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of
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COMMITTEE ON FACULTY WELFARE AND PRIVILEGES

IN THE MATTER OF:

DR. JAN BLITS, PROFESSOR OF EDUCATIONAL STUDIES

VS.

DR. RALPH FERRETTI, ASSOCIATE PROFESSOR OF EDUCATIONAL STUDIES

DR. ROBERT HAMPEL, ASSOCIATE PROFESSOR OF EDUCATIONAL STUDIES

DR. DAVID KAPLAN, ASSISTANT PROFESSOR OF EDUCATIONAL STUDIES

DR. RICHARD VENEZKY, PROFESSOR OF EDUCATIONAL STUDIES

DR. VICTOR MARTUZA, CHAIR, EDUCATIONAL STUDIES

FINDINGS AND RECOMMENDATIONS

I. **Procedural Issues**

In a memorandum dated September 17, 1990, Dr. Jan Blits requested a Step 3 hearing before the Committee on Faculty Welfare and Privileges, alleging prejudice and unfairness in the evaluation of his scholarly work, published jointly with Dr. Linda Gottfredson, when she was a candidate for promotion to Professor in 1989-90. This complaint is against Dr. Victor Martuza, Chair of the Department of Educational Studies, and the members of the Promotion and Tenure Committee (1989-90) of that department. It is also alleged that prejudiced and unfair actions in the evaluation of papers jointly published with Dr. Gottfredson has compromised Dr. Blits' prospects should he apply for promotion to Professor. This complaint was joined with a complaint from Dr. Linda Gottfredson and heard by a hearing panel of the Committee on Faculty Welfare and Privileges hearing panel on Friday, February 22, 1991. A separate set of findings was prepared for both initiators. Present at the beginning of the hearing were the initiator (Dr. Blits); Mr. Steven Jenkins, an advisor chosen by the initiator; Professor George Cicala, an observer chosen by the initiator; and Dr. Gottfredson, who had initiated a related complaint against the same respondents. The respondents included Dr. Ralph Ferretti, who also represented the other members of the Departmental Promotion and Tenure Committee, and Dr. Victor Martuza. The Hearing Panel consisted of Dr. Gordon J. DiRenzo, Dr. Gordon Bonner, Dr. Robert Stark, Dr. Monika Shafi, Dr. David Sheppard, Dr. David Haslett, first alternate, and Dr. Robert Day, second alternate. As will be documented subsequently, both of the respondents left the hearing after the

discussion of procedures. Pertinent background sections have been included in both findings, since this initiator (Dr. Blits) alleges that his evaluation by the Department Promotion and Tenure Committee and the Department Chairman during his prospective promotion process would probably have been similar to that experienced by Dr. Gottfredson.

A. Allegations of Procedural Violations

Prior to the hearing, the respondents alleged that, in connection with this grievance, the following procedural violations had occurred.

1. The Committee on Faculty Welfare and Privileges chose to ignore the difference between a "grievance" and a "complaint."
2. Dr. Blits improperly initiated a Step 3 grievance without first having gone through Steps 1 and 2 of the Grievance Procedure.
3. The Chair of the Committee on Faculty Welfare and Privileges had improperly failed to appoint a subcommittee of five persons to hear Dr. Blits' complaints, as required by the Faculty Handbook (p. I-17).
4. Dr. Blits improperly chose an attorney from outside the University community as his advisor for this hearing.

The first order of business during the procedural section of the hearing was a ruling on the questions raised by the respondents. This Committee ruled as follows.

1. Whether what the initiator brings before this Committee is referred to as a "complaint" or a "grievance" is not significant. The only relevant distinction is whether the complaint/grievance is one that alleges a violation of the Collective Bargaining Agreement. This Committee is charged with hearing complaints/grievances that do not allege a violation of the Collective Bargaining Agreement. Since Dr. Blits' complaint does not allege a violation of the Collective Bargaining Agreement, it is within the proper jurisdiction of this Committee.

2. Dr. Blits' decision to bring his complaint directly to this Committee without having gone through Steps 1 and 2 of the Grievance Procedure does not violate due process. An initiator may choose to waive Steps 1 and 2 of the Grievance Procedure, thereby bringing his or her complaint directly to this Committee. That this is a correct interpretation of the Collective Bargaining Agreement has been unequivocally confirmed by the University's chapter of the American Association of University Professors (see Documentation). Moreover, this Committee believes that, for the following reasons, Dr. Blits' decision to bring his complaint directly to this Committee was appropriate. Step 1 is a hearing before the initiator's departmental chair. Step 2 is a hearing before the Dean of the initiator's college. In this case, the initiator's department chair is one of the respondents. Therefore, a Step 1 hearing is inappropriate since one of the parties to a dispute cannot also serve as a judge in the

dispute. Furthermore, the initiator has presented evidence, which this Committee finds convincing, that the Dean of the initiator's college openly supports the chair in this dispute. In this case, a Step 2 hearing, we believe, would serve little purpose other than to delay even further the initiator's opportunity for an impartial hearing.

3. Contrary to what the respondents have alleged, the chair of this Committee in fact appointed a panel of five persons to hear Dr. Blits' complaint. As is customary, the two remaining members of this Committee participated in the hearing as alternates, in case one or more of the five members of the subcommittee, for whatever reason, become unable to continue with the hearing or with the deliberation afterwards.
4. This Committee granted Dr. Blits' request to have, as his advisor in this hearing, a person who is an attorney. To permit attorneys to be advisors to parties is consistent with the Committee's practice in previous hearings. It is also consistent with paragraph III-N-1 of the Faculty Handbook, which states that any party in a hearing before this Committee "shall be permitted to have an advisor of his own choosing in his/her representations." Because of an attorney's knowledge of the law and of rules of evidence, parties in a formal court proceeding who are represented by attorneys have a significant advantage over parties who are not so represented. But hearings before this Committee are not formal court proceedings. Our hearings are constrained only by whatever is fair and reasonable and in accordance

with University policy. This Committee does not believe that attorneys are necessarily any more qualified in knowing or presenting what is fair and reasonable, and in accordance with University policy, than are members of the University community. Therefore, we do not believe that, in these hearings, it is necessarily any advantage to be advised by an attorney. This Committee reserves the right, of course, to restrict the participation of advisors, be they attorneys or not, if there exist special circumstances in which the interests of a fair hearing may be better served by doing so. The respondents, however, have not presented this Committee with reasons for believing that any such special circumstances exist in this case.

Upon hearing this Committee's ruling on the last of the above four procedural matters that they had raised, Dr. Martuza and Dr. Ferretti refused to participate further in this Committee's hearing and left the room.

If the respondents to a complaint were able to bring a hearing to a halt whenever they wanted by merely walking out, such an action would render it impossible for any Committee to carry out the duties with which it has been charged by the University Faculty Senate. Therefore, this Committee proceeded with the hearing without the presence of any of the respondents. As the respondents were leaving the hearing room, they were informed by the Chair of the Committee that the hearing would continue. The respondents said "We understand" before they left the room.

Prior to leaving, the respondents requested that this Committee enter two lengthy documents (69 pages taken together) into the record of these

proceedings--documents in which the respondents reply in part to Dr. Blits' and Dr. Gottfredson's complaints. These documents were ruled "untimely," since Paragraph IB of the Hearing Procedures of this Committee requires that any documents to be considered by this Committee must be made available to all parties at least "five working days before the initial date of any hearing." The reason for this requirement is to allow the opposing parties and the Committee sufficient time to examine the documents and prepare their case for the hearing.

As a result of the respondents' refusal to participate in the substance of this hearing and thus to answer whatever questions might have been posed by the initiators and this Committee, reaching an unequivocal conclusion on some of the allegations brought by Dr. Blits was made impossible. On the other hand, this Committee found the evidence to be sufficient to reach conclusions on certain other allegations brought by Dr. Blits.

II. Unfairness in Department Promotion Proceedings

A. Background and Allegations

Dr. Blits' complaint relates to Dr. Gottfredson's complaint in a special way. The allegation of unfairness is based in large part upon the evaluation of Dr. Gottfredson's scholarly performance by the Department Promotion and Tenure Committee and the Department Chair in 1989. This evaluation focused on two papers on which Dr. Blits and Dr. Gottfredson are co-authors. The initiator in this case (Dr. Blits) alleges that the alleged unfair evaluation of Dr. Gottfredson would also apply to him whenever he submits his credentials for

promotion to Professor. It is necessary, therefore, to include at this point the background of the Gottfredson complaint in order to provide a context for the Blits complaint.

In 1989 the Department Promotion and Tenure Committee recommended that Dr. Gottfredson not be promoted to the rank of Professor, on the grounds that her scholarly work did not meet the Department's requirements. The Chair, in a separate recommendation, supported the Promotion and Tenure Committee's report on her scholarship, and also recommended that she therefore not be promoted. Just one year earlier, however, the Promotion and Tenure Committee, and the Chair, had both found that her scholarship clearly did meet the requirements for promotion. Dr. Gottfredson's dossier on scholarship was the same in 1989 as it had been one year earlier, except for the addition of two articles co-authored with Jan Blits, the initiator in this complaint. Eight of the nine outside reviewers of Dr. Gottfredson's scholarship that the Department had solicited were very favorable, and recommended her promotion without qualification. One reviewer, the only one whose review had not been available to the Promotion and Tenure Committee the previous year, was unfavorable. In spite of the Promotion and Tenure Committee's and the Chair's negative recommendation, Dr. Gottfredson was promoted. It should be noted that the report of the College Promotion and Tenure Committee characterized the one negative review in question as "unprofessional."

B. Dr. Gottfredson's Finding

This Committee has carefully examined the letters of review for Dr. Gottfredson, as well as the reports of the Promotion and Tenure Committee and the Department Chair. The conclusions of this examination are contained within the report on the Gottfredson case and will not be repeated here. The findings in Dr. Gottfredson's report, however, will be summarized. They are important for they comment directly on the environment that is likely to surround the other author (and initiator of this complaint) of these controversial papers whenever he requests consideration for promotion to Professor. The Committee's findings state:

The report of the P&T Committee neither accurately nor honestly reflects the support of the outside reviewers for Dr. Gottfredson's scholarship. This distortion goes beyond any reasonable range for academic judgement. It violates the requirements for fairness in evaluating documentation for promotion and tenure, as alleged by Dr. Gottfredson in her complaint. Dr. Gottfredson's work is praised highly by eight of nine outside reviewers, all eight of whom have impressive credentials and recommend Dr. Gottfredson's promotion without qualification. Indeed, their reviews must be read to appreciate fully the extent to which these reviews praise her scholarly work. Yet, not one of their numerous, extremely positive comments is cited in the P&T Committee's report; this report cites only six negative comments. Moreover, these six negative comments are made to appear as if they come from a number of different

reviewers when, in fact, four of the six come from the lone, negative reviewer. The other two comments are quoted out of context, making them appear to be far more negative than they really are...

There is insufficient basis, in the P&T Committee's report, for what it calls a "perhaps more serious problem" with Dr. Gottfredson's research--an alleged "recent tendency to misrepresent the positions of others." The only evidence the P&T Committee cites in support of this very serious charge is that in her two recent papers co-authored with Jan Blits she (and Dr. Blits) misrepresented "the basic findings of the (NAS) panel report"--a point, the P&T Committee substantiates by an appeal (once again) to the one negative reviewer. The P&T Committee does not even specify exactly how these findings have allegedly been misrepresented...

The evidence that the P&T Committee cites for Dr. Gottfredson's alleged "recent tendency to misrepresent the position of others" is, therefore, far too weak to substantiate such a sweeping charge. If this Committee, from its own readings of Dr. Gottfredson's recent work, had more evidence than this single, alleged example, then it should have made this evidence known in its report. The evidence, if any, for charges as serious as misrepresentation must be made explicit. As the Faculty Handbook (p. III-K-3) states, "the reasons

for adverse recommendations must be explained to the candidate as specifically and completely as possible and reasonable."

C. The Controversial Aspect of the Blits-Gottfredson Co-authored Papers

The two new scholarly papers present in the 1989 Gottfredson promotion dossier, but not in the 1988 dossier, are on the topic of "race-norming," which is the practice of reporting candidates' scores on employment tests not in relation to all other candidates, but in relation only to those of the same race--a practice designed to benefit Blacks and other minorities by helping them to achieve equal opportunity. In these articles, Drs. Gottfredson and Blits conclude that, contrary to what the NAS panel says, race-norming "represents a giant step backwards in the struggle for human dignity and equality." This conclusion is very controversial and, among many academics, unpopular. Finally, it should be mentioned that research grants had been received by Drs. Gottfredson and Blits from a private organization, the Pioneer Fund, and that this Fund has been alleged by some members of the campus community of having racist objectives.

After a careful examination of the reviewers' letters and the reports of the Promotion and Tenure Committee and the Department Chair, the Committee on Faculty Welfare and Privileges believes that a strong prima facie case has been established that the respondents have violated Dr. Gottfredson's academic freedom as defined in the Faculty Handbook. Because the respondents refused to participate in the hearing, the Committee on Faculty Welfare and Privileges provides two scenarios in an attempt to explain the behavior of the respondents:

1. Either the Promotion and Tenure Committee and Chair really do, in spite of everything, object only to alleged scholarly deficiencies in these articles, in which case it must be pointed out that, in their reports, this objection is not fairly presented and the reasons for it are not adequately explained to the candidate, as required by p. III-K-3 of the Faculty Handbook; or,
2. Alternatively, the Promotion and Tenure Committee and the Chair are objecting on ideological grounds to the conclusions she is reaching, in which case the pressure they are exerting upon her to change the character and quality of her work is a clear and very serious violation of her academic freedom.

III. The Finding in Dr. Blits' Complaint

The Committee on Faculty Welfare and Privileges finds that the evaluations by the Promotion and Tenure Committee and the Department Chair of the two recent articles that the initiator co-authored with Dr. Gottfredson are unfair, fail to provide adequate explanation for the accusation of misrepresentation, and unjustifiably threaten the initiator's academic freedom. The rationale for this finding has been stated in II.C of this opinion, and it is set out in full in this Committee's opinion in the case of Dr. Gottfredson.

The Committee on Faculty Welfare and Privileges finds that there is reason for serious concern that the initiator would experience a pattern of unfairness and bias on the part of the Departmental Promotion and Tenure Committee and

Department Chair similar to that experienced by Dr. Gottfredson, should he submit his credentials for consideration for promotion to Professor in his department.

Because the respondents refused to attend the substantive part of the hearing and we, therefore, were unable to question them about other allegations made by the initiator, we are unable to reach conclusions on these other allegations. This situation, however, should not be construed as a finding in favor of the respondents on any of these other allegations.

IV. Relief

The following is the initiator's statement of relief which he seeks:

1. Public censure of the Promotion and Tenure Committee and the Chair for their misconduct by the Faculty Welfare and Privileges Committee and the Provost. Copies of the censure should be placed in the personnel files of those in question and should be distributed to the Educational Studies faculty.
2. Restitution of my lost time and money. Since I have already lost at least of quarter of a year's time in defending my work against the Committee's and the Chair's unfair and biased charges, this restitution should include (1) a 25% reduction in my work load for one year, i.e., a 50% reduction in my teaching responsibilities for a year (with full pay, benefits, etc.). In addition, since I have been forced to delay my bid for promotion for at least a year, the restitution should also include (2) payment of my loss in salary during this period, including

the salary increment I would have received (\$2750) for promotion to full professor.

3. The Chair should be warned by the Faculty Welfare and Privileges Committee and by the Provost not to continue his pattern of hostility toward me, and the warnings should be made public to the Department.

The Committee on Faculty Welfare and Privileges does not support all of these requests for relief. It is not appropriate to request censure for behavior that has not yet occurred, no matter how likely it may be that that behavior will eventually occur.

We regret the time and money that the initiator has lost in defending himself against what we have found to be unfair and unjustifiably threatening reports on the scholarly work he did jointly with Dr. Gottfredson, and we sympathize with his situation. Restitution for time and trauma spent in the preparation of a grievance would set a precedent that is not, in our view, appropriate. The initiator is not entitled to compensation for not being promoted, since we are not able to assume that the initiator would have been promoted had he applied.

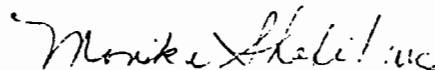
The Committee on Faculty Welfare and Privileges recommends that the Provost communicate its findings to the Chair and members of the Department's Committee on Promotions and Tenure regarding the faulty procedures which they used for faculty evaluation.

There is a clear sense that a substantial element of the Department and perhaps others in the College of Education hold strong resentment against the initiator for the professional embarrassment to the unit that this grievance has caused. It is highly questionable whether the credentials of the initiator could be evaluated for promotion to Professor in an unbiased and fair fashion in this circumstance. We, therefore, recommend that the Provost form a Promotion and Tenure Committee for Dr. Blits that would be composed of two members of the University Faculty outside of the College of Education and three members selected from the initiator's discipline who are members of academic departments outside of the University of Delaware. The Chair of this Committee, designated by the Provost, would report directly to the College of Education Promotion and Tenure Committee in the matter of a recommendation for promotion to the rank of Professor.

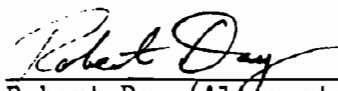
Aside from the issue of promotion, there remains the question of whether the initiator can be expected to continue to function effectively as a faculty member in a department where such a level of animosity exists. The Committee on Faculty Welfare and Privileges recommends that the Provost explore the possibility of relocating the initiator to a different academic unit at the University of Delaware.



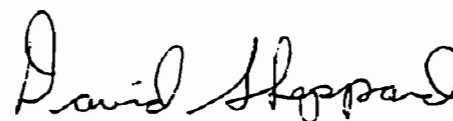
Gordon R. Bonner
Associate Professor
Business Administration



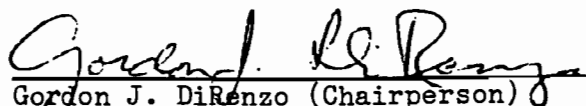
Monika Shafi
Assistant Professor
Foreign Languages and Literatures



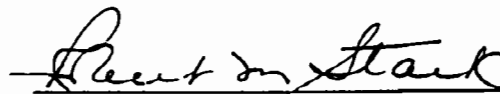
Robert Day (Alternate)
Professor
English




David Sheppard
Associate Professor
Life and Health Sciences



Gordon J. DiRenzo (Chairperson)
Professor
Sociology



Robert Stark
Professor
Mathematical Sciences



David Haslett (Alternate)
Professor
Philosophy

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