

## R E P O R T

# ACADEMIC FREEDOM AND TENURE: LOUISIANA STATE UNIVERSITY, BATON ROUGE<sup>1</sup>

This is a report on two distinctly different cases at Louisiana State University, Baton Rouge, different in the administrative officers involved and in the matters under dispute but alike in putting core issues of academic freedom to the test. The first case, affecting a nontenured associate professor in the Department of Civil and Environmental Engineering in his seventeenth year on the faculty, tested the relationship between freedom of research and publication and freedom of extramural utterance in a politically charged atmosphere. The second case, affecting a tenured full professor in the Department of Biological Sciences in her thirty-first year on the faculty, tested the freedom of a classroom teacher to assign student grades as she sees fit.

Louisiana State University and Agricultural and Mechanical College, Baton Rouge, the state's flagship university, was founded in 1853 as the Louisiana State Seminary of Learning and Military Academy. It is the dominant unit of the Louisiana State University System, now composed of five institutions, each headed by a chancellor, under the authority of a system president and a board of supervisors. Dr. Michael V. Martin assumed the chancellorship of LSU, Baton Rouge, on

August 1, 2008, having previously served as president of New Mexico State University. The system, together with three other Louisiana systems of education, falls in turn under the jurisdiction of a governor-appointed commissioner of higher education and a sixteen-member board of regents.

As of 2009, LSU, Baton Rouge, enrolled 21,000 undergraduate and 4,000 graduate students in seventeen schools and colleges, with approximately 1,250 full-time faculty members. Its administration had embarked in 2003 on a seven-year National Flagship Agenda, "focused on how [LSU] could improve its research and educational enterprise to make it more nationally competitive." Achievement of its goals, necessitating "an increase in resources from a variety of sources—federal, state, and private," has been hampered by budgetary difficulties facing the state of Louisiana in general and its systems of higher education in particular, though these difficulties have been felt to very different degrees in LSU's various colleges.<sup>2</sup>

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1. The text of this report was written in the first instance by the members of the investigating committee. In accordance with Association practice, the text was then edited by the Association's staff and, as revised with the concurrence of the investigating committee, was submitted to Committee A on Academic Freedom and Tenure. With the approval of Committee A, the report was subsequently sent to the faculty members at whose request the investigation was conducted, to the administration of Louisiana State University, Baton Rouge, to the president of the AAUP chapter, and to other persons directly concerned in the report. This final report has been prepared for publication in light of the responses received and with the editorial assistance of the staff.

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2. In 2005–07, an AAUP Special Committee on Hurricane Katrina and New Orleans Universities undertook an investigation that included two units of the Louisiana State University System: Louisiana State University Health Sciences Center (LSUHSC) and the University of New Orleans (UNO). The Association did not impose censure on the LSUHSC administration, largely because of reforms in official policies. The Association did impose censure on the administration of UNO in 2007, and its policies were significantly revised early in 2011. For the special committee's report, see *Academe*, May–June 2007. The UNO censure was removed by the annual meeting in June 2011. A month later, Louisiana's legislature and governor acted to remove UNO from the LSU System and make it the ninth member of the University of Louisiana System.

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## The Case of Professor Ivor van Heerden

### I. Factual Background (before Hurricane Katrina)

Dr. Ivor van Heerden, a coastal geologist and hurricane researcher, received his BSc degree from the University of Natal in his native South Africa and his MS and PhD in marine sciences from Louisiana State University, Baton Rouge. His full-time faculty service at LSU began in August 1992, when he received a grant-funded “soft money” appointment in the College of Basic Science as an assistant professor—research. That initial appointment, designated a “summer” research project involving flood management in the Atchafalaya Basin, was on a fiscal-year basis. In July, however, before the appointment began, the director of the Center for Coastal, Energy, and Environmental Resources (CCEER), Professor Charles G. Grout, wrote to assure Professor van Heerden that the position would later be advertised at the associate level as “permanent” and include the academic responsibilities necessary for the nine-month appointment. In the event, the position came through at the associate level with academic responsibilities, but it was permanent only in the sense that no end date was specified. Professor van Heerden began in August 1992 as associate professor—research and retained that rank throughout his LSU career.

Applicable LSU policies exclude “research faculty” from accruing credit toward tenure, and Professor van Heerden’s first five years were to be partially grant-funded, yet his appointment from the outset carried academic responsibilities beyond research. Faculty members who later discussed his situation with the undersigned investigating committee emphasized the irregular nature of his appointment, questioning—as the Faculty Grievance Committee was later to question—just how the provisions of various policy documents could and should apply in his highly atypical case.

An important aspect of Professor van Heerden’s work throughout his affiliation with LSU was close interaction with and technical assistance to local, state, and federal agencies. In 1994, while continuing full time at LSU, he was appointed assistant secretary of the Louisiana Department of Natural Resources to manage the state’s coastal and habitat restoration program, based on a comprehensive environmental management plan he had developed and described in a 1993 report. Under the state’s plan, which provided for multifaceted large-scale restoration, Professor van Heerden was re-

sponsible for ensuring the transfer of technology and ideas from academia to local government and to state and federal agencies involved in restoration. From 1992 to 1998, he was director of the Natural Systems Management and Engineering Program at LSU’s CCEER while maintaining his research professorship, dividing his time among a number of projects in his areas of expertise, notably in flood management. In 1995, he authored “A White Paper—The State of Louisiana’s Policy for Coastal Restoration Activities,” which set the official state policy for coastal restoration in Louisiana. In 1997, because he had exceeded the statutory limit of four years for a term appointment at the level of associate professor, his position was reclassified as a “hard-money” appointment under the state’s general fund, although he had already established and would maintain an impressive record of securing grant and contract income. Professor van Heerden continued to be paid by the state’s general fund through the end of his appointment in 2010, a fact that rendered his position an exception to official policies on research-series appointments.

In February 1998, Professor van Heerden began an appointment with the Louisiana Geological Survey (LGS), heading the River Basins and Wetlands Management Section. Dr. Lynn Jelinski, then vice chancellor for research, sent a team of LSU scientists, including Professors van Heerden and Marc Levitan, to Honduras to conduct assessments after Hurricane Mitch had left more than ten thousand people dead. Their collaboration led to the founding of the LSU Hurricane Center, which figures prominently in this report, under the administrative authority of the Office of Research and Graduate Studies. Professor Levitan, an associate professor of civil engineering with a specialty in wind engineering, was appointed the center’s director and, from July 2000, Professor van Heerden was its deputy director, with responsibility for developing a “funded research program related to storm impacts on the natural environment” and for carrying out associated administrative and academic duties.

At the beginning of the 2000–01 academic year, Professor van Heerden transferred to the Department of Civil and Environmental Engineering (CEE) within the College of Engineering, initially with a ten-month fiscal-year appointment. He sought the transfer, he said, to be able to work more closely with graduate students and to have teaching opportunities unavailable in LGS.

In a September 28, 2000, memorandum, the interim vice chancellor and dean of the graduate school stated that the change was intended “to better reflect the services you have been providing to the university and to better take advantage of the expertise you have to offer.” The memorandum also noted that the “position and the funds transferred to CEE will revert to the Office of Research and Graduate Studies at such time as the position is vacated”—a provision that would later be of crucial importance.

The appointment to the CEE department, which was endorsed by the department’s faculty, required the development of a revised position description, which Professor van Heerden’s new department chair prepared in consultation with the Office of Human Resource Management (HRM). It listed his various duties and responsibilities, assigning the percentage of time to be devoted to each: “program development and supervision” was to occupy 35 percent of his time; “basic and applied research” was to take 30 percent; participation, as needed, in other LSU programs was to take 20 percent; and “technical assistance to state and federal agencies” was to take 15 percent. This same position description remained on record with HRM through 2010.

In accordance with the 20 percent assignment to other academic programs, Professor van Heerden participated in the establishment of a new undergraduate interdisciplinary minor in disaster science and management in the College of Arts and Sciences and began teaching a core course that he had developed—Hazards, Disasters, and the Environment—in fall 2001. He later taught two graduate seminars as well.

Perhaps no one noticed at the time of Professor van Heerden’s transfer to the CEE department, but this new appointment seems to have placed him in an untenable situation: the guidelines then in effect for research professors in the engineering college made him ineligible for the research professor title he had held since 1992. From the perspective of the college’s administration, research professors’ appointments were *term* appointments paid from contracts and grants; Professor van Heerden’s eligibility for a term research appointment had long since expired, and, as previously noted, he was now being paid from the state’s general fund. From the perspective of the Office of Research and Graduate Studies, which had become responsible for his salary, Professor van Heerden’s position was outside the tenure system, yet it was a continuing position.

How these very local perspectives and decisions played out under the more general rules of LSU and the LSU

System will be discussed below. At the outset, everyone seemed satisfied with the arrangement, and in January 2002 Professor van Heerden assumed additional duties as the founding director of the LSU Center for the Study of Public Health Impacts of Hurricanes, funded by a five-year, \$3.65-million grant from the Louisiana Board of Regents. According to a press release issued at the time, it was to be operated by the Hurricane Center and its purpose was to “consider and evaluate possible hurricane scenarios in an attempt to predict the impact of a hurricane strike, the preparations that should be made to prepare for such a strike, and post-disaster recovery.” Central to the efforts of the two “sister” centers was the development of computer models for predicting hurricane storm surges, models minutely calibrated to local terrain that could provide accurate information on which the public, government agencies, first responders, oil companies, and others could rely in an emergency. The Hurricane Public Health Center, as it came to be known, also examined such hurricane- and flood-related issues as mass evacuations, emergency accommodation for people and their pets, the spread of infectious diseases, contamination of the water supply, and residual contamination of air and soil. The department’s 2002 fall newsletter reported with pride about the “\$3.7-million Health Millennia Fund grant.”

Professor van Heerden’s department chair at this time, Professor George Z. Voyiadjis, was supportive. In a memorandum dated August 15, 2002, he wrote in favor of Professor van Heerden’s being moved to a nine-month “academic appointment,” describing him as “a solid member of our faculty, [who] conducts research and serves on the committees of four graduate students. He continues to make strong contributions to our departmental research goals as well as carry out [a] vigorous individual research program. Dr. van Heerden is an asset to our department, and we are honored to include him as part of our research personnel.” Professor Voyiadjis also wrote, “[T]his is not a tenure-track position at this time.” He was later to testify that, although Professor van Heerden was not required to teach classes, he was rated 3.5 on a 4-point scale in undergraduate student evaluations. “I applaud him for that,” he added. For the first half of his decade as a member of the CEE department, Professor van Heerden received consistently positive performance evaluations from his chair, evaluations including recognition of and commendation for the service and teaching aspects of his position. His chair praised his success at research funding but encouraged him to publish more refereed articles in professional journals.

In November 2003, Professor van Heerden underwent a formal reappointment review by the CEE department faculty. His position description was interpreted as 5 percent administration (the deputy directorship) and 95 percent research. The senior faculty members conducting the review commented on his performance in the traditional categories of instruction, research/scholarship, and service. Professor van Heerden had by then taught his core undergraduate course on disaster science and management three times and had served on the committees of five students—one PhD and four master’s degree candidates—but, noting that “his appointment has no teaching requirement,” the faculty committee did not assess his teaching. He was judged to have an “outstanding level of research funding.” His research output in publications was “less than the norm for the department, but reflects the particular nature of his appointment with its emphasis on advisory and technology transfer activity” (that is, service), an activity judged “notable.” The review recommended his reappointment for three additional years.

Within the context of Professor van Heerden’s generally positive annual evaluations, conducted by his department chair, a matter of contention was the percentage of effort he was supposed to devote to research. Members of the CEE faculty listed their activities annually and submitted them electronically to the chair, who then provided an overall evaluation and made comments on instruction, research/scholarship, and service/professional activity. The investigating committee noted a variety of inconsistencies and errors, some trivial, some continuing for years before being corrected in Professor van Heerden’s evaluations. When asked about them in his deposition, Professor Voyiadjis testified that he had assistance in these matters and made no great effort to root out mistakes himself, having some thirty-five members of the department to review. Professor van Heerden told the investigating committee that he had conscientiously recorded the correct percentages given in his job description every year, but that Professor Voyiadjis had annually deleted them. Professor Voyiadjis testified that he had changed the percentage of effort in research to 100 percent every year over Professor van Heerden’s objection that instruction, service, and professional activity accounted for 70 percent of his position description. Professor Voyiadjis conceded that Professor van Heerden’s interpretation of his position had been derived from the previous chair, but, he stated, “I explained to him that his coming with the title of Associate Professor of Research . . . [meant] that [his position] is 100 percent research.” On another occasion the chair told him, “My

evaluation is solely on research.” Professor van Heerden’s disputed research percentage was to be pivotal for his case.

A June 2004 evaluation by Professor Voyiadjis observed that Professor van Heerden “is publishing his research work in refereed archival journals at the same time that he is being called upon as a speaker for numerous groups.” That same year the LSU Graduate Council approved Professor van Heerden for a three-year term as an associate member of the university’s graduate faculty, a membership that previous evaluations had identified as important. The documentation supporting the nomination, submitted by Professor Voyiadjis, listed Professor van Heerden’s duties as 20 percent teaching, 30 percent research, and 50 percent administration.

The College of Engineering, in step with LSU’s 2003 National Flagship Agenda, adopted a new mission statement in September 2004 that appeared to embrace the sort of applied science that the two hurricane centers supported:

To serve as a center of learning and a source of technical expertise for Louisiana and the Nation by graduating skilled engineers and construction managers well prepared for productive professional careers; to identify and develop new technologies through leading-edge research; and to disseminate and implement these technologies for the benefit of government, industry, and society.

By letter of March 17, 2005, then-dean of engineering Zaki Bassiouni commended Professor van Heerden’s success in obtaining funding for Gulf Coast hurricane surge modeling, remarking on his “commitment to excellence” and his “dedication to teaching, research, and professional service.” The dean continued, “[T]hrough your professional service and academic outreach, you have extended your own knowledge to enhance the lives of others, in addition to motivating your students to follow your lead.” At the department level, in annual evaluations of June 2004 and again in July 2005, Professor Voyiadjis commended Professor van Heerden “for his effectiveness in obtaining national publicity for LSU’s activities in solving hurricane-related problems.” The LSU Office of Public Affairs touted the university’s “World-renowned Hurricane Experts”:

LSU is home to one of the largest groups of hurricane experts in the nation. These experts will be available to the media for expert comment or analysis throughout the potentially active 2005 season. LSU’s researchers are studying all aspects of hurricanes and tropical storms as part of a comprehensive research effort that will benefit the citizens of Louisiana and the entire Gulf Coast region.

Ivor van Heerden was listed among these “hurricane experts,” and he was identified as “associate professor, civil and environmental engineering.”

## II. Factual Background (after Hurricane Katrina)

As Hurricane Katrina approached the coast of Louisiana in late August 2005, both the Hurricane Center and the Hurricane Public Health Center, involving faculty and graduate students from a variety of LSU units and elsewhere, were active around the clock. Professor van Heerden secured permission from the board of regents to turn the public health center’s research funding to “full operational support” in the areas of its scientists’ and engineers’ expertise to assist numerous federal, state, and local agencies that sought advice and support from LSU’s hurricane experts. The models they produced were posted on the public health center’s website and thus were likewise available to the press. The hurricane centers bumped other users from LSU’s supercomputer to run the Advanced Circulation (ADCIRC) storm-surge models that led to calls for the evacuation of New Orleans published in the *Times-Picayune* newspaper and made mandatory by Mayor Ray Nagin. Nor were the two centers alone in their efforts. Personnel from all over LSU with disaster resources to contribute stepped forward to help. From Katrina’s landfall on August 29, Professor van Heerden was in a national spotlight that LSU was proud to share. He was given an LSU cap and T-shirt to wear in media interviews, for which he was in constant demand; an LSU tie and lapel pin were provided for his first appearance on *Meet the Press*. Then-chancellor Sean O’Keefe wrote of those early days, “Experts from LSU’s Hurricane Center as well as researchers on campus in other disciplines provided news agencies with information and insight.”

University resources were placed at Professor van Heerden’s disposal: on September 9, an LSU campus police officer escorted him and two other LSU investigators through military roadblocks for a site visit to the flooded areas of New Orleans. The Army Corps of Engineers had been describing Katrina as a Category 4 hurricane, more massive than the city’s levees had been designed to withstand and had attributed the vast flooding to storm surges that “overtopped” the concrete walls of the levees, undermining the earthen walls below. But what the LSU investigators found—later confirmed by their own further tests and by those of the other official investigative teams—was evidence inconsistent with overtopping: debris lines below the tops of some levees and an absence of scoured trenches on the protected sides of some levee

walls. They hypothesized that *structural* failure of the levees had accounted for most of the city’s flooding and most of its deaths. As word of these findings spread on campus, Vice Provost Charles Wilson sent an e-mail message confirming a meeting to Drs. Harold Silverman and Robert R. Twilley, respectively interim vice chancellor for research and graduate studies and director of the university’s Wetland Biogeochemistry Institute. He wrote, “One of the issues will be Ivor; we must get him on the team and have him change his story.”

By September 21, enough evidence had accumulated for Professor van Heerden to describe the flooding to the *Washington Post* as a “catastrophic structural failure” in a front-page article in which LSU’s Hurricane Center featured prominently. LSU’s Hurricane Public Health Center and LSU’s Natural Systems Modeling Laboratory were also mentioned in the article, which was picked up by other news media. By implication, the Army Corps of Engineers—which had been charged by Congress to design and construct a hurricane protection system for the New Orleans area after Hurricane Betsy flooded the city in 1965—bore responsibility for the failed levees. It would be nearly a year after Katrina, however, before the Corps would accept the responsibility laid at its feet by Professor van Heerden.

In the two weeks following the appearance of the article in the *Washington Post*, and as criticism of the Army Corps of Engineers and the Federal Emergency Management Agency (FEMA) intensified nationally, the Louisiana Department of Transportation and Development commissioned LSU to establish a select group of academic and private-sector experts, headed by Professor van Heerden, “to understand, first, what performance was expected of the Greater New Orleans hurricane protection system and, second, to identify causes of failure as part of an effort to improve future performance.”<sup>3</sup> The nine-member body of engineers and scientists, officially designated the State of Louisiana Forensic Data Gathering Team, was ubiquitously known as “Team Louisiana.” Its contract with Louisiana’s transportation department was administered by LSU’s College of Engineering. Professor van Heerden was called to testify before the US Senate Committee on Homeland

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3. Ivor L. van Heerden et al., *The Failure of the New Orleans Levee System during Hurricane Katrina: A Report Prepared for Secretary Johnny Bradberry, Louisiana Department of Transportation and Development*, Baton Rouge, Louisiana, State Project No. 704-92-0022, 20 (December 18, 2006), p. i.

Security and Governmental Affairs in his official capacity as head of Team Louisiana.

In the midst of these developments, and as his media appearances increased, Professor van Heerden began to have serious trouble with his administrative superiors. A confidential memorandum dated October 24, 2005, from one of his senior departmental colleagues, Professor Roy K. Dokka, to Dr. Michael Ruffner, vice chancellor for communications and university relations, complained that the “image of LSU” was being damaged by “a deluge of irresponsible reports to the media being spewed” by (unnamed) non-tenure-track persons with “NO credentials, training, or experience in the field about which they opine.” The memorandum went on to predict “serious credibility, political, and perhaps, legal *liability* issues” for LSU, and Professor Dokka reports, “I have been in Washington several times recently meeting with the congressional delegation and federal agencies. In almost every contact, I am asked how so-and-so’s irresponsible behavior is tolerated.” The memorandum ended by opining that LSU “will remain in third-rate category unless the ‘cowboys’ are reined in.”

External pressures on university administrators were apparently intense during this time. Professor Raymond B. Seed of the University of California, Berkeley, who headed the National Science Foundation’s investigative team (known as “the Berkeley team”) and who praised the work of Team Louisiana highly, wrote of “extreme Federal pressure” on the LSU administration being exerted over the winter of 2005–06. He wrote that his own university “was also approached in an inappropriate manner . . . but such untoward pressures were simply rebuffed. That, in the end, probably goes right to the heart of what really separates a top-flight university with one of the top colleges of engineering in the nation (and *the* top-rated Department of Civil Engineering in the nation) from a university like LSU.”<sup>4</sup>

In the week following Professor Dokka’s memorandum, an exchange of e-mail messages took place between LSU administrators and university attorneys about Ivor van Heerden and “the image of LSU.”<sup>5</sup> The administration declined to allow Professor van Heerden the services of an LSU attorney to assist him with his

upcoming US Senate testimony, scheduled for November 2, and he was summoned to a meeting with Vice Chancellor Ruffner. At that meeting, on November 11, Dr. Ruffner was joined by Interim Vice Chancellor for Research and Graduate Studies Silverman, whose office had financial authority for Professor van Heerden’s position.

Summarizing what had transpired in a memorandum of understanding addressed to the two vice chancellors four days later, Professor van Heerden wrote, “I agreed to no longer talk to the media directly because you stated that my talking to the media was hurting LSU’s chances to obtain federal funds.” Responding the next day, Vice Chancellor Ruffner made an about-face from LSU caps and ties, writing of Professor van Heerden’s contacts with the media, “I do not consider any topic off limits. All I ask is that each person make it clear that opinions are not those of LSU. It is up to each of you to insure that media do not portray your opinions as those of LSU. This is your responsibility if you choose to speak with media.” He continued, “Also, LSU will engage in helping with [the] recovery of Louisiana, not in pointing blame. The chancellor has begun initiatives toward this goal, and it would not be useful to have the university associated, intentionally or not, with efforts aimed at causation.” One such chancellor’s initiative was published that same month, produced by Dr. Ruffner’s office: *LSU in the Eye of the Storm*. Although the book concentrates on LSU’s considerable contributions to relief efforts in the immediate aftermath of Katrina, it attributes the deaths and destruction to a “natural disaster,” in conflict with Team Louisiana’s findings that the greater number of deaths and most of the destruction had resulted from man-made causes. In any event, that an administrator would instruct hurricane scientists not to seek causes of hurricane destruction is difficult for this investigating committee to comprehend, the more so because of the explicit charge that Team Louisiana had received from the state’s department of transportation.

Professor van Heerden’s November 15 memorandum continued, “Another issue we discussed was complaints LSU had received about me presenting myself as an engineer and talking about engineering issues. . . . I reiterate that I have never claimed to be an engineer.” He also pointed out that he had been invited to give talks in colleges of engineering at various universities where “they did not seem to have an issue with me being a geologist talking about soil issues and foundation failures” or commenting on levees and their construction. According to faculty members in the CEE

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4. Professor Seed was writing to the president of the American Society of Civil Engineers in October 2007 regarding “New Orleans, Katrina, and the Soul of the Profession.”

5. The correspondence begins October 30 and continues intermittently until December 20, 2005.

department, Professor van Heerden, as spokesperson for a team that included professional engineers, inevitably reported the judgments of the engineers on his team when he faulted the Army Corps of Engineers. In vain, the investigating committee reviewed scores of articles and video clips for evidence that Professor van Heerden had misrepresented his training or had indicated that the views he expressed were those of LSU. The committee's inference is that reporters' inaccuracies were more likely the result of LSU's own website search function and its telephone book, both of which abbreviated Professor van Heerden's title and identified him as a member of the CEE department faculty.<sup>6</sup>

Other subjects of the meeting, according to Professor van Heerden's memorandum, were the LSU administration's introduction of a requirement that he report to five supervisors any and all contacts with the Louisiana Recovery Authority (LRA); that if he spoke with Governor Kathleen Blanco or the senior members of her administration, which they preferred that he not do, then these contacts also were to be reported to his supervisors; and that he was to decline to participate in any of the committees the governor was then establishing, including the Coastal Restoration and Protection Committee on which she had already asked him and two of his colleagues to serve. Professor van Heerden said that when he protested the vice chancellors' demands, he was reminded that his salary was paid through Dr. Silverman's office. Finally, the vice chancellors emphasized, and Professor van Heerden accepted, that when he spoke to the media or to Congress henceforth, he was doing so in his capacity as a citizen. It should be noted in this context that Governor Blanco's administration was Democratic and that criticizing the Army Corps of Engineers, like criticizing FEMA, was widely viewed in Louisiana as a direct attack on the national Republican administration then in office. While the investigating committee has

refrained from dwelling on the number of partisan political remarks that feature prominently throughout the documentation of this case, it should be well understood that, in the years following Hurricane Katrina, coinciding with elections in Louisiana, political rhetoric was intense and ubiquitous in the media. Professor van Heerden's assistance to the administration of Governor Blanco and his opposition to a Republican-led "master plan" for the state's recovery are central to the events chronicled in this report. It would be misleading to ignore the political nature of what transpired at LSU during those years.

In the view of this investigating committee, Professor van Heerden's November 11, 2005, meeting with the two vice chancellors marks a point at which the LSU administration's deliberate effort to position other faculty members in the roles then occupied by Professor van Heerden became obvious.<sup>8</sup> The administration's plans for a new direction envisioned close cooperation with the Army Corps of Engineers, with its deep pockets for recovery funding, and centered on two individuals, Dr. Twilley, director of the Wetland Biogeochemistry Institute, and Dr. Twilley's supervisor, Vice Chancellor for Research and Economic Development Brooks Keel.

Having been instructed to report his contacts with the governor, Professor van Heerden duly notified his five supervisors on December 7 that he had been asked to report to the governor's mansion that afternoon. In his capacity as head of Team Louisiana, he spent several hours assisting Governor Blanco's preparations for congressional testimony. The next day Dr. Twilley, one of the five stipulated recipients of such notifications, wrote to the head of the state's Office of Coastal Affairs, saying of Professor van Heerden, "I just want the governor to know that Ivor was not involved in our coastal restoration team that helped the [Corps of Engineers] develop the Chief Engineer's report, so he does not represent the wider coastal science and engineering community. . . . We just want to make sure that the most qualified individuals from higher education are providing the context that the science and engineering community has been developing."

Also in December 2005, Vice Chancellor Silverman, accompanied by other LSU officials, requested a meeting with the executive director of the LRA, Andrew Kopplin, who later testified that he was told that "they had another expert on their faculty who was, in their

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6. Interviewees volunteered copies of old LSU telephone books and internal searches. The only other member of the department without an engineering PhD was Professor Dokka, and, to his annoyance, he is likewise identified in the press as an engineer (e.g., "Environmental Engineer Says Mississippi River Well Understood," *WAFB-9 News*, March 26, 2008): deposition, pp. 62–63.

7. The LRA was established in October 2005, by executive order of the governor (*State of Louisiana Hazard Mitigation Plan Update*, vol. 1, submitted to FEMA by the Governor's Office of Homeland Security and Emergency Preparedness [GOHSEP], April 2008), p. 22.

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8. Professor Marc Levitan did retain his position as head of the Hurricane Center until February 2009.

view, trained in levees and that Dr. van Heerden's expertise was not in levees but was in a different area; and they felt like the engineering and scientific background of this other individual was superior and that Dr. van Heerden wasn't qualified in that particular area of expertise."

Not only did the university administrators intend to put their own people in key positions; they simultaneously pressured CEE department chair Voyiadjis to terminate Professor van Heerden's position. E-mail messages to Dean Bassiouni dated December 21, 2005, and January 4 and 5, 2006, detail Professor Voyiadjis's polite stalling tactics. Acknowledging that the dean required his signature "on correspondence you are preparing for the purpose of discharging Ivor" and agreeing to comply, he nevertheless provided a positive list of Professor van Heerden's contributions in the first e-mail, a suggestion in the second that the terms the dean had stipulated might equally apply to Professor Dokka, and a request in the third that he be given permission first to speak to a lawyer and to Vice Provost Wilson. At about the same time, Professor Voyiadjis took into his confidence a senior faculty member sympathetic to Professor van Heerden, Professor John Pardue, raising the more general issue of avoiding harm to the department and mentioning the document he was expected to sign. Professor Pardue later testified that he had used the information to impress upon Professors van Heerden and Levitan that "the university's dissatisfaction" had reached a new level and that "they needed to be very aware of that and decide then if they were going to change behavior or progress in another way." Professor Pardue also testified that he had heard remarks by vice chancellors indicating that they would terminate the van Heerden position shortly.

It seems to the investigating committee that the LSU administration wanted first to get its ducks in a row. In January 2006, Dr. Twilley wrote confidentially to Dr. Bruce A. Ebersole, chief of the Army Corps of Engineers Flood and Storm Protection Division in its Coastal and Hydraulics Laboratory at the Research and Development Center, welcoming the establishment of a "science-client relation to support the coastal forecasting needs of government agencies"—work that Professor van Heerden had been leading since 2002. Dr. Twilley attached a draft Coastal Modeling Initiative that he said was "being discussed at the vice-chancellor level of LSU." When Dr. Ebersole replied, asking whether he should telephone Professor van Heerden or Professor Hassan Mashriqui, a storm-surge modeler in the LSU Hurricane Center, Dr. Twilley steered him to speak to the latter "about the skill sets necessary to

run the ADCIRC model." Professor Mashriqui stayed quiet about the new partnership, and Dr. Twilley told Hurricane Center Director Marc Levitan that he was not interested in the ADCIRC model Professor van Heerden had used from 2002 to 2005.

During the period from 2002 to 2005, Professor van Heerden later testified in court, "[W]e had a Web page and we had shared our storm-surge modeling data with state agencies, the fire chiefs in New Orleans, [and] the Louisiana Department of Transportation and Development, who manages levees. We had put it up on a Web page. We had always had numerous requests from mayors [and from] chemical companies, for instance, who had hazardous chemicals on the ground and were worried about the potential of flooding; and obviously we always passed [our data] on to the media. And we know from Hurricane Katrina that the connection we had with . . . *The Times-Picayune* . . . was responsible for many, many more people evacuating than had originally intended to evacuate." These notification procedures and the involvement of the press will prove relevant to events in summer 2008 and to connections between freedom of research and publication and freedom of extramural speech.

Conflicts continued to swirl around Professor van Heerden. Colleagues both sympathetic and unsympathetic told the investigating committee that they knew already by early 2006 that the administration was preparing for "getting rid" of Professor van Heerden. One department member described him as "a freebie to the department," adding that Professor van Heerden had done nearly everything possible to ensure his own nonreappointment and should have taken more pains to avoid appearing partisan, especially when writing about public policy issues. Authoring articles, this department member added, is harder than basking in the limelight. "Engineers are elitist toward scientists," he told the investigating committee. "It's great he brought all that money into the department, but I thought he should play LSU ball or get out." After Katrina, the investigating committee found, the university applied multiple pressures to ensure that Professor van Heerden would indeed get out.

Professor van Heerden, however, remained very much in the public eye through the media and was a frequent subject of blogs where complex issues were likely to be interpreted in political terms and where partisan politics colored the comments. After he co-authored a popular book, published in May 2006 on the post-Katrina devastation, *The Storm: What Went Wrong and Why during Hurricane Katrina: The Inside Story from One*



*Louisiana Scientist*, describing the November 2005 meeting with Vice Chancellors Ruffner and Silverman, the *New York Times* printed “A Scientist’s Book on Katrina Draws Fire at LSU,”<sup>9</sup> including interviews with Drs. Dokka and Ruffner, an article viewed by many as acknowledging that Professor van Heerden’s days at LSU were numbered.<sup>10</sup> Dr. Ruffner replied in his official capacity by letter to the *New York Times*. He claimed that the “engineering faculty and its dean” had requested his and Dr. Silverman’s intervention—a claim sharply denied by Professor van Heerden’s departmental colleagues, who maintained that Professor Dokka’s complaint to the dean had been the single catalyst. Dr. Ruffner also undermined Professor van Heerden’s credibility as a spokesperson about levees: “He is trained in geology and botany, not civil engineering.” Professor van Heerden’s PhD is in marine sciences, and his courses in botany, appearing nowhere on his curriculum vitae, were taken as an undergraduate in South Africa. Dr. Ruffner’s letter noted that Professor van Heerden had agreed not to “speak on matters for which he has no professional credentials or training,” implying that he had previously done so—an implication denied not only by Professor van Heerden but also by his engineering colleagues.

*LSU in the Eye of the Storm*, for which Dr. Ruffner takes credit,<sup>11</sup> casts Katrina as a natural disaster, a point of view opposite Professor van Heerden’s contention in *The Storm* that the disaster was man-made. The declaration Dr. Ruffner’s letter made in closing, that LSU supports “total freedom of expression,” rang hollow to many members of the faculty. Forty-seven scientists and other faculty members at LSU crafted a strongly worded criticism of Dr. Ruffner’s letter. The *New York Times* did not print it, but the *Advocate* did. After describing Professor van Heerden’s credentials, the letter said, “The

attempt to muzzle a professor seems to have been motivated by worries that criticism of powerful men and agencies may jeopardize federal funding to LSU. This anxiety loses sight of what is really important, namely, that human error and incompetence caused a good part of Hurricane Katrina’s terrible death and destruction and that recognizing past mistakes is necessary to avoid future ones.” The letter continued, “Universities have a special mission, even a duty, to examine and speak on all matters, especially on those that affect the public. Academic freedom means that faculty members are free to investigate and discuss issues. . . . [A]dministrative attempts to determine the outcome of research by intimidating professors tarnish the institution.”

Professor van Heerden wrote to Dr. Ruffner in self-defense, without result. Then the director of the Hurricane Center, Professor Levitan, tried to present Dr. Ruffner with numerous documents to elicit a correction and apology in defense of his deputy’s bona fides. Professor Levitan later testified, “I took these materials [to Dr. Ruffner] to show [Professor van Heerden’s] background; I took the materials about our Center for the Study of Public Health Impacts of Hurricanes where Professor van Heerden had been leading a group of twenty-some-odd scientists from several campuses for—in fact since 2002—to study the exact situation of a Hurricane Katrina–like storm.” The vice chancellor, he said, refused to look at the materials and kept redirecting the conversation to LSU’s desire to publicize the Hurricane Center, telling Professor Levitan, as he later testified and as he later told the investigating committee, that “van Heerden is a problem and if you guys get rid of him, the university would be much more supportive.” Professor Levitan would remain unwilling to cooperate in the ouster of his colleague. The investigating committee found it ironic that in 2006, in the midst of these postpublication episodes, Professor van Heerden received an LSU book award for *The Storm*, signed by Dean Bassiouni, “in recognition and appreciation for this scholarly publication.”

In October 2006, Professor van Heerden’s department chair showed him an October 2005 draft policy for research faculty in the College of Engineering and stated that this document, which Professor van Heerden reports he had not previously seen, would govern his future at LSU.<sup>12</sup> Under the new policy, (a) Professor van Heerden

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9. *New York Times*, May 30, 2006. The article prompted an opinion piece in the Baton Rouge *Advocate* on June 2 that was highly critical of the LSU administration. Dr. Ruffner’s letter was published in the *Times* on June 7.

10. In the “Afterword” to the paperback edition of *The Storm* (2007), Professor van Heerden writes that John Schwartz, the author of this article, “was one of the reporters placed off-limits to me by university officials.” He also states that “Schwartz had used a freedom-of-information request to obtain forty-three e-mails from LSU covering the episode.”

11. Dr. Ruffner, according to his *curriculum vitae*, “received national acclaim for producing *LSU in the Eye of the Storm* . . . after Hurricane Katrina as a crisis management blueprint for flagship institutions.”

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12. The policy, which originated pre-Katrina, on August 17, 2005, was approved on November 5, 2005, by the engineering college’s Policy Committee, according to minutes of that meeting. The investigating committee obtained a

would no longer be permitted to teach as part of his assigned academic duties, (b) he would be subject to future renewals of only one year at a time (he had been serving on a renewable three-year contract), and (c) his performance would be judged exclusively on research. The college's policy in effect when Professor van Heerden had first been appointed associate professor—research had been established in June 1990 and lightly amended by the college policy committee in June 1996. It stipulated that “full-time research personnel,” explicitly including research professors at all ranks, “must be funded exclusively from sources external to the university.” Thus its applicability to Professor van Heerden—like that of its successor policy—can be doubted. In any case, the 1990 policy stated in reference to point (a), above, that “[t]he faculty in the department in which the adjunct appointment resides must approve . . . possible teaching responsibilities,” which had led to Professor van Heerden's teaching undergraduate and graduate courses. The earlier document is silent on points (b) and (c). Perhaps Professor Voyiadjis had doubts about the applicability of the new policy to Professor van Heerden, for he made no provision for the annual reappointment evaluations required under the new policy's “renewal process.” Professor van Heerden objected sharply to his chair and to Vice Chancellor Keel, but he received a chilling reply from the latter, who told him that he planned to increase LSU's support of hurricane research and had appointed Dr. Twilley as an associate vice chancellor of research and economic development “to help lead these efforts at LSU.” He professed his agreement with the notion of 100 percent effort in research for research faculty and publication in “*Science*-quality journals,” adding that a research faculty member on “hard money” is “a very unusual circumstance” that “we should examine across campus closely next year.”

In late 2006 and early 2007, Chancellor O'Keefe declined a request by a large number of Professor van

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copy of Professor Voyiadjis's October 28, 2005, memorandum to department faculty members with the subject line “Policy on Faculty Research Faculty” and with the draft policy attached. Although Professor van Heerden is listed as a recipient of the e-mail message, there is support for his testimony that he had not seen it: the date was eight weeks after Katrina and five weeks after Hurricane Rita, a more powerful storm (Category 5) that brought renewed flooding and a second evacuation of New Orleans; Team Louisiana was fully engaged.

Heerden's supporters, among them scientists and members of the New Orleans community, to endorse their nomination of Professor van Heerden for the 2007 National Wetlands Award, presented annually to “individuals who have excelled in wetlands protection, restoration, and education.” The chancellor was advised by Vice Chancellor Keel, who wrote, “We would not want this award to justify his potentially misguided view of service/science. . . . [W]e need to be careful giving Ivor our ‘official stamp of approval’ in light of some of the negative reactions he has generated.”

Team Louisiana's final report became national news in March 2007, renewing criticism of the Army Corps of Engineers. Dr. Keel sent a string of links to stories in the national media to Drs. Twilley and Silverman, asking how the publicity surrounding “Ivor's ‘Team Louisiana’ report” would “affect our efforts.” Further e-mail correspondence among the administrators, their eyes on “as much as \$350 million,” documents their continued attempts to make sure that state and federal legislators and officials “know the difference between Ivor and the rest of LSU.”

Professor van Heerden was asked to serve as an expert witness in April 2007 by attorneys for the plaintiffs in Katrina-related litigation against the US government and the Army Corps of Engineers. In July, one of the attorneys wrote to his colleagues, copying Professor van Heerden, “I would not be surprised if LSU fires him if he testifies.” The attorney went on to say that he had been informed “several months ago” of the “possibility of Ivor being fired,” but he reported a more recent encounter as well:

Just last week I had lunch with Chancellor O'Keefe. LSU does not want Ivor or anyone else associated with LSU to testify against the Corps. Remember, the hierarchy with LSU now is very Republican oriented. Also, the top fundraiser for LSU's huge \$750-million drive is former Congressman Hinson Moore. In addition, as I told you all, Chancellor O'Keefe is a well-connected Republican, and I am certain that LSU is concerned that if Ivor is identified as being adverse to the Corps and its large corporate, pro-Republican interests, it could have serious adverse [e]ffects for LSU. . . . They just don't want their people front and center in such politically charged conflicts, especially in a capacity that opposes the current Republican regime.

Professor van Heerden was eventually able to participate as an ordinary witness, subpoenaed to testify, but not as an “expert.”

During the hurricane season of 2007, when Professor van Heerden sought routine supercomputer priority for tracking two “disturbances” at the request of Louisiana’s Emergency Operations Center (EOC) and the state police, Vice Chancellor Keel replied that his newly appointed associate vice chancellor, Dr. Twilley, would be coordinating all campus requests for the emergency commitment of computer resources. Professor van Heerden’s request was not granted. Dr. Twilley soon established a comprehensive Coastal Emergency Risks Assessment (CERA) unit that excluded Professor van Heerden. Other faculty members associated with Professor van Heerden told the investigating committee that being *included* on the CERA list did not mean they were actually invited to participate.

Vice Chancellor Keel wrote as follows to Professor van Heerden on August 31, 2007, copying Drs. Levitan, Voyiadjis, Bassiouni, Ruffner, and Twilley: “Ivor, my firm recommendation is to NOT make any comments to the press; any media inquiry should be referred to university relations; thanks.” Off campus, a concerted media campaign arose defending the Corps of Engineers and attacking its critics, notably Professor van Heerden, in the New Orleans press. The online affiliate of the *Times-Picayune*, NOLA.com, was hit with thousands of such posts purporting to be from ordinary citizens of New Orleans (more than seven hundred were traced in a single six-week period in late 2008 and early 2009) that were in fact sent from government computers inside the Corps offices in New Orleans. The campaign continued even after summer 2009, when an internal review, prompted by the affidavit of a former NOLA.com employee, led the Corps commander to announce that the problem had been addressed. Meanwhile, CERA was aggressively pursuing its partnership with the Corps.

Although the performance evaluations conducted by Professor van Heerden’s department chair were generally positive during this time, he was repeatedly encouraged to publish more articles in professional journals. When senior faculty met in early 2008 to discuss his reappointment, Professor Voyiadjis “brought up the 100 percent issue,” to which some members of the faculty immediately raised objections. In their view, Professor van Heerden was being squeezed out, and the chair’s intransigence about the research percentage was aiding that effort. During the faculty meeting, Professor Levitan produced in evidence a copy of the van Heerden position description then on file with the university’s human resources office. The result of the meeting was an evenly divided vote among the participating faculty, seven for renewal and seven against. Professor Voyiadjis acknowl-

edged in an e-mail message to Professor van Heerden that his job description had been controversial in the reappointment meeting and, in an attached memorandum through the dean, set out to clarify Professor van Heerden’s job description in CEE. He noted that Professor van Heerden’s “current appointment should reflect limited involvement in service, technology transfer, and outreach” but, referencing the college research-personnel policy, added, “The formal job description is 100 percent research.” The statement does not appear in the cited policy or in any other policy that has thus far come to light. The Faculty Grievance Committee, based on its review of the submitted documents and changes in Professor van Heerden’s assigned duties reflected in various annual performance evaluations, found considerable “ambiguity in the job assignment[s] on record” for him over the course of his decade of service in the CEE department.

Professor Voyiadjis decided to reappoint Professor van Heerden, as he later testified, to “give him the benefit of the doubt and allow him one more year to prove his case.” He did so with the tacit approval of the dean (then Dr. Bassiouni, who retired at the end of that academic year). By memorandum dated April 14, 2008, Professor Voyiadjis notified Professor van Heerden of the renewal of his appointment, but he conveyed the concern of “a number of CEE [department] faculty that you did not demonstrate a journal publication record in your field of specialization commensurate with your appointment as Associate Professor—Research.” The chair advised him that, “during the next year, my expectations would be that you will be active in seeking external funds for your research program and publishing peer-reviewed archival journal publications in science or engineering journals relevant to your research areas.” Professor van Heerden told the investigating committee, however, that he was bumped from some grants as colleagues sought to distance themselves from him under the increasing pressure of his unlikely reappointment.

When the hurricane season of 2008 began, CERA, under Dr. Twilley, had authority for storm-surge modeling and liaison with state officials through the new Governor’s Office of Homeland Security and Emergency Preparedness (GOHSEP), so Professor van Heerden, still denied access to the LSU supercomputer, made no preparations to do modeling. The CERA models, however, proved unreliable. Professor Levitan, director of the Hurricane Center, testified that when he and the director of the Climate Center approached Dr. Twilley to seek permission for Professor van Heerden to be allowed in the state’s EOC, arguing that his expertise was necessary,

“Dr. Twilley relented and agreed to let Ivor participate if it was deemed that—if his services were requested by the state—but [said] that he didn’t want to have anything to do with Ivor; he didn’t want Ivor to be in his office, and [he] made some kind of comment about he might get fired for even allowing Ivor to participate in that limited manner.” When Hurricane Gustav came ashore (landfall September 1), CERA experienced difficulty with its newer ADCIRC model (an Army Corps of Engineers–FEMA model SL15), and the EOC contacted Professor van Heerden for help. At that point, Dr. Twilley turned over priority control of his own smaller computer cluster to the Hurricane Center to run an earlier version of the ADCIRC model that was well tested and stable, namely, the model used during Katrina and Rita that had been refined and customized to southeast Louisiana since 2002. As Professor Levitan testified, “In operations, you don’t go with the state-of-the-art research model that takes a long time and may be cranky, and may or may not work. You go with the model potentially that’s working and running—and you can get results fast.” Power outages in Baton Rouge disrupted the model runs, however, and help came from a Hurricane Center research associate driving back from New York who found a hotel offering high-speed Internet access and ran the successful models from there. Hurricane Ike hit Louisiana only twelve days later (landfall September 13), but CERA had announced that it would not be making model runs, so Professor van Heerden was again asked by the governor’s office to run surge models and provide advice. Receiving additional requests from the state police and the Sea Grant Coastal Advisor, among others, he posted his data on the web, with the governor’s thanks. Dr. Twilley, however, ordered him to remove them, and he did.

Dr. Twilley had forbidden the dissemination of data on the web (which had been standard procedure at the LSU Hurricane Center from 2002 to 2005), asserting, as he told the press, that the display of conflicting models confused the public.<sup>13</sup> He added that the National Weather Service (NWS) had formally reprimanded LSU for the public release of information that should have gone only to GOHSEP. Because this latter remark could refer only to Professor van Heerden’s posting after Ike, Professor van Heerden wrote to officials at the NWS and the National Oceanographic and Atmospheric Administration (NOAA) in an effort to track down the reprimand. Bill Read, director of NOAA’s Tropical

Prediction Center, replied, “We have neither the desire nor reason to be dictating what other institutions can distribute via the Web. In fact, I encourage other entities involved in hurricane work to make data available, as you all likely have information we are not aware of.”

Professor van Heerden’s 2009 evaluation for reappointment began, as in 2008, with his submission of materials. Before consideration of his record began, however, he was summoned to an April 9 meeting with Interim Dean of Engineering W. David Constant. Also present were one of the engineering college’s associate deans, Dr. Warren Waggenspack, and Professor van Heerden’s faculty adviser, Professor Charles Delzell. Professor van Heerden was notified orally, as well as by a letter handed to him dated April 3, that he was being issued a terminal appointment for the 2009–10 academic year. Dean Constant’s decision not to reappoint Professor van Heerden, the reasons for which he declined to state, preceded by nearly a month the meetings of the department’s senior faculty on April 27 and May 4, at which further review and a vote on Professor van Heerden’s reappointment were to occur. Irregularities, discussed in detail below in the “Issues” section of this report, included the chair’s decision to hold the senior faculty meetings at all, given the previously issued notice of nonreappointment and the dean’s unexpected presence at the department meeting. Discussion is said to have been minimal. By a vote of eight to four, with four abstentions, the department faculty recommended against Professor van Heerden’s reappointment.

Professor van Heerden learned only from press reports that he was also being removed as deputy director of the Hurricane Center, effective one month later, and was not told the reasons for that decision either. The grievance committee was later to “note in passing that Dr. van Heerden was not granted the common courtesy of an official notice stating that he had been terminated as deputy director of the Hurricane Center and would no longer receive the \$4,000 salary supplement for that position.”

On May 21, Chancellor Martin received a petition from more than four thousand New Orleans residents asking him to reconsider the action against Professor van Heerden. No response came from anyone in the LSU administration.

At the end of September, Professor van Heerden’s lawyers filed a grievance on his behalf with the Faculty Grievance Committee, a standing committee of the LSU Faculty Senate, alleging that inadequate consideration had been given to his qualifications, that the adverse

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13. *Times-Picayune*, September 20, 2008.

reappointment decision was retaliatory and resulted in significant part from considerations that violated his academic freedom, and that he had a claim to the protections of tenure by virtue of the nature and length of his full-time service at the university, which, notwithstanding his title, involved duties that were never limited to research.

In its December 18, 2009, report on Professor van Heerden's grievance, the faculty committee addressed, among other matters, his complaint of retaliation and violation of academic freedom. After citing the applicable provisions relating to academic freedom as set forth in the bylaws and regulations of the LSU board, the report "reaffirms the rights of academic freedom as specified [in the board's policies] . . . as fundamental for an academic staff member. [The committee] strongly supports and advocates the rights of an academic staff member to investigate, publish, and state his or her findings. The committee notes that the appearance of chastising freedom of expression is not to the university's benefit." The committee went on to find that "the grievant provides extensive documentation in support of this complaint, with several exhibits. However, the committee feels it does not have the resource base to investigate or address a grievance of this magnitude." In short, although the committee acknowledged having received an abundance of evidence supporting Professor van Heerden's allegation (and elsewhere in its report found a "serious breach of normal procedure" in the assessment of his academic performance and described the evaluation process as "biased" and "compromised"), it declined to carry out an investigation of the evidence because the complaint was "beyond [its] capability and resources to address." (Its declining to do so and its likewise having cited a lack of "expertise or resources" as a basis for declining to reach a judgment on Professor van Heerden's claim to de facto tenure will be discussed below, in this report's treatment of the issues presented by this case.) The grievance committee reiterated in its report that it would not take exception to the department's negative evaluation of Professor van Heerden's academic performance, since it lacked the authority to render a substantive judgment on the merits of a candidate for reappointment.

The administration took no action in the case after the grievance committee issued its report, and there were no subsequent communications between the administration and the committee with respect to that body's findings and conclusions.

On February 10, 2010, Professor van Heerden's lawyers filed a wrongful termination lawsuit in Louisiana state

court alleging that LSU officials had conducted a "multi-year campaign of retaliatory harassment" against him, culminating in its termination of his services because of his role as a whistleblower in publicly criticizing the Army Corps of Engineers for levee failures in the wake of Hurricane Katrina. Named as defendants in the lawsuit were the LSU Board of Supervisors and four LSU administrative officers: then-Vice Chancellor Keel, Associate Vice Chancellor Twilley, then-interim engineering dean Constant; and CEE department chair Voyiadjis. The defendants subsequently removed the case to federal court, where it remains under judicial review.

### III. The Association's Involvement

The national Association first became involved in the van Heerden case in early April 2009, soon after press reports appeared about the administration's action against him. The staff, concerned about the potential implications of his situation for principles of academic freedom, conveyed its interest in the case to his supporters and to the president of the local AAUP chapter. In June, one of Professor van Heerden's attorneys forwarded to the staff a large binder of documents relating to his appointment history at LSU, his activities and published statements pre- and post-Katrina, and the reactions, both intramural and extramural, to those activities and statements. The staff awaited the results of the LSU grievance process before it wrote to the administration about the Association's concerns. In its initial letter to Chancellor Martin dated January 28, 2010, the staff pointed out that, under Association-supported standards, Professor van Heerden was completing his twelfth full-time year at LSU when notified that his services were being terminated and thus, based on the length of his service, should have been afforded the safeguards of academic due process that accrue with tenure.

As for the findings in the grievance committee's report, particularly with regard to his allegation of violation of academic freedom, the staff wrote that, "with the LSU faculty committee's having declined to take a position on whether Professor van Heerden's evidence called for a formal hearing, it appears that the serious charges he has made thus far stand un rebutted." The letter urged that the notification of nonretention be rescinded.

The administration did not respond to the staff's January 28 letter or to follow-up letters sent on February 25 and March 11, by which time Professor van Heerden had filed suit. On April 5, the Association's general secretary authorized an investigation. Outside counsel to the university, responding by letter dated June 2, stated that the pendency of litigation prevented the administration

from cooperating with the investigation. The Association's staff subsequently received the transcripts of the May 2010 court hearing on the litigation with the testimony of key administrative officers on their activities in the case, some by deposition. Several of the documents that were admitted as evidence had been obtained by Freedom of Information Act media requests.

The Association's undersigned investigating committee, having examined the extensive available documentation, traveled to Baton Rouge on August 26, 2010, stayed for three nights on the LSU campus, and devoted two days to interviews with members of the LSU faculty who had knowledge of the events in the case of Professor van Heerden or that of the separate case of Professor Dominique Homberger. The committee is grateful to all those who were willing to come forward and is disappointed that the administration declined to participate.

#### **IV. Issues in the Case of Professor van Heerden**

Analyzed here are what appear to the investigating committee to be the central issues raised by the LSU administration's actions to terminate the services of Professor Ivor van Heerden. The analysis is based on available documentary information, supplemented by interviews with members of the LSU faculty and additional conversations, correspondence, transcripts, and news accounts. The standards considered by the committee in assessing the issues are those set forth in the joint 1940 *Statement of Principles on Academic Freedom and Tenure*, derivative Association-supported documents, and official LSU policies.

##### **A. ACADEMIC DUE PROCESS IN PROFESSOR VAN HEERDEN'S CASE**

###### *1. His Right under the 1940 Statement of Principles to the Protections of Tenure*

During his years of LSU service, Professor van Heerden was not considered for tenure. The LSU System's *Ranks, Provisions, and Policies Governing Appointments and Promotions of the Academic Staff*, as adopted in 2002, had defined his position (associate professor—research) as not tenure-eligible, and LSU, Baton Rouge, in its applicable local policy statement (PS-36) needed to be consistent with this determination. Professor van Heerden was eligible, however, to apply for promotion and was also eligible to apply for a vacancy in the tenure system when one occurred, but members of the CEE department interviewed by the Association's investigating committee said of the latter possibility that the department preferred candidates with doctorates in engineering, not in marine sciences, and candidates

who would publish in core engineering journals. Many of Professor van Heerden's publications were technical and government reports, as well as articles that appeared in public-policy journals.

The 1940 *Statement of Principles* calls for a probationary period for full-time faculty not to exceed seven years, after which "teachers or investigators should have permanent or continuous tenure, and their services should be terminated only for adequate cause." Thus, faculty members whose full-time service has exceeded seven years should be protected by the safeguards of academic due process that accrue with tenure in any action to terminate their services. Leaving aside early grant-funded appointments, Professor van Heerden had been a full-time associate professor at LSU for twelve years, nine of them in the College of Engineering's Department of Civil and Environmental Engineering, when he was told that his appointment would not be renewed. For all of that time, he was paid from state general funds and his position description covered the three traditional areas of teaching, research, and service, in all of which he participated.<sup>14</sup> The investigating committee thus finds that under the 1940 *Statement of Principles* he should have been afforded the protections of tenure in the action taken against retaining him.

###### *2. His Status at LSU as a Research Professor*

Professor van Heerden's actual status was affected by his chair's determination that his position was exclusively in research. Perhaps it is not unreasonable to suppose that a faculty member with "research" in his title would be evaluated at 100 percent research. Not unreasonable, but incorrect by LSU System rules, according to which a research professor's "primary responsibility is conducting research"—not his *sole* responsibility, as Professor Voyiadjis insisted annually. Moreover, under strict observance of LSU System rules, "research" would not have been part of Professor van Heerden's title because he was state-funded and had long ago exceeded the statutory limit for term appointments. According to the policy statement on research ranks (PM-23), "Only individuals whose primary responsibility is conducting research or extension education and who often are paid from grant or contract funds are to be appointed to

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14. At the time he left LSU, Professor van Heerden was still on the committees of graduate students completing their degrees. His undergraduate course, however, was a casualty of the 2005 policy that forbade his teaching except on his own time.

these ranks.” Professor van Heerden’s position description from 1993 to 1998 assigned 35 percent of his time to re-search and from 1998 to 2010 assigned 30 percent to research, so the policy should not have applied to him.<sup>15</sup> The investigating committee questions using a term from his title as dispositive against the position description for his rank.

The investigating committee noted, too, that Professor Voyiadjis had apparently made no attempt over the years to secure a revision of Professor van Heerden’s position description. As to Professor Voyiadjis’s claim that research faculty are required to spend 100 percent of their time on research, in court testimony he cited PS-36 as the source of the 100 percent research requirement, but PS-36 has no such requirement. On the contrary, PS-36, in its “Criteria for Evaluating Faculty Job Performance,” stipulates that the “weight to be accorded each [area] will be consistent with the mission of the department and with the faculty member’s job duties and work assignments.” But Professor van Heerden’s official duties remained unchanged from 2000 to 2010, while Professor Voyiadjis evaluated only his research. Further, Professor Voyiadjis made comments in all the areas of effort every year, applauding and commending Professor van Heerden’s work in each of these three areas while, as he said, *evaluating* only research. He testified that he found the quantity of publications in professional engineering journals “below par,” but that “funding and other considerations” increased his research assessment, which was identical to his overall assessment. Moreover, Professor Voyiadjis’s nomination of Professor van Heerden to the graduate faculty lists his work assignment as 20 percent teaching, 30 percent research, and 50 percent administration. After Professor van Heerden’s appointment to a three-year term as an associate member of the graduate faculty in 2004, Professor Voyiadjis wrote in 2005, “He should set a goal of becoming a full member of the Graduate Faculty”; and in 2006, “He also needs to become a member of the Graduate Faculty,” although full membership was restricted to tenure-system faculty members. These comments from his chair establish both that the teaching of graduate students was a part of what the chair deemed a “100 percent research” appointment and that Professor van Heerden should, in the chair’s view, have sought a tenure-system position.

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15. For example, PM-23 designates the title Associate Professor–Professional Practice for those whose primary responsibility is teaching, service, fieldwork, and supervising students in the field.

A further provision of PM-23 was overlooked by those who sought to hold Professor van Heerden to it: “If an individual in one of these ranks is *temporarily* switched from grant or contract funds to permanent funds, that time does not count toward tenure unless specifically approved through channels by the President” (emphasis in original). Professor van Heerden was *permanently* switched to state general funds in 1997. One reading of the provision is that, were he to have applied for a tenure-system position, he would have had tenure immediately because of his accrual of thirteen years’ service on permanent funds. Another is that PM-23 could not be fairly applied to Professor van Heerden at all, regardless of his title. It is difficult to escape the conclusion that LSU System rules were being arbitrarily or selectively—and surely inconsistently—applied.

The second internal document cited as pertinent to Professor van Heerden’s status is PS-36. Its description of scholarship encompasses many examples that, in Professor van Heerden’s position description, are listed as either program development or technical assistance to state and federal agencies; one might argue that some 80 percent of his assignment (all but instruction) would be research by that measure, making him appear more subject to the provisions of PM-23 and PS-36. Such an argument, however, would fly in the face of his chair’s understanding of research. Repeatedly, the chair’s annual evaluations noted the extent to which Professor van Heerden was successful in publishing in “refereed archival journals.” One of the members of the department defended what he regarded as the department’s high standard for research, telling the investigating committee that research in engineering “needs to be heavy on equations—equations, that’s what they want to see.”

The AAUP’s position on the status of a researcher holding academic rank dates back to 1969. Its *Report of the Special Committee on Academic Personnel Ineligible for Tenure*, approved that year by the Association’s Committee A on Academic Freedom and Tenure, states that “[w]henver academic institutions designate full-time researchers as faculty members, either by formal appointment or by conferring the titles of instructor, assistant or associate professor, or professor, those researchers should have all the rights of other faculty members, and . . . the AAUP should apply the 1940 *Statement of Principles* to them as strictly as to anyone else.”

In its concluding statement, the special committee offered the following as “definitions of acceptable academic practice in American colleges and universities”:

1. The academic freedom of all teachers and investigators with full-time or part-time appointments in a university should have the full protection of the Association.

2. Full-time teachers and investigators who are appointed to the rank of instructor, assistant professor, associate professor, and professor should have the rights and privileges appropriate to their rank, including tenure or the eligibility for tenure after the appropriate probationary period.

When a new policy for research faculty in the College of Engineering was approved in November 2005, changing Professor van Heerden's conditions of service from three-year to one-year appointments, he had already served more than eight years in a full-time faculty position, more than five in the CEE department. The LSU System policy, as adopted in 2002, specifies that associate professors who are not paid from grant or contract funds hold appointments carrying indefinite tenure.

In sum, Professor van Heerden had a professorial rank, and his position was funded through the state budget. Over his decade of full-time service on the LSU faculty, the position descriptions and other documents relating to his appointment referred to a variety of duties that he carried out. While the LSU administration has maintained that his official position was always designated as "100 percent research," the investigating committee believes that either the claim is false or "research" is so broad a term as to cover most of Professor van Heerden's professional activities. The committee finds that designating Associate Professor van Heerden as a researcher did not invalidate his claim under the 1940 *Statement*, by the time of his removal from LSU's full-time faculty, to the safeguards of academic due process that accrue with tenure.

3. *The Procedures Followed in Terminating His Services*  
LSU's procedures for handling matters involving reappointment that were in effect at the time of Professor van Heerden's appointment to the full-time faculty require, as a first step, that the dean notify "all chairs of the submission timetable for reappointment/nonreappointment recommendations." Candidates are to be notified of eligibility for reappointment and afforded opportunity to submit a dossier with supporting documentation for the reappointment file. The second step involves review by the department and its formulation of a recommendation. The department chair is responsible for ensuring that all pertinent materials are available to the eligible voting faculty members, who meet to vote on the candi-

date and provide the chair with an advisory report, to which the candidate "may prepare a formal letter of response for inclusion with the reappointment file submitted for review beyond the department." The dean will then "review and make reappointment recommendations" following consideration of the recommendation by the departmental faculty. For associate professors and professors, when nonreappointment is recommended, "a conference with the dean will be held in a timely manner. At the conference, the candidate will receive a written statement outlining reasons for her/his recommendation."

Professor van Heerden's reappointment review in spring 2008 appears to have been carried out largely in accordance with the above cited procedures except for the controversy over the existing job description as compared with the chair's expectation of 100 percent research. Not so in 2009.

Although the "30 percent research" portion of the position description says "basic and applied research," a very large part of Professor van Heerden's *other* responsibilities fell under LSU's description of scholarship. As a matter of principle in any discipline, the weight to be given to various aspects of a faculty member's research is a judgment call, the prerogative of the chair, the senior faculty, and the peer-review process. According to the Association's *Statement on Government of Colleges and Universities*, "scholars in a particular field or activity have the chief competence for judging the work of their colleagues." The investigating committee nevertheless notes that three things made the value of Professor van Heerden's work vulnerable to existing divisions within the discipline of civil and environmental engineering: his applied research, his science doctorate, and his government reports and publications bearing on public policy. Until the controversy following Katrina, all his work had been welcome as covered by "the particular nature of his appointment with its emphasis on advisory and technology-transfer activity," in the words of the 2003 review. Whether Professor van Heerden's research was in fact constrained following the imposition of the 100 percent rule in April 2008, considered separately below, depends on the extent to which his activities counted as *applied research*. For more than a decade Professor van Heerden had been heavily involved in technology transfer and public policy—consistent with his actual job description—making himself available to government bodies and publishing technical reports as well as articles in public-policy venues. Professor Voyiadjis's memorandum of April 14, 2008, quoted above, advised Professor van Heerden that he should abandon a great part of what he had originally been appointed to accomplish



and a great part of the commitment proclaimed in the college's mission statement of 2004.

The investigating committee faults the decision-making process as it was carried out in this case. The interim dean offered no plausible explanation in his court deposition for interfering in the department's review of research faculty or for his rendering a decision on Professor van Heerden's appointment status before the department met to discuss the record. Dean Constant's testimony and that of Professor Voyiadjis were in agreement that the chair was not consulted before the decision was made.

Two members of the review panel performing the department's reappointment evaluations told the investigating committee that the assessment of Professor van Heerden's record had not begun when word was received that the dean had already acted to terminate the position, effective one year hence. Professor Voyiadjis nevertheless called a meeting to discuss Professor van Heerden. At the beginning of the meeting, according to those who attended, Professor Voyiadjis was asked, "Why are we doing this?" He replied that the Office of Human Resource Management required it. The Faculty Grievance Committee reported that when it asked Professor Voyiadjis "about the purpose of the faculty annual evaluation subsequent to the dean's nonrenewal notice, [he] replied that it was to provide feedback to Dr. van Heerden to help in getting his next job." He later testified that the meeting was held because the process of review was already in motion and needed to be concluded—testimony contradicted by the testimony of Professor Levitan, a member of the department's Promotion and Tenure Committee.

The process also was adversely affected by the presence of Interim Dean Constant at the meeting of senior faculty—a fact that particularly exercised the Faculty Grievance Committee, which remarked in its report that the dean's "presence tainted the proceedings" and was "intimidating to the attending faculty and a serious breach of normal procedure," concluding that "[a]ny results obtained under such conditions cannot be considered unbiased." The investigating committee concurs.

Further, the investigating committee shares the concern of the grievance committee about the fairness of a process in which a dean, whose powers extend over every member of the department, fails to recuse himself at the departmental level. His attendance was widely (and unsurprisingly) perceived as intimidating. It can be argued that Dean Constant's presence was irrelevant to the outcome of Professor van Heerden's case because

the matter had already been decided when the department met, but the investigating committee gained the impression both from court testimony by administrators and from faculty interviews that the LSU administration feared further backlash from the faculty and the public.

Another procedural issue related to the decision in Professor van Heerden's case concerns the matter of providing him with the reasons for that decision. The Association's *Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments* calls for providing reasons upon request, and applicable policies at LSU also call for the affordance of a written statement of reasons in cases of nonreappointment. During the April 9, 2010, meeting in the dean's office at which he was notified of the decision to issue him a terminal appointment, Professor van Heerden reports the dean's having refused his repeated requests to reveal the reasons for that decision, telling him only that it was "not performance-related." According to the December 18 report of the faculty grievance committee, the dean's explanation was that the LSU requirement regarding reasons was for performance-related evaluations and that the van Heerden nonrenewal involved a position that would not be refilled. Professor van Heerden, however, reports the interim dean as having told him that the funds for the position would stay with the College of Engineering.

In the court proceedings, Associate Dean Warren Waggenpack testified that the "core mission" of LSU is teaching, that teaching was not a part of Professor van Heerden's official responsibilities as a research associate professor, and that accordingly Professor van Heerden was not contributing to that mission. The associate dean's description of the mission of the university, however, does not conform with LSU's official mission statement.<sup>16</sup>

With regard to the testimony of Interim Dean Constant and Associate Deans Waggenpack and Kelly A. Rusch that the decision was based on budgetary constraints, the judge who presided over the May 2010 proceedings on Professor van Heerden's motion for a preliminary

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16. "As the flagship institution of the state, the vision of Louisiana State University is to be a leading research-extensive university, challenging undergraduate and graduate students to achieve the highest levels of intellectual and personal development. Designated as a land-, sea-, and space-grant institution, the mission of Louisiana State University is the generation, preservation, dissemination, and application of knowledge and cultivation of the arts."

injunction wrote, “Although it became obvious that these witnesses disliked Dr. van Heerden and handled his termination in a very unprofessional manner, the Court found their testimony credible as to the reasons given for terminating him.” If the decision did result from budgetary concerns and involved no performance-related issues, the dean could simply have informed him of that fact at the time. One explanation for this reticence was offered in the court testimony of Associate Dean Waggenpack. He stated that “when Dr. Constant didn’t give him a reason for the nonrenewal, [Professor van Heerden] made what I viewed as a threat to have [CNN’s] Anderson Cooper show up at the doorstep to ask questions. Once a threat is made, I’m not going to participate in the conversation.” Professor van Heerden himself testified that he had made a statement about CNN because he “foresaw that there would be a media flurry.”

With respect to the financial grounds for the action against Professor van Heerden, as of this writing, Louisiana and particularly public higher education throughout the state, including LSU, are facing genuine and severe financial difficulties. However, at the time of the van Heerden decision, prior to April 2009, the situation did not appear so dire. Members of the CEE department had not been aware of budgetary constraints. They report that the budgets for the year before and the year after the van Heerden decision were the same. It should also be noted that, throughout most of his time on the LSU faculty, Professor van Heerden had been bringing in substantial outside grants to the university to support the research and related activities in which he and others were engaged.

Dean Constant stated in his court deposition of May 2010 that the decision not to reappoint Professor van Heerden was his to make, that no other administrative officers influenced his decision, and, as previously noted, that the decision was motivated solely by the need to eliminate Professor van Heerden’s position in order to meet mandated budgetary constraints and not by performance-related considerations. The interim dean’s statement can be questioned because of statements and developments subsequent to the van Heerden decision. In August 2009, the new engineering dean, Dr. Richard Koubek, announced seven priorities, the seventh of which was “the development of a 3-year budget process that will be used to inform the college decision making as we face budget cuts and/or surpluses in the future.” Members of the CEE department told the investigating committee that the budget had not been reduced the following year, and departmental con-

versations about how to absorb anticipated future budget cuts began only after Professor van Heerden was gone. Department members added that budget-cutting was still in the “exercise stage” (in August 2010, when interviews with them were held) because the Accreditation Board for Engineering and Technology offered a degree of protection that other colleges did not have. Members of the department described as false the allegations of administrators that if Professor van Heerden had not been released, someone else would have had to be dropped. Interim Dean Constant testified that not retaining Professor van Heerden, who was entitled to a year of notice and would be paid another year of salary, “didn’t have anything to do with the upcoming budget” but was influenced by concerns about budgets of later years. Associate Dean Waggenpack had testified similarly at the injunction hearing. There was no impact on later college budgets, however, because, as Professor Voyiadjis testified in June 2011, funds for Dr. van Heerden’s position reverted back to the office of the vice chancellor for research and development. Finally, the appointments of other research professors whose LSU service in the department was shorter than that of Professor van Heerden were renewed.<sup>17</sup> Financial considerations, the investigating committee came to believe, were not a significant factor in the administration’s decision against retaining Ivor van Heerden.

## **B. RAMIFICATIONS FOR ACADEMIC FREEDOM IN THE DECISION AGAINST REAPPOINTING PROFESSOR VAN HEERDEN**

Unable to accept the repeated assertions of administrative officers that the decision to terminate Professor van Heerden’s services was motivated by financial constraints rather than performance considerations, the investigating committee has assessed his allegations of retaliation and violation of his academic freedom.

### *1. Freedom to Dissent from an Administration’s Position without Suffering Retaliation*

The “Academic Freedom” section of the 1940 *Statement of Principles on Academic Freedom and Tenure*

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17. According to the court testimony of Professor Levitan, “when Professor van Heerden’s termination was announced, we hadn’t finished our performance review of any of the [department’s] three or four research professors.” Asked whether any of the other research professors received notices of nonreappointment, he responded, “Not to my knowledge.” He also expressed his belief that none of them had been at LSU as long as Professor van Heerden.

begins with the premise that “[t]eachers are entitled to full freedom in research and in the publication of the results, subject to the adequate performance of their other academic duties.” The section goes on to refer to college and university faculty members as “citizens, members of a learned profession, and officers of an educational institution.” The Association has consistently maintained that in this last capacity a professor should have the academic freedom to speak out responsibly against administration policies and actions, especially on issues of high public importance and certainly on issues within the professor’s area of academic competence.

The evidence already noted in this report of hostility from LSU administrators to Professor van Heerden’s public opposition to their position on post-Katrina flooding is abundant. The investigating committee, unimpressed by the administration’s stated reasons for its decision not to retain him, has no doubt that the decision was to a significant extent in retaliation for his opposition.

As asserted in the Association’s 1994 statement *On the Relationship of Faculty Governance to Academic Freedom*, faculty members have the right under principles of academic freedom to communicate their views “on matters having to do with their institution and its policies” and “on issues of public interest generally,” and they have this right “even if their views are in conflict with one or another received wisdom.” When Professor van Heerden complained to the Faculty Grievance Committee that the decision against retaining him was retaliatory and in violation of his academic freedom, that body, as stated earlier, acknowledged in its response that academic freedom is crucial for a member of the academic staff and that the evidence supporting the van Heerden allegation was abundant. The grievance committee declined, however, to reach formal findings on the matter, stating that it lacked “the resource base to investigate or address a grievance of this magnitude.”

The investigating committee asked the grievance committee chair, Professor Pratul Ajmera, why his committee had stopped short of an explicit assessment of the issue and what resource base had been lacking. He replied that requested documents had been supplied readily and that all the witnesses had been cooperative but that his committee believed some aspects of the case required judgments of law and the committee had no means of consulting with attorneys. He added that a number of people named in the grievance were no longer at LSU, thus preventing a full examination of all the disputed facts. The investigating committee suggests

that the grievance committee members were perhaps overly modest in thinking that they needed counsel from an attorney at law in order to issue a formal finding on whether the administration had violated Professor van Heerden’s academic freedom by denying him retention in retaliation for his continuing dissent from the prevailing LSU position on post-Katrina flooding. This investigating committee does not hesitate in itself reaching a finding that the LSU administration’s action against Professor van Heerden, largely if not entirely because of his dissent, violated his academic freedom.

*2. Freedom to Engage in the Research of One’s Choosing*  
Interim Dean Constant insisted in his court testimony that Professor van Heerden had criticized the failed levees and resulting New Orleans flooding not in his official capacity on the faculty as a researcher but rather in his capacity as a private citizen. Whether he did so as a private citizen (the investigating committee has argued to the contrary) or as an academic citizen or more narrowly as a researcher, administrative actions in defining his research responsibilities had a negative impact on his academic freedom to determine the kind of research he chose to do.

Professor van Heerden argues that his freedom as a researcher was constrained when Professor Voyiadjis, his chair, following his reappointment review in 2008, defined the focus of his research and urged him to publish more peer-reviewed scientific papers: “If [you are] reappointed, the emphasis of your research during the upcoming year is intended to be in the broadly defined areas of coastal and hurricane science and engineering, natural disaster response and mitigation, natural systems management and engineering, and coastal restoration consistent with your research qualifications. This research emphasis may change from appointment period to appointment period, depending on the research needs of the Department and the College of Engineering.” The clear implication of his chair’s concluding sentence is that Professor van Heerden’s research areas were to be determined by the department and college on a year-by-year basis—a severe restriction for any scientist accustomed for decades to determining his own research priorities. The list of research possibilities is broad, and much of it is taken from Professor van Heerden’s curriculum vitae, as Professor Voyiadjis later testified. Throughout his career at LSU, Professor van Heerden had not only *studied* natural-disaster responses and mitigation; he had also *participated* in those activities, and his participation—as was true in the case of

Hurricane Katrina—sometimes led to new avenues of research. Although Professor Voyiadjis may well have been calling for the only research emphases possible to preserve Professor van Heerden’s slender chance of remaining on the LSU faculty, the investigating committee finds that the restriction he imposed constituted a constraint on Professor van Heerden’s academic freedom as a senior research scientist to decide his research priorities.

### 3. *Freedom to Engage in Extramural Utterances*

The 1940 *Statement of Principles* carries an Interpretive Comment, adopted that same year, saying that a college or university administration which “believes that the extramural utterances of [a faculty member] have been such as to raise grave doubts concerning the teacher’s fitness for his or her position . . . may proceed to file charges. . . . In pressing such charges, the administration should remember that teachers are citizens and should be accorded the freedom of citizens. In such cases the administration must assume full responsibility, and the American Association of University Professors and the Association of American Colleges are free to make an investigation.”

The Association’s Committee A in 1964 approved an amplified *Statement on Extramural Utterances*, which includes the following provisions:

The controlling principle is that a faculty member’s expression of opinion as a citizen cannot constitute grounds for dismissal unless it clearly demonstrates the faculty member’s unfitness for his or her position. Extramural utterances rarely bear upon the faculty member’s fitness for the position. Moreover, a final decision should take into account the faculty member’s entire record as a teacher and scholar. In the absence of weighty evidence of unfitness, the administration should not prefer charges; and if it is not clearly proved in the hearing that the faculty member is unfit to continue, the faculty committee should make a finding in favor of the faculty member concerned.

Under the policies of the LSU System, academic freedom “includes the right of a member of the academic staff of the University System to exercise in speaking, writing, and action outside the University the ordinary rights of a citizen.” The LSU policies, reiterating a caution included in the 1940 *Statement of Principles*, also state that “when a member of the academic staff is not officially designated to represent the University System, the staff member must indicate clearly that he or she is speaking as an individual citizen.”

The activities Professor van Heerden undertook and the statements he made that attracted controversy were so much a part of his normal academic duties—and an extension in order to meet the extraordinary demands related to Hurricane Katrina—that the boundary between freedom of research and publication and freedom of extramural speech is more difficult to establish than it usually is. Even his contact with the journalistic world, often a hallmark of extramural expression, is complicated by the role of the media during disasters and other emergencies when both notification of danger and evacuation often depend on swift and broad media coverage. A crucial responsibility of LSU’s Hurricane Center had been to monitor changing conditions and make them publicly available via its website, especially to governments at all levels, state police, emergency responders, chemical industries, and the press, but that responsibility had, by 2008, been taken away, passed to the CERA group with its different interpretation of its responsibility. The investigating committee was led to the view that the LSU administration wanted to have it both ways with Professor van Heerden: to dress him in LSU garb and champion his media appearances when the content of his statements was agreeable, but subsequently to attack him in print while cutting off his access to the media when it disapproved of the content.

When the LSU administrative officers came to disapprove of Professor van Heerden’s utterances and wanted to keep them as distant from the university as possible, they referred to those utterances as the external activities of a citizen. The investigating committee is unaware, however, of instances in which Professor van Heerden was accused of falsely indicating that he was speaking for LSU and not simply as an individual.

The investigating committee finds abundant reason to believe that the LSU administration acted against Professor van Heerden out of displeasure with, and in retaliation for, his extramural whistle-blowing activity with regard to the Army Corps of Engineers and the failed New Orleans levees. Although the Corps of Engineers itself eventually admitted responsibility for levee failures, the LSU administration feared loss of the revenue controlled by the Corps (see section A.2 above). The investigating committee finds that the administration acted in this regard, too, for reasons that violated Professor van Heerden’s academic freedom, again having it both ways: it denied that the nonreappointment decision was “performance related,” yet both openly and covertly it maligned his scientific work and misrepresented his professional qualifications while publicly accusing *him* of misrepresentation.

## V. Conclusions

1. The administration of Louisiana State University, Baton Rouge, acted in disregard of the 1940 *Statement of Principles on Academic Freedom and Tenure*, which affords the protections of tenure to full-time faculty members after seven years of service, when it removed Professor Ivor van Heerden from the LSU faculty after seventeen years of service without having afforded him those protections.

2. The LSU administration's designation of Professor van Heerden as a researcher did not invalidate his right to the protections of academic due process that accrue with tenure.

3. The administration's claim to the contrary notwithstanding, financial constraints were not a significant factor in its decision against retaining Professor van Heerden.

4. The administration decided not to retain Professor van Heerden largely in retaliation for his continuing dissent from the prevailing LSU position on the failed levees and the New Orleans flooding, thereby violating his academic freedom.

5. The administration, by imposing a restriction on the nature of the research to be done by Professor van Heerden, constrained his academic freedom as a senior research scientist to determine his own research priorities.

6. The administration, in acting against Professor van Heerden out of displeasure with his position on the reason for the flooding, violated his academic

freedom also for exercising his extramural rights as a citizen.<sup>18</sup>

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18. Mr. Richard F. Zimmerman Jr., counsel for the law firm representing the LSU Board of Supervisors and the individually named defendants in the litigation initiated by Professor van Heerden, responded to a draft text of this report in behalf of Chancellor Martin and six other administrative officers whose comments were solicited. He referred to earlier correspondence stating that the administration would not cooperate with the investigation because of the lawsuit, and he stated that the investigating committee, having decided to move forward nonetheless, had "received only one side of the story." He expressed the belief that the report "contains numerous factual inaccuracies" but stated that, because the professor has chosen to litigate, "we will address Dr. van Heerden's claims in the Federal Court and will not comment directly" on the inaccuracies.

"We believe," LSU counsel further stated, "that the Court which employs an adversarial structured process, will be in the best position to reach a correct result as to the facts and the law. Please be advised that our failure to specifically address those matters here should not be construed as agreement with or acquiescence in the purported factual interpretations or conclusions of the draft report. In fact, we fully disagree with all conclusions stated in the draft report."

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## The Case of Professor Dominique G. Homberger

### I. Factual Background

Professor Homberger, who received her MS degree in biology and her PhD in zoology, both from the University of Zurich, is a biologist specializing in the areas of functional, ecological, and evolutionary morphology. She has taught at LSU since 1979. In the spring 2010 semester, she taught one section of the introductory-level biology course for nonmajors. On March 25, while Professor Homberger was administering the second examination of the semester to approximately 170 students, Dr. Kevin R. Carman, dean of the College of Science, sent her an e-mail message: "I have recently been made aware of the developing situation regarding student grades in your BIOL 1001, Section 4 class. After consultation with departmental leadership and with Academic Affairs, I have concluded that it is in the best interest of the stu-

dents to relieve you of your teaching duties in BIOL 1001 . . . effectively immediately." Professor Homberger then discovered that she had been locked out of her section's course-management web page.

Professor Homberger had agreed "to pitch in for the department" by teaching a section of the course after receiving a request early in the fall semester from the associate chair for undergraduate studies, who was seeking "an experienced instructor in BIOL 1001." She had immediately written to the course coordinator, Professor E. William Wischusen, requesting sample syllabi and the textbook for BIOL 1001. She added, "I would like to have permission to experiment with some teaching approaches that have proven effective in my classes," giving as examples interactive lectures, short daily quizzes formatted like her examinations, required

readings, and lectures on independent topics not repeating the textbook. At that time, Professor Wischusen had been encouraging: “What you suggest fits very well.”

All sections of BIOL 1001 use the same textbook and, according to the department’s bylaws, an associate chair for introductory biology, then Professor Wischusen, has responsibility for “coordinating instructors of freshman courses,” though the instructors are given some leeway in the development of course content and assessment. Just how much leeway becomes an issue in this case. Professor Homberger had continued to consult with Professor Wischusen during the planning and development of the course, explaining her reasoning for various decisions; their pedagogical theories differed, but each had cooperated in making suggestions and offering explanations to the other. As media dissection of her teaching methods was to reveal in the following weeks, absent from Professor Homberger’s courses are devices popular with students such as extra credit, curved grading, and “cram” sheets; instead, quizzes (multiple choice with ten options, discouraging mere guesswork) cover both readings and lectures, and assessment is comprehensive, including the final examination. Once the course had begun, Professor Wischusen had access to Professor Homberger’s course web page, so he could see the assignments, quizzes, and examinations as well as the many links to current films and articles that she was using.

Professor Homberger has a reputation for setting high standards—a source of disharmony with some of her colleagues over the years that surfaced in the media following her removal from her class. One told the undersigned investigating committee that Professor Homberger should meet with education experts because, although her goals are worthy, “there are better ways of achieving them these days.” Professor Wischusen, too, had suggested that Professor Homberger engage an education specialist, and she had done so, though her suspension precluded the specialist’s scheduled class visit. But Professor Homberger has a record of commendation for teaching excellence going back at least to 2004, including praise in her annual reviews for her “rigorous approach,” “careful mentoring,” and “demanding coursework,” providing a glimpse of her theory of education. Annual reviews comment further on her “outstanding” and “very strong” teaching evaluations, sometimes placing her “in the top category of all faculty.” The impressive record, however, was earned in the teaching of upper-level courses; the spring of 2010 found her teaching at the introductory level for the first time since 1995.

The class average on Professor Homberger’s first test, given on February 18, had been 53 percent. As Professor Homberger later wrote, “It is not uncommon at LSU that a single initial test in a science course serves as a wake-up call for students to study harder to earn a satisfactory final grade for the course.” Perhaps so, but the investigating committee was told that BIOL 1001 had long enjoyed a reputation as the easy option among introductory LSU science courses. Professor Wischusen, reacting to the results of the first examination, had written to Professor Homberger, “I think it would be very helpful for the average from this first exam to end up in the 60’s.” She had not complied with his suggestion but had continued her efforts to ignite interest in biology and to encourage her students to learn better study habits, with the result that quiz grades rose sharply following the examination. When she had posted midterm grades, strongly skewed to grades of D and F, Professor Homberger had sent a message to the students reminding them, with illustrative tables, “that even in the worst-case scenario . . . low grades at mid-term are still recoverable.”

Professor Wischusen, having meanwhile seen the as-yet-unposted grades on March 12 in his capacity as course manager with control of the entire site, had a series of meetings and e-mail exchanges with Professor Homberger that he describes as “focused on her examination and ways that she might improve her next exam.” He understood her to say that “she was going to change her approach to assessing her students,” but Professor Homberger did not share that understanding. Professor Wischusen told the Faculty Grievance Committee that Professor Homberger’s quiz questions and exams were similar in “disproportionately testing factual knowledge and not general concepts,” but she disagreed. Professor Wischusen and the department chair, Professor Marcia Newcomer, consulted with Dean Carman on March 22. In the thirteen days before the dean acted to suspend Professor Homberger, no one sought an explanation from her about the midterm grades. On the contrary, as of March 23, Professor Wischusen was still e-mailing Professor Homberger with sample quiz questions, and he reviewed her second examination on March 24, the day before the suspension. In sum, prior to her sudden suspension and lock-out, Professor Homberger was not consulted about, nor was she informed of, the administration’s decision. No member of the biology faculty and no one involved in the decision to remove her had ever sat in on her class. Moreover, no students had filed (or later filed) appeals of their grades with Professor Wischusen, though, he

said, “several students did inquire about appealing their grades.” No students had complained about Professor Homberger to either the chair or the dean. According to press accounts, complaints had been aired in class, though students had disagreed among themselves about what an introductory course ought to demand of them. When Professor Wischusen replaced Professor Homberger, he added twenty-five points to each student’s grade on the first examination before allowing her access to the web page to enter grades for the second examination.

In his own view, though this view apparently was not accepted by the Faculty Grievance Committee, Professor Wischusen “was the instructor of record for the course and now the faculty member with responsibility for grading as outlined in PS-44. As such, I made an adjustment to the grades for the first exam that I thought was appropriate. I had reviewed the questions from the first exam prior to making this adjustment.”

Upon receiving Dean Carman’s e-mail message suspending her, Professor Homberger requested that he reconsider his decision “for the moment” to hear her side of the story. He replied, “By all means we should visit, but my decision stands.” Her chair was less blunt: “I know you have worked very hard to develop your new course, and I have heard your lectures are excellent. I have greatly appreciated the fact that you were willing to take on teaching 1001. I will be teaching 1201 in the fall, and I am anxious to talk with you about current topics that you incorporated into your lectures. However, the midterm grade distribution in 1001-4 is a serious warning sign that cannot be ignored. I am sorry this action had to be taken.” The fact that no one mentioned any cause *other* than grade distribution for the suspension should be noted because the rationale given by various administrative officers involved in the matter kept shifting its focus until it reached its final form in mid-April.

If the course coordinator, chair, and dean were in fact responding to the grade distribution, then they acted precipitately: they had misinterpreted the “anomalous” data before them. In particular, they had failed to attend to a crucial implication of Professor Homberger’s assessment policy: unlike policies in other sections of the course, the midterm grade in her section represented only 27 percent of the final grade. Once details of her summary dismissal from teaching BIOL 1001 became public, Professor Homberger was able to explain her view, already shared with her students, that the gradual compilation of points gives students time to master vital study skills that are often new to them and that her policy works together with a comprehensive

final examination to reward improvement in the course. The campus newspaper, the *Daily Reveille*, reported on April 13 that the class average had improved markedly on the second examination, confirming her expectation and undermining the grade-distribution complaint. Similarly undercutting the grade-distribution justification for suspension were data from ten multisection lecture courses between 2005 and 2009, analyzed by the *Chronicle of Higher Education* and published on May 16, showing broad disparities among the sections in some disciplines and “almost identical grade distributions” in others. By that date, the thorny topics of grade inflation and lowered standards in higher education had been raised in editorial and comment sections of the online media covering the Homberger story, and public opinion had appeared to move decidedly to the side of the ousted professor.

Issues of academic freedom were clearly at stake. Interviewed on April 13 by Baton Rouge’s *Advocate*, Dean Carman said, “I had to balance academic freedom with the need to protect the students.” He told the *Daily Reveille* much the same thing that day: “Academic freedom is valued but has to be weighed against the interest of the students, so I made the decision I felt was best for the students.” When the story broke nationally the following day, the dean issued a statement through LSU’s public relations office: “LSU takes academic freedom very seriously, but it takes the needs of its students seriously as well. . . . The extreme nature of the grading raised a concern, and we felt it was important to take some action to ensure that our students receive a rigorous, but fair, education.” The dean’s office did not respond to follow-up questions. Not everyone who mentioned academic freedom favored it. A member of Professor Homberger’s department wrote to the *Chronicle of Higher Education*, “This talk about ‘academic freedom’ is nauseating. It does not apply to what one teaches in core-curriculum courses. LSU students should worship at the altar of Dean Carman.” In the midst of the media coverage, however, the administration began offering a new but related explanation for its actions: student retention.

By May 16, when the *Chronicle* ran several articles on Professor Homberger’s suspension, including an interview with Dean Carman, the focus had shifted:

The *Chronicle*: Ms. Homberger says her students’ grades would have improved by the end of the semester. At the midterm, they had taken only one of the semester’s three major tests. On the second exam, which was given the day she was suspended from the course, the students did at

least moderately better. Why didn't you wait to see how things played out?

Dean Carman: Certainly the grades could have improved. But, again, many students had already left. The attrition rate was so out of the norm that I thought we needed to take action. It isn't just about the grades. The grades were a concern. But the attrition rate was what really worried us.

If the real worry was student retention, Professor Homberger deserved to be told so. Neither the dean nor her chair mentioned it at the time, though in separate statements both took "full responsibility" for the suspension. Her chair said later, "We often cited her high DFW rate—as in D's F's and Withdrawal. Retention is implicit in the DFW statistic." The same issue of the *Chronicle* included an analysis of attrition in LSU's introductory science courses for fall 2009, noting that "three sections of introductory chemistry had withdrawal rates higher than 28 percent. So did four sections of calculus and three sections of introductory economics." Professor Homberger's attrition rate, at the time of her suspension, was 24 percent, so why did the *Chronicle* make 28 percent its cutoff point? Because Dean Carman had overstated her attrition rate as 27.8 percent in his April 13 interview with the *Daily Reveille*.

Finding the administration's publicly stated grounds for Professor Homberger's removal to have been considerably weakened by the evidence, the investigating committee followed another lead in its attempt to determine what had prompted the suspension of a long-standing member of the tenured faculty. The committee was told that animosity in the biology department was of many years' duration and often entangled students. Months after the investigating committee's visit to campus, the LSU Faculty Senate meeting of December 8 that was to address possible changes to LSU's policy on student grades (PS-44) deteriorated at one point into a shouting match of accusations over whether Professor Homberger had been "mobbed for fifteen years" by colleagues in her department who had seen their chance to discredit her through the BIOL 1001 imbroglio.<sup>19</sup> The department chair, Professor Newcomer, had indicated departmental antagonism when she wrote to Professor Homberger on April 22, "Now I know you are a woman of conviction, and I respect your convictions. I also knew that if I went to talk to you about the anomalous grade distribution, we

would not be able to come to a compromise. Also, I am a person who, unfortunately, avoids conflict." At the end of the same e-mail message, Professor Newcomer stated, "I apologize for not coming to talk to you about this beforehand." Dean Carman told the *Chronicle* on April 27, "If I had to do this again, I would have met with Professor Homberger before I gave her the notice, as a professional courtesy." That the chair and dean, a month later, remained unwilling to acknowledge Professor Homberger's *right* to assign grades in her courses and to be heard on the matter before being removed was disturbing to the investigating committee, though perhaps not surprising.

On April 16, Professor Homberger filed a grievance with the Faculty Grievance Committee, amending it on April 26. Her complaints to the grievance committee were summarized as follows in that body's subsequent report:

- A. Relieving Dr. Homberger of her teaching duties because of the grade assignment in her class violates a core tenet of academic freedom in the classroom.
- B. University policy on the assignment of grades was ignored.
- C. Dr. Homberger was not accorded due process or even the courtesy of a conference with the Chair or the Dean prior to being relieved of her teaching duties.
- D. "Relieving" Dr. Homberger of her teaching duties is tantamount to "suspension," which has extremely negative implications.

E. Changing an assigned grade without an instructor's knowledge or consent, and without an academic appeals procedure, is in violation of an instructor's rights and of due process. . . . It is also a violation of integrity in grade assignment. Among the grievance committee's unanimously adopted "Findings and Recommendations," delivered May 21, were the following:

[A]dministrative intervention in this case occurred too hastily. Such intervention encroaches on academic freedom, threatening an instructor's right to exercise his or her pedagogical approaches in the classroom. Administrative intervention should occur rarely, be undertaken reluctantly, and take place only in extreme situations and after all other options have been exhausted.

Since issues of integrity in the assignment of grades are at the core of an academic institution's mission, the Committee recommends that the University develop policies that (1) delineate

19. A videotape of the meeting is available on the LSU website at <http://www.lsu.edu/senate/meeting%20videos.html>.



situations under which administrative intervention in the middle of a course might be appropriate; (2) specify due process for such an action; (3) identify those rare situations when it might be appropriate for someone other than the original instructor to assign a course grade; and (4) determine whether such a person should be allowed to change grades on a test that he or she neither prepared nor administered.

Making a decision to suspend a member of the faculty from a course on the basis of grade distribution, without consulting the faculty member involved, is inappropriate. Due process must afford faculty members an opportunity to explain their actions and, if necessary, an opportunity to correct the situation. The Committee concludes that Dr. Homberger was not granted either opportunity and deserves a written apology.

The Committee also recommends that, as specified in her addendum, the University assure Dr. Homberger that no retaliatory or prejudicial action will be taken against her arising from this grievance.

Executive Vice Chancellor and Provost Astrid Merget, who was about to leave office, did not respond to the findings and recommendations of the grievance committee or to Professor Homberger's June 29 request "that the recommendations that were contained in the . . . committee's report be implemented and acted upon." On July 8, Professor Homberger made a similar request of the new provost, Dr. John Maxwell Hamilton, who responded by memorandum of July 14. He accepted some of the committee's recommendations but did not address others. He noted that the Faculty Senate was "developing an improved policy" in the area of grading. Dean Carman wrote to Professor Homberger on July 19, noting that he had been prompted to do so by the provost's inference that the dean's apology had already been delivered. "However," the dean wrote, "while I have stated publicly . . . that I should have met with you in person to inform you of my decision, I have not communicated that regret directly to you. I do indeed apologize for not meeting with you in person to inform you of the action being taken, and I regret that I did not extend this professional courtesy to you." Thus his apology remained limited to regret for not having met with Professor Homberger to tell her he was removing her from the course. He did not address the other issues raised in the grievance committee's report.

Professor Homberger's suspension has implications for teaching at LSU more generally. Professor Brooks

Ellwood, president of the LSU AAUP chapter, told *Inside Higher Ed* that, in his own field, geology, where students may be upset by what is taught about the actual age of the earth or by evolution, the suspension of a tenured professor casts a pall, showing that "students can complain" and have a professor removed. "If you are a nontenured professor at this university, you have to think very seriously about whether you are going to fail too many students for the administration to tolerate."

In examining the various claims and counterclaims in the case, the investigating committee found that what was initially described by both the department chair ("the midterm grade distribution in 1001-4 is a serious warning sign that cannot be ignored") and the dean ("the mid-term grades were so anomalous that I really had no choice") as a problem with midterm grade distributions relative to other sections of the same course, underwent a metamorphosis into claims about student retention rates. The clearer it became that Professor Homberger had acted both in the interest of her students' education in biology and also well within the ambit of the protections supposed to be provided under principles of academic freedom, the more the administrative officers attempted to justify their actions. To the investigating committee, the rising groundswell of support from current and former students, editorial writers, and academics across the country makes the cognizant administrators' failure to apologize inexplicable.

As to the national Association's involvement in Professor Homberger's case, the AAUP's staff first became aware of her situation on March 30, 2010, when LSU chapter president Ellwood informed the Washington Office of it. In subsequent days Professor Homberger herself provided the staff with details as well as key documents. The situation also attracted considerable local and national press attention. The staff offered advice and assistance to Professor Homberger and encouraged her to pursue an intramural grievance.

At a previously scheduled meeting to discuss the further course of AAUP action in the van Heerden case, the staff also discussed the case of Professor Homberger. In its April 5 letter to Chancellor Martin, notifying him that an investigation into the van Heerden case had been authorized, the staff wrote as follows:

In addition to its charge relating to the van Heerden case, the *ad hoc* committee may be asked to address another case at Louisiana State University if it remains unresolved. The case, which just recently

came to our attention, involves Dr. Dominique G. Homberger, a tenured professor in the Department of Biological Sciences. She reports having been summarily removed from teaching a course after complaints about the distribution of grades she had assigned in that course—grades that were changed by someone else after a new instructor took over the class. This Association has consistently viewed an instructor’s authority in assigning particular grades to be a direct corollary of the “freedom in the classroom” ensured by the 1940 *Statement of Principles on Academic Freedom and Tenure*.

As it did with respect to the van Heerden case, the administration declined to respond to the staff’s initial inquiry about the Homberger case and to subsequent communications about it. With the issues posed by her case remaining largely unaddressed by the administration even after the Faculty Hearing Committee had supported the key aspects of her complaint, this investigating committee was charged with inquiring into her case as well.

Immediately before and during its visit to Baton Rouge, members of the investigating committee spoke with Professor Homberger and other LSU faculty members knowledgeable about her case. Despite the unwillingness of the chancellor and other administrative officers at LSU to meet with it when it was on campus or to respond to the AAUP’s inquiries about this case, the investigating committee, as with the van Heerden case, considered the available documentation, supplemented by faculty interviews and news accounts, as providing sufficient information to assess the issues of concern posed, to make findings, and to reach the conclusions that follow.

## II. Issues in the Case of Professor Homberger

The investigating committee’s analysis of the issues raised by the Homberger case, like its assessment of the issues posed by Professor van Heerden’s case, is based on the standards set forth in the 1940 *Statement of Principles*, in derivative AAUP policy documents and reports, and in official LSU policies.

Two issues, in particular, occupied the investigating committee.

### A. ACADEMIC FREEDOM IN ASSIGNING STUDENT GRADES

The Association’s 1997 statement *The Assignment of Course Grades and Student Appeals* sets forth general guidelines “concerning the right of instructors to assign course grades to students, the right of students to

challenge the assigned grades, and the circumstances and procedures under which student appeals should be made.” With respect to the right of an instructor to assign grades, this document provides as follows:

The Association’s *Statement on Government of Colleges and Universities* places primary responsibility with the faculty “for such fundamental areas as curriculum, subject matter, and methods of instruction.” The assessment of student academic performance, it follows, including the assignment of particular grades, is a faculty responsibility. Recognizing the authority of the instructor of record to evaluate the academic performance of students enrolled in a course he or she is teaching is a direct corollary of the instructor’s “freedom in the classroom” which the 1940 *Statement of Principles on Academic Freedom and Tenure* assures. The faculty member offering the course, it follows, should be responsible for the evaluation of student course work and, under normal circumstances, is the sole judge of the grades received by the students in that course.

As for the right of a student to appeal a grade, the 1997 document states:

According to the Association’s *Statement on Professional Ethics*, “professors make every reasonable effort . . . to ensure that their evaluations of students reflect each student’s true merit.” The academic community proceeds under the strong presumption that the instructor’s evaluations are authoritative. At the same time, of course, situations do arise in which a student alleges that a grade he or she has received is wrong, and the *Joint Statement on Rights and Freedoms of Students* provides that “students should have protection through orderly procedures against prejudiced or capricious academic evaluation.” A suitable mechanism for appeal, one which respects both the prerogatives of instructors and the rights of students in this regard, should thus be available for reviewing allegations that inappropriate criteria were used in determining the grade or that the instructor did not adhere to stated procedures or grading standards.

Under no circumstances should administrative officers on their own authority substitute their judgment for that of the faculty concerning the assignment of a grade. The review of a student complaint over a grade should be by faculty, under procedures adopted by faculty, and any

resulting change in a grade should be by faculty authorization.<sup>20</sup>

The LSU *Faculty Handbook* states, in PS-44, that “[t]he instructor’s assignment of a grade is final, and the grade may not be changed or altered except through the academic appeals procedure, following appropriate investigations.” This regulation was ignored in the case of Professor Homberger. PS-44 also states, “It is the right and responsibility of the instructor in a course to determine and assign the grade for each student beyond the final date for withdrawing with a W. Individual instructors are expected to assign grades equitably and consistently in accordance with the standards established by the faculties of the various colleges and schools. There is no ‘University curve’ or other table of numerical equivalents of letter grades to which a faculty member must adhere.”

The Faculty Grievance Committee commented on the *Faculty Handbook* and PS-44 policies, on their application to the situation involving Professor Homberger, and on her allegation that the dean’s action in relieving her of her teaching duties because of her grade assignments violated a basic principle of academic freedom in the classroom. With regard to removing her from the course, the grievance committee observed as follows:

Dr. Homberger was not removed from her teaching duties because of the course content, the quality of the course, or her teaching performance. Rather, the decision was made solely on the basis of mid-semester grade distribution. It is clear that the mid-semester grade distribution was out of line with expectations (compared with the other sections of BIOL 1001 for the same semester, as well as with historical distributions) and that there were a substantial number of student withdrawals.

As noted above, the grievance committee found that the administration’s intervention “occurred too hastily” and that “such intervention encroaches on academic freedom, threatening an instructor’s right to exercise his or her pedagogical approaches in the classroom.” The grievance committee had more to say on the subject of grading policies:

Existing University policies, such as those of PS-44 and the *Faculty Handbook*, implicitly refer to the final semester grade assignment, and the procedure for grade appeals described in the General Catalog also applies to final grades. This raises the question: under what circumstances, if any, can administrators intervene in an ongoing course because of grade assignment? Such action impinges on the ability of instructors to evaluate their own students, which violates the instructor’s freedom to use his or her own pedagogical method of teaching and testing. At what point has an instructor hopelessly crossed a line during a semester to a degree so grave that it justifies administrative intervention? Any administrative action that leaves open an arbitrary threat of intervention in a course during a semester impinges on a teacher’s pedagogical freedom.

Although the investigating committee does not doubt that the Association’s recommended standards with respect to grading apply not only to final grades but also to grades assigned while a course is in progress, the Faculty Grievance Committee judged that PS-44 had not been adequately prescriptive on that point and should be clarified. PS-44 aside, the investigating committee finds that the changing of Professor Homberger’s grades, unfair to her and to her students, was a violation of her right to assign grades and, moreover, a violation of her academic freedom to teach.

In the aftermath of Professor Homberger’s suspension and grievance, Professor James V. Moroney took over as chair of the Department of Biological Sciences in summer 2010 upon the completion of Professor Newcomer’s term. Additional pressures were then brought to bear on Professor Homberger, purportedly because of the department’s financial problems. She reports having been told on July 22 to retain and pass a percentage of students in her classes that reflected the department’s percentage in 3000- and 4000-level courses and being informed that her course in comparative anatomy could not be offered any longer if she did not comply. When she asked for an explanation of the percentages with which she was expected to comply, Professor Moroney replied by e-mail message the following day: “Here are the grade distributions I referred to yesterday that you asked to see. The average DFW [grades of D, F, and withdrawal] rate for BIOL was 14.4 percent.” He added later that day, “The 14.4 percent DFW rate is for 3000/4000 level BIOL courses. Please keep in mind that this is an average rate for all

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20. For a further discussion of the Association’s policies on grading and academic freedom in particular cases see *Academic Freedom and Tenure: Nicholls State University (Louisiana)* (2008) and *Academic Freedom and Tenure: Benedict College (South Carolina), A Supplementary Report on a Censured Administration* (2005).

of our 3000/4000 level courses over the past 4–5 years. Some courses will be below this average and some above the average.”

The investigating committee sees such expectations of an instructor as in clear disregard of the statement in PS-44 that LSU has “no ‘University curve’ or other table of numerical equivalents of letter grades to which a faculty member must adhere.” Moreover, the committee is sensitive to the possibility that the pressures regarding Professor Homberger’s comparative anatomy course were part of a pattern of retaliation that she contends she has been enduring. Provost Hamilton had written on July 14, “We assure Dr. Homberger that no retaliatory nor prejudicial action will be taken against her due to filing this grievance,” and Professor Newcomer that same day signed Professor Homberger’s sharply negative performance evaluation for calendar year 2009—an abrupt turnabout from the run of positive evaluations she had been receiving for many years. Professor Newcomer criticized, in particular, low enrollments and retention rates in Professor Homberger’s comparative anatomy course. Professor Homberger took exception to her chair’s evaluation, despite its overall assessment of *satisfactory*. “I can only conclude,” she wrote, “that this evaluation is in retaliation for the fiasco that the department and college suffered as a result of the public outcry at the local and national levels when I was removed from my teaching BIOL 1001 in the spring of 2010.” She added, “I request that the chair’s evaluation be revised to acknowledge truthfully my contributions to teaching, research, and service, as well as the impediments that have been thrown in my path.” Professor Newcomer complied with a corrected evaluation.

The impediments to which her letter of exception refers included a number of interventions with students by college counselors, some of her colleagues, and at least one associate dean of the college aimed at discouraging students from taking her courses or working with her and at encouraging students to drop her courses when confronted with early low test scores. Because such activity had been going on for some years before Professor Homberger’s suspension, the investigating committee is not persuaded that it constitutes retaliation, but the committee does consider it manifestly unfair if those who criticize Professor Homberger’s attrition rates actively contribute to them.

Professor Homberger deserves not only the apologies which the Faculty Grievance Committee agreed were owed to her but also robust protection against any retaliation that is occurring.

## B. ACADEMIC DUE PROCESS

Under Regulation 7a of the Association’s *Recommended Institutional Regulations on Academic Freedom and Tenure*, the administration may impose a severe sanction on a faculty member, “such as suspension from service for a stated period,” only after affordance of an adjudicative hearing of record before an elected body of faculty peers. Regulation 5 of that document sets forth the procedures to be followed in such a hearing. It is contrary to Association-supported standards of academic due process for an administration to impose a severe sanction without first having demonstrated adequacy of cause. LSU’s regulations are silent on this matter. At the Faculty Senate meeting held on April 13, 2010, at which the resolution was introduced concerning “A Faculty Member’s Right to Assign Grades,” Faculty Grievance Committee chair Pratul Ajmera suggested that the resolution be amended to add that “we further resolve that we create a subcommittee to create a process/procedure governing suspension of faculty members from teaching.” From the perspective of the Association, having such a procedure is crucial.

In its 1972 report *Academic Freedom and Tenure: Armstrong State College (Georgia)*, an AAUP investigating committee remarked that “[t]he enforced separation of a teacher from his classroom . . . is an action of severity, to be taken only for serious and pressing reasons, with significant professional damage to the individual’s future in teaching.” In a 2008 report on *The Use and Abuse of Faculty Suspensions*, a subcommittee of the AAUP’s Committee A on Academic Freedom and Tenure observed, “Historically, suspension has been regarded in Association policy as a severe sanction second only to dismissal, because it has been seen primarily in terms of removal of a faculty member from teaching. As one case report put it, ‘Barring a teacher from his classroom inflicts ignominy upon the teacher and is destructive to the morale of the academic community.’” The subcommittee further noted that “increasingly the Association is dealing with cases that involve partial suspensions, in which the faculty member is blocked from some duties . . . , but not others. . . . Removal from even a single class can, of course, pose serious complications for the faculty member’s standing as a teacher.” It goes on to express concern that

[w]hether a suspension is partial or total, . . . in many cases administrations . . . do not seem, or care, to grasp the severe effects that suspension can have, not only on the reputation—and morale—of an accused faculty member, but also on his or her ability to contest the intended

sanction. Suspension usually implies an extremely negative judgment, for which the basis remains untested in the absence of a hearing . . . [which would afford] the individual . . . a chance of clearing his or her name. Beyond that, suspension may create a prejudicial atmosphere totally out of proportion to the alleged offense and undeserved in the light of the professor's previous record.

The Faculty Grievance Committee in the Homberger case raised concerns about the abruptness of the dean's intervention, recommending that new guidelines be developed as to when, if ever, such interventions should take place. With respect to Professor Homberger's complaint that she had been denied due process, the grievance committee expressed its agreement with her: "That a decision of this magnitude—relieving an instructor of her duties in the middle of the semester for a matter involving grades—could be made by the chair or the dean without a prior meeting to hear Dr. Homberger's explanation is inexcusable." The investigating committee believes that nothing short of an adjudicative hearing of record can protect an accused faculty member such as Professor Homberger from arbitrary or capricious decisions. It finds that, in not affording Professor Homberger a full hearing on her suspension, it denied her the basic protections of academic due process.

The grievance committee concurred with Professor Homberger's complaint that the dean's action in suspending her from teaching duties "has negative implications to the point of inflicting ignominy on the person suspended." The immediate and widespread condemnation of the dean's action in the media, especially from faculty members and students across the nation, suggests to the investigating committee that ignominy in the matter has been inflicted on the dean and the others with administrative responsibility in LSU's College of Science. It is now a matter of public record that a tenured professor was suspended summarily and that the suspension was not revoked. Moreover, the investigating committee finds it much to be regretted that no apology has been proffered to Professor Homberger that addresses the simple injustice of her suspension.

### III. Conclusions

1. The administration of Louisiana State University, Baton Rouge, violated Professor Dominique Homberger's right to assign student grades and, in peremptorily removing her from a course that was in progress, violated the provisions in the 1940 *Statement of Principles on Academic Freedom and Tenure* ensuring a faculty member's freedom to teach.

2. In imposing the severe sanction of suspension on Professor Homberger without having afforded opportunity for a faculty hearing in which it would demonstrate cause for its action, the LSU, Baton Rouge, administration denied her the basic protections of academic due process as set forth in Regulation 7a of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure*.

3. That no apology has been provided to Professor Homberger by the LSU, Baton Rouge, administrative officers responsible for the injustice of her suspension is much to be regretted.<sup>21</sup> ■

DEBRA NAILS (Philosophy)  
Michigan State University, *Chair*

ABBAS AMINMANSOUR (Architecture)  
University of Illinois at Urbana-Champaign

CHARLES R. FIGLEY (Social Work)  
Tulane University

#### *Investigating Committee*

Committee A on Academic Freedom and Tenure has by vote authorized publication of this report on the AAUP website and in the *Bulletin of the American Association of University Professors*.

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

Members: MICHAEL F. BÉRUBÉ (English), Pennsylvania State University; SHELDON KRIMSKY (Biomedical Ethics and Science Policy), Tufts University; DAVID MONTGOMERY (History), Yale University;

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21. Associate Vice Chancellor for Human Resource Management A. G. Monaco, responding to a draft text of this report, stated that Professor Homberger, as noted in the report, "filed a grievance with the Faculty Senate which then conducted an internal investigation. As a result of their findings, a list of final recommendations was provided to the LSU administration. Those recommendations were accepted and are currently in the process of being implemented. Therefore I find the conclusions of the report premature. The University will not comment on those portions of your draft report that speak to issues involving Dr. Homberger and reserves its rights to comment if necessary in the future."

ADOLPH L. REED JR. (Political Science), University of Pennsylvania; ANDREW T. ROSS (American Studies), New York University; ELLEN W. SCHRECKER (History), Yeshiva University; CARY R. NELSON (English), University of Illinois at Urbana-Champaign, ex officio; ROBERT M. O'NEIL (Law), University of Virginia, ex officio; ERNST BENJAMIN (Political Science), Silver Spring, MD, consultant; JOAN E. BERTIN (Public Health), Columbia University, consultant; MATTHEW W. FINKIN (Law), University of Illinois at Urbana-Champaign, consultant; ROBERT A. GORMAN (Law), University of Pennsylvania, consultant; JEFFREY R. HALPERN (Anthropology), Rider University, consultant; JEFFREY KRAUS (Government and Politics), Wagner College, liaison from Assembly of State Conferences.