

REPORT OF THE FACULTY GRIEVANCE HEARING COMMITTEE

IN THE MATTER OF PROFESSOR JAMMIE PRICE v.

PROVOST LORI GONZALEZ AND VICE-PROVOST TONY CAREY

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On June 13th, 2012, Professor Jammie Price filed a grievance petition along with a number of supporting documents with the Faculty Grievance Hearing Committee (FGHC or the Committee). At that time, the required initial meeting between the grievant and the respondents had not occurred, so the grievant was directed to pursue that. On July 12th, the required initial meeting was held. On July 17th, six members of the FGHC met to consider the petition and voted unanimously, with one abstention, to accept the petition. The matter was then directed to mediation. On August 7th, a mediation session was held with Mediator Thorns Craven. That

Hearing sessions were held on Friday, August 31, Saturday, September 1, Friday, September 14, and Monday, September 17. Total hearing time was approximately 24 hours. A total of 110 exhibits were entered into the record, 17 from the grievant and 93 from the respondents, though portions of respondents' exhibits 1-10 were excluded from the record as lacking relevance. FGHC members hearing the case were Jill Ehnenn, Professor, English; Susan Staub, Professor, English; Jesse Taylor, Associate Professor, Philosophy & Religion; Kim Wangler, Associate Professor, Music; and Jennifer Geib, Assistant Professor, Biology. Hugh Hindman, Professor, Management served as the Committee's non-voting Chair. Upon receipt of the full transcripts of the hearing, the hearing was adjourned on September 25.

I. RECITATION

Context matters. In the spring of 2012 the campus was embroiled in controversy over sexual assault allegations involving student athletes. Two female students, at least one of whom was a student athlete, had accused five male students, at least four of whom were student athletes, of sexual assault, in two separate incidents. The Student Conduct Board found two of the student athletes responsible for sexual assault and suspended them from campus. The controversy escalated when the suspensions were set aside over a procedural error, and the student athletes were reinstated. The reversal of the suspensions was reported by *Appalachian Online* on March 1. On Friday, March 2, a "silent protest" was held on campus to protest the university's handling of the matter. Eventually, in a second series of hearings, 4 of the 5 accused were found responsible for sexual assault and were suspended from campus. These events generated considerable media attention, resulted in an investigation by the US Dept of Education's Office

of Civil Rights, which in turn, brought about an overhaul of the university's policies and procedures regarding student sexual misconduct.

I.A. Initial Complaint Against Price

I.A.1. Student Athlete #1. Professor Price was intending to participate in the March 2 silent protest and wore a tee shirt that signaled that intention to her 11am section of Sociology 1000. When students in the class asked Dr. Price about her tee shirt, remarks ensued about the sexual assault case. A female student athlete in the class (hereinafter, Student Athlete #1), who was a teammate of one of the sexual assault victims, took offense and went to Associate Athletic Director Troy Huestess to complain. From there she went to complain to Ms. Linda Foulsham, Director of Equity, Diversity and Compliance. According to Ms. Foulsham, "I received a phone call from Troy Huestess, who is the associate director of athletics, and he said that he was with a student who was very upset and that he wanted to come over and meet with me and also meet with Tony Calamai. So Troy, the student, me, Tony Calamai, and Neva Specht met in Tony's office. And the student was very upset about statements that Dr. Price had made in class involving student athletes and comments about race and particularly black athletes and black football players, and the student did not want to go back into the classroom and said she was fearful" (Transcript 1, pg 186). Neither Troy Huestess nor Dean Calamai testified in the hearing. Associate Dean Neva Specht, who did testify, described the student athlete's demeanor in the meeting: "She cried through most of it. She'd been very upset. My understanding she had just come from a meeting with Linda Foulsham where she had told the story, so I think she was upset from that. I thought she presented in a convincing way" (Tr2, pg 201).

Later that same day, sometime before mid-afternoon on the 2nd, Student Athlete #1 repeated her complaint to Ms. Sharon Trivette, her advisor, and Ms. Jean Roberts, Director of the Learning Assistance Program (Tr3, pg 27). According to Ms. Roberts, she complained of “comments that had been made in class for several days by Dr. Price of – targeting specific student populations, that the student felt very uncomfortable with those remarks. Some were targeted to a population that this student was a part of. Other comments were about another specific student population, that this student felt the remarks were discriminating, biased, hostile among other things” (Tr3, pg 13-14).

Student Athlete #1 was upset about what she perceived as “inaccurate, disparaging remarks that Dr. Price made about student athletes,” contending that Price “ranted about college athletes in two classes.” She told Ms. Foulsham, “I don’t want other athletes to have to deal with this” (ExR#39). She was also apparently offended by other remarks she perceived as racist. When Ms. Foulsham was asked whether she felt the campus sexual assault controversy had a

when the video was shown (Tr2, 13) because they were no longer in her class. So, it should come as no surprise that shortly thereafter Ms. Foulsham heard back from Sharon Trivette “that the students did not want to meet with Dr. Price” (Tr1, 198-199). Since they had been moved to another class, their complaint had already been resolved.

I.A.4. Students #3 and #4. On Wednesday, March 7, Prof. Price showed a documentary on the pornography industry, *The Price of Pleasure*, in class. Within a couple of days, the mother of a student in the class called Dr. Folts. As Folts testified, “One of the student’s mothers called me complaining. What she told me was that Dr. Price had shown a porno movie in class, and that she was very upset about that” (Tr2, pg 214). Dr. Folts suggested the student’s mother call Ms. Foulsham. According to Ms. Foulsham, “I received a phone call from one of the students’ mothers complaining about the video and also complaining about other behaviors or statements that Dr. Price had made in class during the semester, and she wanted to know what the university was going to do about this matter” (Tr1, pg 189). Ms. Foulsham asked the mother to have the student contact her. Students #3 and #4 are friends who went on Spring Break together. On Saturday, the 10th, at the beginning of Spring Break, both students sent emails to Ms. Foulsham at precisely 8:32pm (ExR#15 and #16). Both student emails were similar in their essential content (ExG#10). Both complained about the showing of the video. They criticized the fact that it was shown, Student #3 judging that it was “not appropriate for the classroom,” and Student #4 judging that “It was in no way related to sociology.” They also both complained about the manner in which the video was shown: that Prof. Price did not warn students about the content; did not say a word before or after showing the video; that the video was not on the syllabus; and

that she gave no invitation for students to leave the class if they felt uncomfortable. Both students also criticized the content of the class of Friday March 2, the day of the campus silent protest, though Student #3 went into more detail than Student #4. Both complained that Prof. Price was disrespectful and negative about the university, characterizing it as a racist institution. And both objected to Prof. Price's interjection of personal information into the class discussion: her own dissatisfaction with her job, family and child custody issues that limited her mobility, and an allegation that Prof. Price had been accused of sexual relations with a student. Finally, both students expressed concern for their own personal safety, referencing without elaboration incidents that have occurred on other university campuses.

While the parties assign differing motives, it is generally agreed that Prof. Price entered the room and, without saying a word, flipped the lights and started the video. According to Ms. Foulsham, Prof. Price explained "that she had shown it because during the meeting on March 6th I had talked to her about our policy that prohibits retaliation against anyone who brings a complaint. . . . when I asked her why she showed the video, she said it was because of me. She showed the video because she didn't want to be accused of retaliating against the students" (Tr1, pg 205). Ms. Foulsham found this explanation "neither credible nor logical" (ExR#39). The administration insinuates retaliatory motive. Clearly during the week leading up to March 16, administrators were concerned that the showing of the video looked like retaliation. The possibility was discussed in the March 12 meeting with Provost Gonzalez, Dayton Cole, Linda Foulsham, Ed Folts, and Neva Specht. It concerned Dr. Carey in the March 16 meeting with Prof. Price and Neva Specht that "[t]here was a considerable thought in my mind that the showing of the video, itself, was an act of retaliation. I didn't know that for certain one way or

the other, but it seemed to me like an extremely odd response to the situation” (Tr2, pg 88). In the end, however, few administrators concluded that retaliation was Prof. Price’s motive. When asked if she considered showing the film to be retaliation, Dr. Specht replied, “No” (Tr, pg 197). Earlier, Ms. Foulsham suggested that a reasonable person could believe Prof. Price showed the video as an act of retaliation (Tr1, pg 204). But after investigating, she herself did not draw that conclusion: “I don’t know whether it was retaliation or not. So no, I did not conclude that it was retaliation” (Tr2, pg 54). Decision-makers continue to believe it was retaliation, but even they are equivocal. Provost Gonzalez testified, “I viewed it as retaliation in the lay term, that it was a way to say, ‘If you complain about me, this is what could happen.’ That’s the way I would say it. Retaliation in terms of the federal law, no, I wouldn’t go that far” (Tr3, pg 161-162).

Prof. Price suggests an alternate explanation for the choice of *The Price of Pleasure*. She indicated there was another video – *Killing Us Softly* – she would have preferred to have shown,

Dayton Cole. It was decided at this meeting that a formal investigation into student complaints would be conducted by Ms. Foulsham. According to Provost Gonzalez, “Options discussed were Dr. Folts taking over Dr. Price’s classes, administrative leave with pay, and removal from the classroom” (Tr3, pg 127).

On the Friday of that week, March 16, a meeting was held with Dr. Carey, Dr. Specht, and Prof. Price to inform Prof. Price that a formal investigation was being initiated, to inform her that she was being placed on leave while the investigation ensued, and to present her with the March 16 letter documenting these actions. There was conflicting testimony about when the decision was finally made to remove Prof. Price from teaching and place her on leave. Dr. Carey insisted that the decision was not made until the end of the March 16 meeting, and that he was “prepared to deliver the letter or not deliver it depending on Dr. Price's responses in the meeting” (Tr2, pg 80). But Dr. Folts testified that, on the 13th, 14th, and 15th, “I was involved in phone calls and creating and then shifting the students back into the original class, and then changing that class over to me. But that was not within the administration, it was with the registrar’s office” (Tr2, pg 216-217).

Ms. Foulsham’s investigation included interviews with Prof. Price, Dr. Folts, three tenured faculty in the Sociology Department, and thirty-one students from Prof. Price’s classes (ExR#39). On April 3, Prof. Price submitted a written response to the allegations (ExG#1). On April 11, Ms. Foulsham sent an email to all students who were enrolled in what had been Prof. Price’s classes. The email read, in part: “Dear Student: I am writing to inform you that the Provost has asked me to conduct an investigation of a complaint of inappropriate classroom behavior that has been filed by a few students against Dr. Jammie Price. I would like to meet

with you in my office at your earliest convenience to discuss the allegations and obtain any information you might have that would be relevant to the investigation” (ExR#90). In addition to the four students who had already complained, this email resulted in interviews with twenty-seven students.

On April 26, Ms. Foulsham submitted her investigation report to the Provost, asserting, “There is sufficient evidence to conclude that Dr. Price created a hostile learning environment for a significant number of her students. Her pedagogy appears to be consistently confrontational, belittling, angry, critical, and destructive of the potential for a valuable educational experience for her students. Whether or not students felt demeaned or harassed based on their race, sex, political affiliation, status as an athlete, or status as an Appalachian student, there is a consistent pattern of Dr. Price making students feel uncomfortable” (ExR#39).

On the basis of Ms. Foulsham’s report, on April 30, Provost Gonzalez issued a “summary of the facts” that concurred in the finding of a hostile learning environment, adding, “In the classroom, students reported you [Price] often commented about an allegedly racist environment at Appalachian and about student athletes. Additionally, students stated that you repeatedly criticized students for attending Appalachian. Such comments are patently unacceptable, and support the conclusion that your classroom demeanor has been confrontational, belittling and destructive to students and the student experience. Comments about your personal life and challenges also contributed to a hostile environment” (ExR#41). As a consequence, Prof. Price was “instructed to work with Associate Dean Specht to draft a professional development plan . . . designed to cover a two-year period” (ExR#41).

discussion of the matter” (Tr2, pg 123). Because administrative leave has been used in the past does not mean that there was authority for it either then or now. Thus, we unanimously conclude that the *Faculty Handbook* does not *specifically* or *clearly* provide for or address administrative leave with pay for the purpose of investigation.

Respondents claim that *Faculty Handbook* Section 6.5.3.2 provides the authority to place a faculty member on administrative leave with pay for the purpose of investigation. They have repeatedly made this argument. However, this *Handbook* section only addresses leave requested by the faculty, which is not relevant to Dr. Price’s situation. Saying that it also applies to leave imposed upon the faculty is out of context and quite a stretch. Thus, we unanimously conclude that section 6.5.3.2 cannot be invoked as adequately justifying putting faculty on administrative leave with pay for the purpose of investigation.

Respondents claim that the Provost has the ultimate authority to interpret the *Handbook*.

A minority of the voting members of the Committee (2-3) saw this issue somewhat differently. While they agree with the majority that there is no authority in the *Faculty Handbook's* Section 6.5.3.2 to place a faculty member on involuntary leave with pay, they are persuaded that "University administrators have inherent authority to place employees on administrative leave with pay in fulfillment of institutional management responsibilities" (ExR#93). Such inherent authority is limited only by the requirement that administrators have "good cause." Good cause is subject to testing in a grievance hearing, and the minority would find that Respondents had good cause to place Prof. Price on administrative leave with pay.

II.A.2. Were Prof. Price's due process rights violated when she was denied a due process hearing? Respondents have asserted that Professor Price was not entitled to a due process hearing because only serious sanctions warrant a hearing before the Faculty Due Process Committee (FDPC). They assert that administrative leave with pay for the purpose of investigation is neither disciplinary nor "serious" sanction. As a result, Dr. Price was denied a hearing with the FDPC and was told that her only option to challenge the decision was a grievance hearing.

Question of serious sanction: *Faculty Handbook* Section 4.10 addresses "Discharge or the Imposition of Serious Sanction." Section 4.10.2.1 lists the following as serious sanctions: discharge, suspension, demotion in rank, diminishment in pay, or deprivation of some other substantial interest. A majority of the voting members (3-2) conclude that placing Prof. Price on involuntary administrative leave deprived her of substantial interest (liberty interests and dignity interests, as described below), and therefore is, indeed, a serious sanction.

Respondents asserted that administrative leave pending investigation is common practice, and they provided the Committee with a number of illustrative cases where university employees had been placed on administrative leave with pay (ExR#85). Most of these cases involved administrators or other non-faculty employees so their applicability to tenured faculty is unclear. Of the seven illustrations involving tenured faculty placed on leave, five involved criminal misconduct, just the kind of circumstance most likely to warrant suspension pending final outcome. Of the other two illustrations, one occurred in a military academy that admittedly “operates according to a stricter code of behavior and values,” and the other would be governed by the grievance procedure under a collective bargaining agreement.

Respondents also provided the Committee with an interpretation of their authority to invoke “administrative leave to facilitate an investigation” (ExR#93). In one paragraph of this document, several court cases are cited suggesting that “[i]t is well established that placing an employee on paid administrative leave during an investigation concerning the employee’s conduct is not an adverse employment action.” Included in these cases is the Fourth Circuit’s *Von Gunten v Maryland* (2001), a Title VII case. But *Von Gunten* does not hold that administrative leave with pay can never be considered an adverse employment action, and the standard in the Fourth Circuit recognizes that similar or lesser actions (reducing job responsibilities and professional status) could constitute adverse employment action. Still, we get it; employees rarely prevail on claims that administrative leave with pay constitutes adverse employment action. Even the AAUP’s 2007 report on *The Use and Abuse of Faculty Suspensions* (ExR#30) acknowledges, “Courts generally rule that suspension with pay does not trigger constitutional due process concerns at public institutions.” Whether a faculty member is

the teacher and is destructive to the morale of the academic community. . . . The profession's entire case for academic freedom and its attendant standards is predicated upon the basic right to employ one's professional skills in practice, . . . To deny a faculty member this opportunity without adequate cause, regardless of monetary compensation, is to deny him his basic

II.A.3. Recommendations regarding involuntary placement on Administrative Leave

a. While the majority found that Prof. Price should have been afforded a due process hearing, the Committee can find no remedy for Prof. Price with regards to this issue and is unanimous that recommending a hearing now would serve no useful purpose. What's done is done.

b. We unanimously recommend that, henceforth, no faculty member should be placed on involuntary administrative leave except as provided for in *FH 4.10*, unless the *Faculty Handbook* is otherwise revised.

c. We are aware that a Due Process Task Force is formulating recommendations related to these issues for submission to the Faculty Senate. We strongly urge the administration to accept any Senate legislation on this matter.

II. B. Findings Regarding Imposition of a Professional Development Plan

The Committee unanimously finds that imposition of a professional development plan does not, by itself, constitute a serious sanction. It lacks key elements of administrative leave, which we did find to be a serious sanction. Prof. Price would remain, first and foremost, in the classroom. It is clearly a sanction, a change in a term or condition of employment imposed based on the administration's judgment of misconduct. But it is a lesser sanction and, so, the faculty grievance hearing process is the appropriate venue for its adjudication.

On the ultimate question whether the professional development plan was justified, we find it useful to distinguish classes and events occurring prior to March 7 and the class of March 7. We do so because a majority (4-1) conclude that events prior to March 7 are an illegitimate basis for imposition of a professional development, and thus, violate Prof. Price's academic freedom to teach her subject according to the dictates of her own responsibly exercised professional judgment.

At the same time, the Committee concludes unanimously that the events of March 7 represent a serious lapse in judgment.

II.B. 1. Classes and events prior to March 7. These principally include the two classes the last week of February, in the unit on race and ethnicity, the classes where Prof. Price is said to have “ranted” about student athletes. These classes provoked an immediate verbal complaint from Student Athlete #1 and a partially corroborating statement from Student Athlete #2 when his opinion was solicited by Ms. Roberts, his advisor. It also includes the class on March 2, the day of the campus silent protest. This is the class Student Athlete #1 walked out of on her way to complain to Troy Heustess. Students #3 and #4 also later expressed negative reactions to this class.

In teaching race and ethnicity Prof. Price discusses race in the context of higher education

legitimate topic for a Sociology class. It is a legitimate argument in the field that student athletes receive special privileges in a university setting. It is a legitimate argument in the field and at the university that others perceive athletes as receiving special privileges. In fact, ASU student athletes do receive special privileges. Committee members from outside the discipline of sociology are aware there is a substantial literature on these issues. We can fully understand how a student athlete, one perhaps nurtured for a lifetime on the values and virtues of athletic competition, one who perhaps never heard anyone seriously question these values and virtues,

that both a reasonable person would find hostile or abusive and one that the particular person who is the object of the harassment perceives to be hostile or abusive. Hostile environment is determined by looking at all of the circumstances, including the frequency of the allegedly

II.B.3. Recommendations Regarding the Professional Development Plan

a. The Professional Development Plan is largely untethered to the question of poor judgment or even hostile learning environment, if we were to accept that finding. The only aspects of the PDP that are relevant to the Respondents' concerns were to include a disclaimer regarding sensitive topics on the syllabus and the professional development activities of addressing sensitive topics in the classroom and the sensitivity training. Since the majority did not find that Prof. Price created a hostile learning environment, we recommend the Professional Development Plan be set aside.

b. Most of the Professional Development Plan is directed at issues of teaching effectiveness. The Committee unanimously asserts that assessment of teaching effectiveness and proposed corrective measures should emanate from the department. Teaching effectiveness should never be assessed within the context of an investigation of misconduct. This fundamental tenet of faculty governance provides an additional basis for our unanimous recommendation that the professional development plan be set aside.

II.C. Additional Findings Regarding the Investigation

The Committee unanimously agrees that this case should have started, and could well have stopped, with a meeting between Prof. Price and Student Athlete #1. If Prof. Price had had a

discomfort, and allowed Prof. Price to help the student understand the sociological basis for her pedagogy. If that had happened, it is likely the student would have realized that the comments were not racist or otherwise intended to be hostile. Instead, the situation was escalated and the opportunity for clarifying conversation was eliminated. For us, that missed opportunity – preventing a student and teacher from having the chance to correct a misunderstanding – was a real tragedy and poor judgment on the part of the administration.

We are unanimous in identifying five significant concerns with the ensuing investigation:

II.C.1. The appearance of undue deference to student athletes. It is ironic that a case – initiated at least in part by Prof. Price’s assertion that student athletes get preferential treatment – became an object demonstration that student athletes do, in fact, get preferential treatment. The

and Student Advising for Athletes. Without the involvement of the Athletic Department, the matter would likely have been returned to the department for resolution.

II.C.2. The manner in which student interviews were solicited. We do not disagree that interviews with students were appropriate, but we c

expect such a report to be given credibility, it must be compiled with far greater precision than was exhibited here.

A report that paraphrases rather than quotes students (with identifying information removed) always opens up opportunity for bias. It was impossible to distinguish direct quotes from interpretation, and the report did not denote how many comments were attributed to each student. That is, did one student say ten things, or did ten different students say one thing? Because of the impossibility of distinguishing one student interview from another, we asked for access to Ms. Foulsham's notes. Respondents refused to make these notes available, even in redacted form. A redacted summary of each interview would not compromise student confidentiality, and would make the investigation report more useful for the decision-maker, for

II.C.6. Recommendations:

a. The Committee unanimously recommends that, in accordance with ASU policy (and best practices at our sisters schools), every attempt be made to encourage dialogue between a teacher and student before a complaint escalates to any other entities on campus.

b. The Committee unanimously recommends that, henceforth, all actionable complaints be put in writing by the complainant and that the accused should be granted the right to know who her accuser is and to know precisely what she is being accused of. We believe that the fundamental right to this information supersedes any concern about retaliation, for which there is a separate remedy should retaliation occur.

c. The Committee unanimously recommends education about Academic Freedom in the classroom for athletic advising and the Equity Office so that they will be better able to advise students about the parameters of instructor pedagogical prerogatives in the classroom.

d. The Committee unanimously recommends that the Office of Academic Affairs should uphold and reassert their commitment to the principles of responsible Academic Freedom, as articulated in *Faculty Handbook* 3.2 and 3.3 and the *UNC Code*, chapter 6, section 600, including their responsibility for maintaining an “environment in which academic freedom flourishes.”

e. The Committee unanimously recommends that the Respondents organize a taskforce, with substantial faculty membership, to conduct a critical review of the investigative process. This review should address our concerns as noted above and result in a process that is consistent with practices in the UNC system and nation.

f. The Committee unanimously recommends that ASU return to the previous practice of having a faculty review board involved in the oversight of the Equity Office.

III. CONCLUDING REFLECTIONS

As a committee, we wish to express our concern about the unbalanced nature of ASU's grievance proceedings:

1. The faculty member (grievant) should be entitled to active representation. We support the recent *Handbook* changes approved in October's Faculty Senate regarding this issue and urge the Provost and Board of Trustees to support that Senate recommendation.
2. The Faculty Grievance Hearing Committee is vested with the authority to deal with confidential personnel matters. As such, when requested, confidential information must be shared in order for the committee to make an evidence-based decision.
3. When the Provost is a Respondent in a grievance case, the report should be submitted to the Chancellor for a decision.

PERAN MASYARAKAT

Asisten Profesor, English

Universitas

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