

August 7, 1998

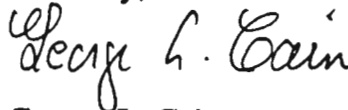
President G. Wayne Clough
President's Office
Campus 0325

Dear President Clough:

I am writing to report the decision of the Faculty Status and Grievance Committee with regard to a grievance filed April 22, 1998, by Professor Theodore P. Hill, of the School of Mathematics. A copy of this grievance together with supporting materials submitted by Professor Hill is included herewith.

In accordance with our Committee procedures, specified in the Faculty Handbook, two Committee members, Professor Vicki Galloway and Dr. Mark Richards, were appointed to conduct an informal inquiry into Professor Hill's grievance. A preliminary version of their report was given to the principals in the case for comment. After consideration of the responses from Professor Hill, Professor Andrew and Dean Schuster, our Committee unanimously endorsed the final report of Professor Galloway and Dr. Richards. The specific recommendations of the Faculty Status and Grievance Committee are found in this report, a copy of which is included herewith. We hope this will aid in the resolution of this case.

Sincerely,



George L. Cain
Chairman, Faculty Status and
Grievance Committee

cpys: Professor Theodore Hill
Professor Alfred Andrew
Dean Gary Schuster

MEMORANDUM

To: Faculty Status and Grievance Committee
From: Vicki Galloway and Mark Richards
Date: July 29, 1998
Subject: Case 98-05

This case concerns a grievance dated April 22, 1998 by Prof. Theodore Hill, Math, against Prof. Fred Andrew, Acting Chairman of the School of Mathematics, and Dr. Gary Schuster, Dean of the College of Sciences. We have completed an informal investigation of this grievance, the chronology of which is as follows:

April 22, 1998	Grievance filed by Prof. Hill
May 4, 1998	Grievance assigned to Galloway and Richards for investigation
May 12, 1998	Interview with Prof. Hill
May 19, 1998	Interview with Prof. Andrew
May 22, 1998	Interview with Dean Schuster
May 26, 1998	Interview with Prof. Michael Loss, chairman of 1996-97 SOM Junior Promotion & Tenure Committee
June 2, 1998	Interview with Mr. Randy Nordin, Georgia Tech Chief Legal Advisor
June 5, 1998	Interview with Prof. Richard Duke, Acting Associate Chair, SOM

The results of our investigation with respect to each allegation follow.

ALLEGATION #1: Obstruction of Prof. Hill's use of the Georgia Open Records Act in conjunction with his address of grievance to the FSGC.

This allegation refers in part to Professor Hill's assertion that false statements were made by the SOM and COS regarding the existence of certain financial records solicited under the Georgia Open Records Act. Prof. Hill contends that records he was told did not exist do, indeed, exist. Regarding this aspect of the allegation, we note that the recent SOM audit report, prepared pursuant to Prof. Hill's original grievance 97-05 and dated April 29, 1998, supports Prof. Hill's contention regarding certain of these records. In particular, records of income and outgo of funds to the CDSNS do exist, contrary to statements made by CDSNS Director Jack Hale and attorney Pamela Rary of the Office of Legal Affairs. We must presume that Dr. Hale knew, or should have known, that these records existed, and we suggest that Ms. Rary should not only have been skeptical of this particular claim of non-existent records, but should have investigated this claim prior to endorsing it. Further, according to the same audit report, the claim that there were no separate accounts for video-based instruction funds in the SOM is also patently false.

These incidents of denial of records appear to represent an evasion of the Institute's legal responsibility by the SOM and the Office of Legal Affairs. While it is clear that these false claims originated from the SOM, our evidence indicates that they were not originated specifically by Prof. Andrew or Dean Schuster. We have not determined unambiguously the extent to which either party may have been aware or supportive of these claims.

Prof. Hill also specifically cites denial of his solicitation of GTF check request forms from Dean Gary Schuster's office. In our interview with Dean Schuster, we were informed that the COS office in fact does not keep copies of these forms.

A second part of this allegation concerns Prof. Hill's claim that Dr. Fred Andrew, Acting Chair of the SOM, interfered with Prof. Hill's preparation of copies of records requested under the Georgia Open Records Act. The specific incident related is as follows: An SOM staff member was copying records for Prof. Hill in the absence of another who normally performed the task. Dr. Andrew halted the copying and instructed the staff member to return to another high-priority task, the preparation of reappointment packages. Prof. Hill claims that he was subsequently forced to appeal to the Office of Legal Affairs to complete the copying. In our interviews with parties involved, we were informed that the delay was resolved the same day by having Joel Geer of the Office of Legal Affairs assigned to the copying task. In our view, this incident does not appear to be of the same magnitude as other issues addressed in this grievance and does not warrant the claim of obstruction.

ALLEGATION #2: Dr. Fred Andrew, Acting Chair of the SOM, has sought retaliation against Prof. Hill for his use of the faculty grievance process and the Georgia Open Records Act.

This allegation refers to incidents surrounding the annual performance evaluation of Prof. Hill dated March 23, 1998 and discussed with Prof. Hill by Dr. Andrew on April 14, 1998. Prof. Hill's first allegation of retaliation in this context concerns the structure of the meeting initially proposed by Dr. Andrew for the delivery and discussion of his performance review. On arriving at this meeting, Prof. Hill was informed that Prof. Duke would also be attending, an arrangement which Prof. Hill then refused. It is Prof. Hill's contention that Dr. Andrew's invitation of a third-party observer indicated that Dr. Andrew viewed the meeting as a potential conflict situation and that this surprise appearance of a witness was a violation of Prof. Hill's rights under Institute statute 5.1.3.6, "General Policy for Conflict Situations," which states in its entirety:

"On occasion an administrator or faculty member may feel the need for a witness to be present for the discussion of a sensitive matter. These occasions should be very rare, because the presence of witnesses may heighten tension and may indicate a lack of faith in a colleague. However, in those rare cases in which a witness is deemed necessary, there should be prior notification so the other person

may also bring a witness, if he or she chooses. Alternatively the meeting may be taped, with advance knowledge of the other party.”

In our interview with Prof. Duke, we were informed that Prof. Hill had questioned this practice earlier with Dr. Andrew and, in fact, that Dr. Andrew, as a direct result of Prof. Hill’s expression of concern, had then invited SOM faculty members to choose, through e-mail response, whether they wished to have a third party in attendance. While Prof. Hill evidently did not specifically respond to this inquiry; his objection to the presence of a third party was obvious. Yet, according to Prof. Duke, in Prof. Hill’s case, Dr. Andrew “specifically requested” that Prof. Duke be present during Prof. Hill’s performance review. Dr. Andrew’s request for Prof. Duke’s presence despite Prof. Hill’s earlier objections to the practice, clearly indicates that Dr. Andrew viewed the meeting as a potential conflict situation. While he may have been unaware of the specific Institute statute, Dr. Andrew was well aware of Prof. Hill’s objection to the presence of witnesses in performance reviews. He therefore should have provided prior notification of his decision to override Prof. Hill’s wishes and informed Prof. Hill of the reasons for this decision.

The second aspect of this allegation concerns the actual review of Prof. Hill’s performance and the criteria that gave rise to this evaluation. Prof. Hill’s performance was rated as “below expectations” with the following sole explanatory statement: “I find many of your activities to be a serious disservice to the school.” Prof. Hill maintains that this negative evaluation represents retaliation for his use of the grievance process and Open Records Act. According to Prof. Hill, during the discussion of the evaluation, he asked Dr. Andrew to specify the activities judged as “disservice,” and Dr. Andrew cited the grievances and Open Records Act requests. In our interview with Dr. Andrew, he stated that he may have made this statement in response to leading questions by Prof. Hill, but that the actual reasons for the evaluation were Prof. Hill’s conduct on the Jr. Promotion and Tenure Committee and his display to the SOM faculty and staff of the Flannery Committee’s Chair Evaluation Report concerning Dr. Chow. In our interview with Dean Schuster, he stated that he had asked Dr. Andrew whether the poor evaluation was the result of the grievances and records requests, and that Dr. Andrew had answered “no.”

To determine which of Prof. Hill’s activities provided the actual motivation for the negative evaluation, much of our investigation necessarily focused on exploring the issues cited by Dr. Andrew as the rationale for the evaluation: 1) Prof. Hill’s behavior on the Jr. Promotion and Tenure Committee and 2) Prof. Hill’s display of the Flannery Committee’s Chair Evaluation Report which had been secured through the Georgia Open Records Act.

The first of these issues refers to claims of a situation arising from a suggestion of potential conflict of interest that was posed during the address of Prof. Hill’s original grievance 97-05 against SOM Chair Dr. Shui-Nee Chow. At that time, it was suggested that Prof. Hill’s service on the JP&T committee might be compromised since two of the

candidates under consideration were mentioned in the support material of the grievance (though they were not the object of grievance) and that Prof. Hill should consider recusing himself from that committee's deliberations for conflict of interest. It is Dr. Andrew's claim that Prof. Hill's conduct during his service on the JP&T Committee was in some way disruptive, although no details or specific incidents of disruptive behavior were furnished by Dr. Andrew in response to our queries. In our interview with Dean Schuster regarding this allegation of disruptive behavior, we were again provided only a vague account. Dean Schuster said he thought the JP&T committee had disbanded over Prof. Hill's failure to recuse himself for conflict of interest, or that members had threatened to resign. Prof. Duke stated that it was his understanding that each member of the committee had individually threatened to resign. However, in our investigation, we found no evidence of Prof. Hill's unilateral refusal to recuse himself from the JP&T committee's deliberations. On the contrary, according to the minutes of the SOM Faculty Advisory Committee meeting of Oct. 16, 1997, Prof. Hill had solicited the opinion of the Faculty Advisory Committee on the issue of conflict of interest. That committee discussed the matter and voted to take no position. Further, our interview with the Chair of the JP&T committee, Prof. Michael Loss, substantiated none of the claims of disruptive behavior on the part of Prof. Hill. Prof. Loss had received word of the suggestion of conflict of interest and had then submitted the issue to the JP&T committee for vote on Prof. Hill's recusal. The committee vote was evenly split and the decision was thus made by the JP&T committee not to request that Prof. Hill recuse himself. Prof. Loss is quite firm in stating that the committee was able to complete business and "in the end... came up with a good result." The committee was in complete or near-complete consensus on all four candidates considered. Prof. Loss does not agree that Prof. Hill's service detracted from the performance of the committee's duties, denies that there was any committee dissolution at any point, and has stated that he harbors no concerns about Prof. Hill's performance. Thus, our evidence does not support the claims of Dr. Andrew and Dean Schuster regarding disruptive behavior in Prof. Hill's service on the JP&T committee.

Subsequent comments by Dean Schuster and Prof. Andrew continue to allude to "problems" related to Prof. Hill's service on the JP&T committee, yet still fail to proffer any concrete examples or specific allegations. In the above, we have represented accurately our interview with Prof. Loss concerning the committee deliberations, the issue of Prof. Hill's recusal, and his performance with respect to said deliberations. We have received no information to dispute the comments made in this interview.

We note also that, while Dr. Andrew and Dean Schuster believe that Prof. Hill should have recused himself from this committee because two of the candidates were mentioned in the support material of his original grievance, the same level of concern and caution was not exercised when preparing faculty evaluations. We find no evidence of any suggestion on the part of the SOM, COS, or GIT administration that Dr. Andrew recuse himself from Prof. Hill's performance review, even though Dr. Andrew was also mentioned in the support material of Prof. Hill's original grievance.

The second purported rationale for the judgment of “disservice” as related by Dr. Andrew was Prof. Hill’s display of the Flannery report. We previously criticized the propriety of this action by Prof. Hill in our report of grievance 97-05, however, we noted then and repeat now that the document was legally obtained via the Open Records Act and as such was of the public domain. Furthermore, the document “Procedures for Review and Evaluation of School Chairs in the College of Sciences at Georgia Tech” states that the results of a Chair’s performance review are to be made known ultimately to the faculty. We recognize that although this committee evaluation constituted, or should have constituted, a key component of the decision making process, Dean Schuster’s memo to the SOM faculty reappointing Prof. Chow as Chair had concealed virtually all of the serious concerns raised therein, thereby misrepresenting the conclusions of the chair review committee. For these reasons, we cannot condone Dr. Andrew’s citing of Prof. Hill’s display of this report to the SOM faculty and staff as justification for claims of disservice to the school.

In summary, neither of these two issues cited by Dr. Andrew in our interview as reasons for Prof. Hill’s negative performance evaluation has credibility as evaluative criteria. Since Dr. Andrew could provide us no other reasons for the negative evaluation in the areas of teaching, scholarship and service, we must conclude that, indeed, this evaluation was decided by the discomfort and tension produced by Prof. Hill’s use of the grievance process and Open Records Act. We note in this regard that grievance is the right of all Georgia Tech faculty. Open Records Act requests are the right of all citizens of the State of Georgia. The use of either, no matter how inconvenient, annoying or upsetting, is not an acceptable consideration in annual performance evaluation. Performance evaluation must consider only appropriate and objective criteria in the areas of teaching, scholarship and service.

As to Prof. Hill’s allegation of retaliation on the part of Dr. Andrew, while retaliation may not have been the explicit intent, the evaluation is not supportable by the reasons Dr. Andrew provides. We therefore conclude that the intent of the evaluation was indeed punitive and the aim was that of discouraging continued grievance and use of the Open Records Act. Such actions violate the rights of faculty and place the Institute at risk. They cannot be tolerated.

In addition, we have noted previously the failure of the SOM to implement an annual evaluation procedure and evaluation instruments consistent with Institute statute 5.1.3.2, “Performance Evaluation/Salary Decisions” and Regents’ guidelines. The SOM evaluation process remains unchanged and sorely inadequate. Further, Prof. Hill’s evaluation states that he “performed below expectations, [and was] counseled.” Apparently, no counseling actually took place, evidence again of the failure of SOM’s faculty evaluation procedures to comply with the spirit or letter of the evaluation requirements.

ALLEGATION #3: Dean Gary Schuster attempted to cover up the alleged retaliation of Dr. Andrew.

This allegation refers to Dean Schuster's April 17, 1998 withdrawal of Prof. Hill's annual evaluation after a meeting in which were present Drs. Duke and Andrew and Chief Legal Advisor Mr. Randy Nordin. Dean Schuster directed Prof. Richard Duke, Acting Associate Chair of the SOM, to prepare an independent evaluation. Prof. Hill maintains that being forced to undergo a second evaluation constitutes unequal treatment and, to date, has refused to accept or discuss the new evaluation prepared by Prof. Duke. In his letter to Prof. Hill informing him of the above decision, Dean Schuster states that "we have concluded that your unsatisfactory evaluation is not the result of your grievances or Open Records Act requests." Despite this, the letter then withdraws the evaluation and offers no alternative explanation either for the negative evaluation or for its withdrawal. Since it is difficult to see why the evaluation should be withdrawn if it was based on defensible criteria as Dean Schuster's letter implies, it is our view that Dr. Andrew's evaluation of Prof. Hill's performance was judged by Dean Schuster as contaminated by improper criteria. Indeed, we were informed by Mr. Randy Nordin of the Office of Legal Affairs that he had advised Dean Schuster that the evaluation could be construed as retaliatory. We believe this was the reason for the withdrawal.

We do not agree with Prof. Hill that a second evaluation constitutes unequal treatment. On the contrary, if the original evaluation was deemed improper or invalid, then its withdrawal and replacement with a properly conducted evaluation is the correct course of action. Prof. Hill has questioned the ability of Prof. Duke to conduct an independent evaluation. This is a legitimate concern, but Prof. Duke maintains that he has made an extraordinary effort to develop a thorough performance assessment based on strict objective, documented criteria and unbiased by hearsay, unsubstantiated claims or personal emotions surrounding Prof. Hill's use of the grievance process.

While we acknowledge that withdrawal of this evaluation was the proper action, we must express our dismay at the way in which this withdrawal was handled by Dean Schuster. By furnishing no reason for its withdrawal, by making no dispute of the propriety of the evaluation process, indeed, by offering no alternative rationale for the evaluation that would counter the allegation of retaliation, the action appears capricious. We believe that Dean Schuster recognized that Dr. Andrew's evaluation had been improperly motivated by Prof. Hill's use of the grievance process and Open Records Act and that he should have conveyed this honestly and openly to Prof. Hill as the rationale for his withdrawing the evaluation. This failure to take even-handed action to resolve a clear abuse of Prof. Hill displays a lack of respect for faculty rights and Institute statutes, instead creating an air of collusion and establishing a confrontational climate that has resulted in resort to this grievance.

RECOMMENDATIONS:

1. The President should direct the SOM to implement a faculty annual evaluation process and instrument that is compliant with Institute statutes and Regents' guidelines. Such a process would include complete and specific information supporting the evaluation, as well as constructive and feasible suggestions for improvement in areas of unsatisfactory performance. The forms and procedures to be used should be reviewed by administration outside of the COS prior to the 1998-99 evaluation cycle.
2. The President should issue written reprimand to Dr. Andrew regarding the procedures and criteria used in Prof. Hill's performance evaluation and remind him of the proper performance-evaluation criteria to be used in peer review. This letter should also instruct Dr. Andrew as to the role and importance of the faculty grievance process and restate the Institute's commitment to ensuring the undisturbed right of all faculty to address grievance without fear of reprisal or punitive action on the part of the administration.
3. The President should issue written reprimand to Dean Schuster regarding his handling of the review and withdrawal of Prof. Hill's evaluation. Withdrawal was the correct action, but was taken for the wrong reasons and was communicated in a manner neither befitting his role as Dean, nor likely to protect the Institute. Dean Schuster should have been forthright in stating reasons for the withdrawal, offered his regret for the incident, and expressed his support for ensuring an evaluation based on appropriate criteria. The President's letter should also reiterate the role and importance of the grievance process and admonish Dr. Schuster, as Dean of the College of Sciences, to ensure the protection of this faculty right through the honest and unbiased examination of any claims of retaliation brought to his attention.
4. The President should direct Prof. Hill to meet with Prof. Duke to receive and discuss the new performance evaluation. Any objections to this evaluation should be based on its actual content and on the accompanying discussion. Prof. Duke should be advised that as part of his role as evaluator, he is obligated to provide clear, constructive counsel on which performance improvements can be based and subsequently assessed in future evaluations.
5. Prof. Hill has specifically requested redress of this grievance in the form of "written and public" apology from Dr. Andrew and Dean Schuster. We agree that the actions outlined here are sufficiently grave and injurious to warrant personal apology to Prof. Hill. However, we opt not to recommend the mandate of this apology. Expression of regret, if sincere, does not arise from order or coercion. If it must be forced or delivered falsely, it will neither unburden the injurer nor satisfy the injured and, in fact, may serve only to harden resentment on both sides. Further, we do not concur with Prof. Hill that "public" apology is called for and cannot condone the use of any personal apology for purposes of public display or political strategy. On the contrary, it is our belief that such a practice would only serve to heighten tensions, accelerate combative incidents and provoke thoughtless action. It is our view that apology sincerely delivered and also

graciously accepted could contribute to the repair of some of the damaged interpersonal relations leading to and resulting from this grievance. While repair of these relations would indeed be in the best interest of the entire SOM and its healthy operation, the decision to actively foster this repair rests with the individuals involved.