



THE UNIVERSITY
of NORTH CAROLINA
at CHAPEL HILL

Meeting of the Faculty Council
Friday, November 12, 2010 3:00 pm
Hitchcock Multipurpose Room, Sonja Haynes Stone Center

Chancellor Holden Thorp and Prof. McKay Coble, Chair of the Faculty, Presiding

Please note: Supporting materials are online at: <http://www.unc.edu/faculty/faccoun/>

AGENDA

- 3:00 Chancellor's Remarks and Question Period
- Chancellor Holden Thorp
- 3:15 Provost's Remarks and Question Period
- Provost Bruce Carney
- 3:30 Scholars at Risk Program
- Prof. Altha Cravey, UNC-CH Scholars at Risk Committee
 - Prof. Abdul Sattar Jawad, Professor of Comparative Literature, Duke University
- 3:40 The Faculty Grievance and Hearings Process: Overview and Committee Annual Reports
- History and Structure of the Faculty Grievance and Hearings Process
 - Prof. Joe Ferrell, Secretary of the Faculty
 - The Faculty Grievance Committee: Role and Annual Report
 - Prof. Beverly Taylor (Chair, 2009-10)
 - The Faculty Hearings Committee: Role and Annual Report
 - Other background documents:
 - Faculty Hearings Committee, Summary of Activity, 1998-2010
 - Faculty Hearings Committee, General Protocol for Discharge Decisions
 - Prof. Aimee Wall (Chair, 2010-11)
 - The Role of the University Counsel's Office
 - Ms. Leslie Strohm, Vice Chancellor and General Counsel
- 4:15 Exploring Options in a Confidential, Impartial, and Safe Space: The University Ombuds Office
- Mr. Wayne Blair, University Ombuds
 - Prof. Laurie Mesibov, University Ombuds
- 4:30 Open Discussion: All Topics and Speakers
- Faculty Council and members of the UNC voting Faculty (members must be present to present questions or comments)

5:00 Adjourn

November 12, 2010

Meeting of the Faculty Council

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Sonja Haynes Stone Center for Black Culture and History

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Professor McKay Coble, Chair of the Faculty, presiding

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3:40 The Faculty Grievance and Hearings Process: Overview and Committee Annual Reports

- History and Structure of the Faculty Grievance and Hearings Process ([See PowerPoint Presentation here](#))
 - Prof. Joe Ferrell, Secretary of the Faculty
- The Faculty Grievance Committee: Role and **Annual Report**
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 - Other background documents:
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- The Role of the University Counsel's Office

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Minutes

JOURNAL OF PROCEEDINGS OF THE FACULTY COUNCIL

November 12, 2010

The Faculty Council of the University of North Carolina at Chapel Hill convened November 12, 2010, at 3:00 p.m. in the Hitchcock Multipurpose Room of the Souja Haynes Stone Center for Black Culture and History.

The following 65 members and observers attended: Anderson, Bachenhaimer, Bagnell, Balaban, Bechtel, Betts, Blalock, Brice, Brown, Carlson, Chapman, Coble, Copenhaver, Crowder, DeSaix, Eaker-Rich, Earp, Egan, Ferrell, Friga, Gehrig, Gilliland, Greene, Gullledge, Guskiewicz, Hayslett, Irons, Koomen, Kramer, Krome-Lukens, Lee, Leonard, Linden, McMillan, Mieczkowski, Milano, Moracco, Morris-Natschke, Morse, O'Shaughnessy, Palmer, Paul, Persky, Powers, Renner, Richardson, Schoenbach, Shea, Starkey, Stearns, Steponaitis, Stewart, Stotts, Swogger, Szypszak, H. Thorp, J. Thorp, Thrailkill, Tisdale, Tobin, Toews, ●ter, Van Tilburg, Wallace, Webster-Cyriague, and Yankaskas.

The following 19 members were granted excused absences: J. Brown, Chen, Cohen, Cornell, Fuchs-Lokensgar, Gallippi, Gerber, Heenan, Hess, Lopez, Lund, Maffey-Kipp, Mayer, Miller, New, Papanikolas, Rodgers, Schoenfisch, and Sunnaborg.

The following 6 members were absent without excuse: Catellier, Dilworth-Anderson, Gerhardt, Gilland, Shanahan, and Verkerk.

Call to Order

Chair of the Faculty McKay Coble called the meeting to order promptly at 3:00 p.m.

Chancellor's Remarks

Chancellor Thorp named several colleagues who have recently received national recognition for outstanding accomplishments.

There were no questions or comments.

Provost's Remarks and Question Period

Provost Bruce Carney reported briefly on the following items:

● Academic Plan is now in the discussion stage. Co-Chairs William Andrews and Sue Estroff are having one-on-one sessions with each of the academic deans. He said that the basic plan is essentially complete. The report itself will take longer but is moving along.

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A task force appointed by former Provost Bernadette Gray-Little has been conducting a study of how overhead funds from external grants should be distributed. The task force's findings and recommendations are now being examined for dollar consequences at the University level. Next, an analysis of consequences at the unit level will be done.

A salary equity committee requested by the most recent report of the Committee on the Status of Women has been appointed and is at work. It is chaired by Prof. Laurie McNeil.

The search for vice chancellor for research has begun; a search for dean of the School of Journalism and Mass Communication, chaired by Dean James Dean, will begin soon; the search for dean of the School of Dentistry is nearly completion; a search is in progress for a new associate provost for global affairs; and work is beginning on a search for associate provost for diversity and multicultural affairs.

The Office of State Budget & Management anticipates a \$3.5 billion shortfall in the state budget due to elimination of federal stimulus funding and expiration of the most recent sales tax increase. Although the state's economy is improving, the 2011-12 fiscal year will be difficult financially. A tuition increase is in prospect.

Scholars At Risk Program

Prof. Altha Cravey (Geography) described the Scholars at Risk Network. The program is based at New York University. It is an international network of individuals and institutions devoted to promoting academic freedom and defending the human rights of scholars worldwide. Carolina has been involved in the program since 2009.

Prof. Cravey introduced Prof. Abdul Satar Jawad, professor of comparative literature and middle eastern studies at Duke University, and a former member of the faculty of the University of Baghdad. Prof. Jawad told of his persecution by the government of Iraq and spoke warmly of his scholarly work in translating Shakespeare's sonnets and the works of T.S. Eliot. Prof. Jawad received his Ph.D. from City University, London.

The Faculty Grievance and Hearing Process

Secretary of the Faculty Joseph Ferrell introduced a panel discussion of the faculty grievance and hearing processes with a PowerPoint presentation describing the structure of the Faculty Hearings Committee and the Faculty Grievance Committee and detailing the jurisdiction of each. A link to the presentation is available below.

Prof. Beverly Taylor (English & Comparative Literature) described the work of the Faculty Grievance Committee, which she chairs.

Prof. Aimee Wall (Government) described the work of the Faculty Hearings Committee, which she chairs.

General Counsel Leslie Strohm described how the Office of General Counsel interacts with the Hearings and Grievance Committees.

Prof. Laurie Mesibov and Mr. Wayne Blair described how the University Ombuds Office responds to requests for assistance.

As the conclusion of the above presentations, Chair of the Faculty Coble opened the floor for general discussion.

Prof. Steven Bachenheimer (Microbiology & Immunology) said that he was still a bit perplexed at why the Council had gone into closed session in October to discuss a specific case that had been before the Hearings Committee. He felt that the

administration's position had been presented to the Council without an opportunity to hear from the other side. Chancellor Thorp replied that he would have preferred not have had this matter on the Council's agenda, but he felt that reports that had appeared in the Chronicle of Higher Education had raised questions that needed elucidation.

● Margaret O'Shaughnessy (English & Comparative Literature) asked about student allegations of harassment by a faculty member. Ms. Strohm replied that there is a specific policies governing allegations of harassment. There are different procedures for students and employees (including faculty). A student who alleges harassment has several options. If the charge is that a faculty member has engaged in sexual harassment of a student, the student should first contact the department chair. If the case appears to warrant demotion or discharge, it would eventually go to the Faculty Hearings Committee.

Prof. Wesley Wallace (Emergency Medicine) asked for clarification as to the General Counsel's involvement with the Grievance and Hearings Committees. Ms. Strohm replied that in the seven years she has been General Counsel, she has never attended a meeting of the Grievance Committee. She said that the General Counsel attends meetings of the Hearings Committee only if the faculty member being charged is represented by counsel and in that situation, the General Counsel represents the University.

Prof. Vin Steponaitis (Anthropology) asked for comment on how the committee chairs thought the process might be improved. Prof. Taylor replied that it would be good to have more publicity about what the committees are set up to do. She said that all too often faculty members find out about the Grievance Committee and its procedures so late that it is difficult to mediate a resolution. Prof. Wall said that the Hearings Committee needs administrative support. She also would like to see a "single port of entry" for faculty members who feel aggrieved but don't know where to turn.

Prof. Thomas Egan (Surgery) said that he had reviewed 12 years of Hearings Committee reports and could find no instance of a committee finding of "not guilty" of the original charge but recommending a lesser sanction. Prof. Ferrall said he was award of at ● one such case in which the committee found no grounds for discharge but recommended that the faculty member be suspended without pay for one year and encouraged to seek counseling. He said that Chancellor Hooker rejected that recommendation and the faculty member was discharged.

Prof. Egan asked whether there is a limitation on the number of witnesses that a faculty member may call. Prof. Wall said that the committee places a limit on the amount of time devoted to a particular case, but not on the number of witnesses.

Prof. Jane Thrailkill (English & Comparative Literature) asked about the responsibilities of the grievant in a case brought to the Grievance Committee. Prof. Taylor said that the grievant must be clear about exactly what the complaint is. Also, she said, the grievant must identify a specific policy or legal requirement that is alleged not to have been observed.

Prof. Andrew Bechtel (Journalism & Mass Communication) asked about how often cases are settled before hearing and wondered whether the Ombuds Office played some role in such cases. Mr. Blair replied that the Ombuds Office would not be involved in any formal settlement agreements, but that from time to time the Office has facilitated such.

A faculty member asked whether there is a policy that protects "whistle blowers." Ms. Strohm replied that there is such a University policy and also a state law to the same effect.

Prof. Coble asked whether committee members receive any kind of training. Prof. Taylor said that there is not, but she recommended that committee chairs meet with the General Counsel before embarking on their term.

● Victor Schoenbach (Epidemiology) expressed concern about the extent to which faculty members are held responsible for information security. He said that he understood the intent of the policies in place, but that the technical means available to faculty members to insure compliance is often very limited. Chancellor Thorp replied that this is a massive issue that universities

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across the nation and world are facing. He said that Carolina is moving rapidly to address these concerns.

Chancellor Thorp thanked the panel for its comments and said that he was pleased that this item was on today's agenda.

Adjournment

Its business having been completed, the Council adjourned at 4:50 p.m.

Joseph S. Ferrell

Report of the Faculty Grievance Committee for 2009-2010

The Faculty Grievance Committee held two hearings in 2009-2010.

The first, involving a faculty member and a department chair in the School of Education, involved charges of bullying and public and professional embarrassment and alleged racial bias. The committee found no basis for the grievance but recommended practices that might improve professionalism and collegiality in department.

The second, involving faculty in the School of Dentistry, involved allegations of a pattern of unfair treatment with regard to salary and advancement. The committee recommended several steps that the chair might take to improve transparency with regard to setting salaries as well as to improve communications, and an alternative procedure for handling the aggrieved party's reappointment review.

Two faculty members in the School of Medicine consulted with the committee's chair about the possibility of filing grievances, one in a case involving a salary reduction and the other with regard to unfair preferment of an individual over better qualified colleagues. Ultimately, neither filed a grievance.

A third faculty member, in the College of Arts and Sciences, consulted with the committee's chair about filing a grievance over a committee report produced in an Administrative Review of charges of sexual harassment. The aggrieved party did not file a grievance before the end of the academic year.

Submitted by Beverly Taylor, Committee Chair for 2009-10

Faculty Hearings Committee Annual Report November 2009

MEMBERS 2009-2010: James Donohue (Medicine, 2011); Robert Duronio (Biology, 2011); Rosann Farber (Pathology & Lab Medicine, 2010); Lynn Glasscock (Music, 2012); Aimee Wall (School of Government, 2012); Richard Whisnant, Chair (School of Government, 2010).
MEMBERS 2008-2009: Larry Benninger (Geology, 2009); James Donohue (Medicine, 2011); Robert Duronio (Biology, 2011); Rosann Farber (Pathology & Lab Medicine, 2010); Zhi Liu (Dermatology, 2009); Richard Whisnant, Chair (School of Government, 2010).

COMMITTEE CHARGE: According to *The Faculty Code of University Government*, the Faculty Hearings Committee is composed of six faculty members with permanent tenure, serving three-year terms. The committee performs functions assigned to it in the *Trustee Policies and Regulations Governing Academic Tenure*. Those duties include conducting hearings (a) on the request of a faculty member who has been notified before the end of his or her tenure or term of appointment that the University intends to discharge him or her, and (b) on the request of faculty member for review of a decision not to reappoint him or her upon expiration of a probationary term of appointment.

NEW MATTERS REFERRED TO THE COMMITTEE IN 2009-10:

The Committee received a request in March 2009 for a hearing on the non-reappointment of a probationary (non-tenured) faculty member. The Committee requested additional information from the Chancellor and the petitioner and, after considering the additional information, concluded that the request did not meet the tenure regulations' standards for holding a hearing. In the case of non-reappointment of probationary faculty members, the standards provide:

Such review may be had solely to determine whether the decision not to reappoint was (1) based upon any of the grounds stated to be impermissible in subsection a. of this Section 4, or (2) affected by material procedural irregularities. Whether procedural irregularities occurred shall be determined by reference to those procedures which were in effect when the initial decision not to reappoint was made and communicated.

In the March 2009 case, the petitioner complained about the choice of outside evaluators for the reappointment package, but the procedure for selecting evaluators appeared to the Committee to match the University unit's stated procedures for reappointment review.

The Committee received a request in August 2009 for a hearing on discharge of a tenured faculty member. The petitioner, through counsel, requested additional time to work out apparently voluminous pre-hearing discovery issues with the University, and the University and Committee agreed to wait until document production was complete before setting a hearing date. To date, the Committee has not yet been advised that document production is complete.

RECOMMENDATIONS FOR ACTION BY FACULTY COUNCIL: NONE

Respectfully submitted,
Larry Benninger
James Donohue
Robert Duronio
Rosann Farber
Zhi Liu
Richard Whisnant, Chair

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Submitted by Beverly Taylor, Committee Chair for 2009-10

Faculty Hearings Committee

Annual Report

November 2010

MEMBERS 2009-2010: James Donohue (Medicine, 2011); Robert Duronio (Biology, 2011); Rosann Farber (Pathology & Lab Medicine, 2010); Lynn Glasscock (Music, 2012); Aimee Wall (School of Government, 2012); Richard Whisnant, Chair (School of Government, 2010).

MEMBERS 2010-2011: James Donohue (Medicine, 2011); Robert Duronio (Biology, 2011); Lynn Glasscock (Music, 2012); Joanne Hershfield (Women's Studies, 2013); Melissa Saunders (Law, 2013); Aimee Wall (School of Government, 2012);

REPORT PREPARED BY: Aimee Wall, Chair 2010-11 and reviewed by the 2010-11 committee members.

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NEW MATTERS REFERRED TO THE COMMITTEE IN 2009-10:

The committee received a request in November 2009 for a hearing on the University's intention to discharge a tenured faculty member on the grounds of (1) neglect of duty and (2) misconduct. The Committee held a hearing in May 2010. At the conclusion of the hearing, the parties agreed to keep the record open for a limited period of time for the submission of additional witness statements and written closing arguments. The Committee issued a written decision on June 18, 2010 disagreeing with the University's decision to discharge the faculty member and recommending that the administration consider imposing sanctions instead. The Chancellor accepted the Committee's recommendation and reversed the University's decision to discharge.

The Committee received a request in February 2010 for a hearing on the University's intention to impose serious sanctions (suspension without pay for a period of time) on a tenured faculty member. The Committee scheduled a hearing, which was then postponed while the faculty member changed attorneys. The University settled with the faculty member just prior to the scheduled hearing, so the matter did not come to a hearing.

The Committee received a request in April 2010 for a hearing on a decision not to confer tenure on a professor with a probationary appointment. The Committee concluded that the request did not meet the tenure regulations' standards for holding a hearing. In the case of non-reappointment of probationary faculty members, the standards require there to be an allegation of discrimination or material procedural irregularities to convene a hearing. In the April 2010 case, the petitioner complained about "material procedural irregularities," but the Committee concluded that the procedure followed by the unit appeared to match its stated process for review of junior faculty members.

RECOMMENDATIONS FOR ACTION BY FACULTY COUNCIL: NONE

Respectfully submitted,
James Donohue
Robert Duronio
Lynn Glassock
Joanne Hershfield
Melissa Saunders
Aimee Wall, Chair

FACULTY HEARINGS COMMITTEE

Report Year	Summary of Committee Activity
1998	One hearing requested and held (reappointment). Found in favor of the University (i.e., department's decision was not affected by procedural irregularities and was not based upon discriminatory grounds).
1999	Three hearing requests (reappointment). One request denied; one request withdrawn; one hearing. Found in favor of the faculty member (denial of tenure affected by procedural irregularities; recommended corrective actions for the academic unit which were accepted).
2000	One hearing request (related to 1999 hearing); matter settled before hearing.
2001	<i>[Gap in reports]</i>
2002	One matter pending but no hearings.
2003	One hearing request; settled prior to hearing.
2004	One hearing request (denial of tenure). Found in favor of the faculty member (decision affected by a procedural irregularity). Recommended corrective action.
2005	Three hearing requests (reappointment and denial of tenure). One request denied by committee (facts did not support claim). Two requests withdrawn (one settled in mediation; one faculty member resigned).
2006	One hearing request (discharge of tenured faculty member). Request withdrawn prior to hearing.
2007	One hearing requested and held (discharge of tenured faculty member on the grounds of being unfit to continue as a member of the faculty). Found in favor of the faculty member. Chancellor rejected the committee's reasoning and requested an additional hearing but the committee refused. Matter later settled. Faculty member resigned.
2008	Two hearings requested (discharge of fixed-term faculty member; reappointment). Discharge matter settled prior to hearing. Hearing held re: reappointment decision. Found in favor of the University (reappointment decision not made on impermissible grounds).
2009	Two hearing requests. One request denied (reappointment; facts did not support claim of procedural irregularities). One matter (discharge) continued into 2010.
2010	Three hearing requests (discharge, serious sanctions, denial of tenure). Matter related to sanctions settled prior to hearing. Hearing held in the discharge matter. Found in favor of the faculty member on discharge; demotion recommended. University agreed with committee's conclusions and recommendation. Hearing request denied in matter related to denial of tenure (facts did not support claim of procedural irregularities).

11/11/10

UNC-CHAPEL HILL FACULTY HEARINGS COMMITTEE

GENERAL PROTOCOL FOR CONDUCT OF HEARINGS
DECISION TO DISCHARGE
2010

[NOTE: THIS IS A GENERAL DOCUMENT INTENDED TO GIVE A SUMMARY TO ALL PARTIES OF HOW THE UNC FACULTY HEARINGS COMMITTEE PREFERENCES TO STRUCTURE HEARINGS THAT INVOLVE A UNIVERSITY DECISION TO DISCHARGE A FACULTY MEMBER. THE EXACT PROTOCOL FOR ANY GIVEN HEARING MAY VARY, DEPENDING ON THE MATTERS TO BE DECIDED AND REQUESTS BY THE PARTIES. A SPECIFIC PROTOCOL DOCUMENT FOR A PARTICULAR HEARING WILL BE DRAFTED AFTER THE HEARING IS SCHEDULED AND THE PARTIES HAVE HAD A CHANCE TO REQUEST CHANGES IN THIS DOCUMENT. PLEASE FORWARD ANY REQUESTS FOR CHANGES TO THE COMMITTEE CHAIR.]

THE SCOPE OF REVIEW /BURDEN OF PROOF

Section 603(8) of the Code of the Board of Governors provides that the University has the burden of proof and that, in evaluating the evidence, the Faculty Hearings Committee should use the standard of "clear and convincing" evidence in determining whether the institution has met its burden of showing that permissible grounds for serious sanction exist and are the basis for the recommended action." The Faculty Hearings Committee adopts this burden of proof and standard in its hearing protocol for 2009-2010.

WITNESSES AND EXHIBITS

In the spirit of avoiding unfair surprise, and to facilitate the hearing process, the parties must provide a list of witnesses and copies of exhibits they intend to introduce at the hearing to each other by delivery to the street address of counsel for each party or, if the discharged faculty member is proceeding *pro se*, to the home address for the faculty member, and to the committee chair c/o the receptionist at the UNC School of Government (with five copies for other committee members), by or before 5:00 pm of a day at least two business days prior to the date set for the hearing. The failure to list a witness, or to provide advance copies of all exhibits, will not preclude a party from calling the witness or from introducing a document. However, the opposing party may be granted a temporary adjournment of the hearing if the committee deems a delay necessary for that party to respond adequately to the new evidence. If an adjournment is granted, the committee will reconvene at a time convenient to its members. It is important to note that the committee has no authority to compel the attendance of witnesses. However, the chair may request that all witnesses who are employees of the university are given permission to attend the hearing.

THE HEARING

CALL TO ORDER—QUORUM

The chair will call the hearing to order, determine whether a quorum exists, and explain procedures. A quorum consists of at least three members of the total committee membership.

PARTICIPATION IN THE HEARING

Continuing participants in the hearing will include the members of the Faculty Hearings Committee, the University General Counsel as adviser to the Faculty Hearings Committee, the faculty member and her/his counsel, and the officer of administration who made the decision and her/his counsel. The hearing will be closed to others, with the exception of witnesses when they are testifying and a court reporter or other transcriber.

OPENING REMARKS

Each party will be provided with the opportunity to make opening remarks limited to five minutes each. The purpose of opening remarks is to orient the committee to the nature of the case and to the facts the party intends to establish. Opening remarks are not evidence.

THE UNIVERSITY'S CASE

At the conclusion of opening remarks, the University may present evidence (witnesses, documents, testimony, etc.) in support of its decision to discharge. All witnesses may be questioned by the representatives of the University and the faculty member, and by members of the committee. Under ordinary circumstances, the University will be limited to a total of two hours to present its case.¹ The University (and counsel) may reserve a portion of those two hours for rebuttal at the conclusion of the faculty member's evidence. If the University wishes to reserve rebuttal time, the University must notify the committee chair of that fact at the beginning of the hearing.

THE FACULTY MEMBER'S CASE

The faculty member may present evidence (witnesses, documents, testimony, etc.) in his/her defense and to rebut the contentions of the University. All witnesses may be questioned by the representatives of the faculty member and the University, and by members of the committee. The faculty member will be limited to a total of two hours to present his/her case.¹

THE UNIVERSITY'S CASE IN REBUTTAL

At the close of the faculty member's case, the University may submit evidence limited to the rebuttal of the faculty member's evidence, if the University has reserved a portion of its time as prescribed above.

CLOSING REMARKS

After presentation of all the evidence, the University may make closing remarks to the committee, followed by the closing remarks of the faculty member. Because the University bears the burden of proof, the University may also make brief final remarks in response to the faculty members' closing. Closing remarks shall not exceed fifteen minutes per side, including any response by the University.

¹ There is no obligation to use the full two hours and both parties are encouraged to be parsimonious in their presentations. Conversely, the committee has discretion to extend the time limit in extraordinary circumstances such as where the factual background of the charge or charges is complex. Committee questions and cross-examination will not be charged against this time. Both parties will be given approximately equal time to present their case.