academic freedom section of the 1940 *Statement*. The college places no express doctrinal limitations upon its faculty. Faculty members interviewed by the investigating committee, including Professor Hartwig’s department colleagues, affirmed that no limitations on academic freedom were in place either at the time Professor Hartwig was appointed or thereafter.

The faculty committee that heard Professor Hartwig’s grievance concluded that President McNamara’s explanation of her decision to the college community “lacks sufficient detail [for the committee] to judge whether this decision comports with the mission and identity of the college as set forth in the college’s mission statement.” In its response to Professor Hartwig’s complaint before the Connecticut Commission on Human Rights and Opportunities, the administration repeated what President McNamara had stated to the college community about the case, except for the addition of the word “deliberately”:

When the College deliberately hires a Roman Catholic priest to teach philosophy and religion, that individual is recognized publicly as a priest, has the special title of “Father” and is addressed as such by members of the College community. Because of his priesthood, that faculty member is viewed as speaking with the authority of priestly office in matters that relate to the Roman Catholic Church and its teachings.

The investigating committee understands these words to imply that, because Professor Hartwig was not “deliberately” appointed

as a Roman Catholic priest to teach philosophy and religious studies, his teaching before 1997 on matters relating to the church was not an issue. After Professor Hartwig had publicly identified himself as a priest in the Dallas newspaper, however, his continuing to teach at Albertus Magnus College became problematic. Albertus Magnus College describes itself as “faithful to its Catholic heritage,” but it does not select its faculty only from members of the church and it does not require faculty members merely to repeat church doctrine in their teaching and writing. Moreover, Professor Hartwig was teaching in a Department of Philosophy and Religious Studies whose methodologies and approaches, according not only to him but also to his department colleagues, are not sectarian. His students, these colleagues told the investigating committee, had not found fault with his teaching, and neither had they.

It is entirely proper for the president of a college to be concerned with the institution’s public image. But decisions regarding the nonreappointment of a faculty member and the far more drastic action of suspending him should be for sound academic reasons. Professor Hartwig’s truthful description of his clerical status in his 1991 curriculum vitae did not disqualify him for a faculty position at Albertus Magnus College. The description of his status in 1997 in the *Dallas Morning News* obviously circulated more widely than did his curriculum vitae in 1991. But the investigating committee sees no merit in the administration’s position that wider knowledge in 1997 of Professor Hartwig’s status as a priest on leave, imparted through his own words, could serve to impair his service to the college, when that service had been previously praised by the administration and his clerical status had been known to it earlier. The investigating committee rejects the argument that Professor Hartwig’s descriptions of his priestly status warranted his nonreappointment and suspension because his continuance might harm the institution’s “fundamental identity as a Catholic College.”

President McNamara, in her statement to the college community about Professor Hartwig’s case, not only gave reasons for her decisions but also denied that his sexual orientation or outside pressures influenced those decisions. Professor Hartwig’s status as an openly gay man was not controversial on the college campus before 1997, and there is no reason to believe that his sexual orientation, by itself, influenced President McNamara’s decision. Of major importance in Professor Hartwig’s case, however, was the public attention focused on his status as both a priest and an openly gay man and the president’s responses to that publicity. In her meeting with Professor Hartwig on June 22, 1997, President McNamara suggested that he consider “working in a different academic department or in administration.” Professor Hartwig rejected the suggestion. According to Professor Hartwig, in his meeting with President McNamara on August 11, she again raised the issue of his teaching outside the Department of Philosophy and Religious Studies and also raised the matter of the research he was pursuing while on leave of absence. “What am I going to do when your book comes out?” Professor Hartwig

claims that President McNamara remarked to him. The next day, in his memorandum to the president, Professor Hartwig affirmed his right as a scholar to publish his admittedly controversial work. He stated that he would be “careful to distinguish my own opinions from Magisterial positions,” but a book that proposed to challenge as harmful and in some cases immoral the Roman Catholic Church’s insistence on sexual abstinence for “gay men, lesbians, divorcees and single adults” would assuredly bring further attention to Professor Hartwig and consequently to the college. Professor Hartwig’s meetings with President McNamara took place before he had sent her a copy of his essay in the *Dallas Morning News*. If his accounts of these meetings are accurate, President McNamara’s concern about public references to his status as a priest and an openly gay man teaching philosophy and religious studies at Albertus Magnus College preceded her reading his essay in the Dallas newspaper.

If President McNamara was already disposed to make some accommodation to public opinion in light of the articles that had appeared in *The Wanderer*, it is a safe assumption that Professor Hartwig’s essay in the *Dallas Morning News* may have deepened her concern, less because he had written it and more because it was the third newspaper article to have been published within a period of two months that identified him as a priest on leave—the first two had also identified him as a gay person—teaching at the college. President McNamara knew that members of the board of trustees and the national president of the Knights of Columbus were concerned about the college’s negative publicity. From her conversations with Professor Hartwig and his memoranda to her, President McNamara presumably knew that Professor Hartwig, while anxious to find some way to allay her concerns (for example, by speaking with members of the board of trustees, or by writing a letter to *The Wanderer*), was not willing to compromise his rights as a teacher or a scholar. In light of the attention given to Professor Hartwig in a national Catholic newspaper and the possibility of more controversy still to come with the publication of his research, it seems clear to the investigating committee that President McNamara viewed Professor Hartwig’s reference to himself in the Dallas newspaper as a priest on leave as a matter that had attracted wide public notice which called for summary action. The committee is at a loss to interpret in any other way President McNamara’s unwillingness to permit Professor Hartwig, a respected member of the college community for six years, an avenue for redress of her concerns other than to issue him notice of nonreappointment and, far graver, effectively to dismiss him.

4. Academic Freedom

The investigating committee could identify no valid academic basis for the administration’s actions against Professor Hartwig. The committee was struck by President McNamara’s raising with Professor Hartwig in her meeting with him on June 22, 1997, the possibility that he teach outside the Department of Philosophy and Religious Studies, or, indeed, that he not teach at all and in-

stead work in the administration. Professor Hartwig reports that President McNamara repeated the suggestion about his teaching in another department in their meeting on August 11, and that she also raised concerns about the publication of his research. As noted previously, in one of his two memoranda to the president of August 12, 1997, Professor Hartwig stated that he was "very concerned" about a "restriction" on his academic freedom were he to teach another subject at the college. In the same memorandum, Professor Hartwig asserted his right to "publish the fruits of [his] research." President McNamara's suggestion that Professor Hartwig not teach religious studies courses indicates to the investigating committee a willingness on her part to compromise his academic freedom in order to avoid further negative publicity about the college. The threat to academic freedom is obvious.

The investigating committee has no way of determining what action, if any, the administration might have taken against Professor Hartwig had he agreed to alter his teaching or his research. But in raising the issue of Professor Hartwig's teaching and research under the circumstances discussed in this report, President McNamara acted in disregard of his academic freedom. In addition, President McNamara's apparent view that a president may, without regard for procedural safeguards, decline to reappoint a faculty member and proceed to suspend him poses a danger to academic freedom as well as to sound academic government at Albertus Magnus College, for her unilateral actions invite attempts to influence her for improper reasons.

IV. Conclusions

1. The administration of Albertus Magnus College denied reappointment to Professor Michael J. Hartwig without affording him procedural safeguards to which he was entitled under the college's official policies and the Association's *Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments*.

2. In suspending and effectively dismissing Professor Hartwig without demonstrating adequacy of cause in a hearing before faculty peers, the administration denied him due process as called for in the 1940 *Statement of Principles on Academic Freedom and Tenure* as well as the college's own policies.

3. To the extent that the administration of Albertus Magnus College acted against Professor Hartwig for reasons bearing on his teaching and research, it did so in violation of his academic freedom. ☞

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Investigating Committee

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

JOAN WALLACH SCOTT (History), Institute for Advanced Study, *Chair*

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