

2017-18 UNC-Chapel Hill Faculty Grievance Committee

October 3, 2017

Grievance Filed by:

Jay Smith, Professor, Department of History

Against:

James Dean, former Executive Vice Chancellor and Provost

Kevin Guskiewicz, Dean of the College of Arts and Sciences

Jonathan Hartlyn, former Senior Associate Dean for Social Sciences in the College of Arts and Sciences and currently the Kenneth J. Reckford Distinguished Professor, Department of Political Science

W. Fitzhugh Brundage, Chair, Department of History, and William B. Umstead Distinguished Professor

Reviewed by a subcommittee of the Faculty Grievance Committee:

Chris McLaughlin, Faculty Grievance Committee Chair and Associate Professor, School of Government

Beth Posner, Clinical Assistant Professor, School of Law

Erika Ripley, E-Resources and Serials Acquisitions Librarian, University Libraries

I. Introduction & Scope of Review

On July 6, 2017, Professor Jay Smith filed a grievance alleging that the decision not to offer during the 2017-2018 academic year one of his courses, History 383, *Big-Time College Sports and the Rights of Athletes*, violated his academic freedom and did not conform to the policies and practices of the Department of History (the “Department”). Professor Smith named as respondents the individual who made that decision, Department Chair Fitz Brundage, as well as three University officials whom Professor Smith alleges improperly interfered with that decision: then-Provost James Dean; College of Arts and Sciences Dean Kevin Guskiewicz; and, then-Senior Associate Dean for Social Sciences Jonathan Hartlyn (collectively, the “Respondents”).

The Respondents submitted a joint reply to Professor Smith’s grievance on August 9, 2017, which asked the Faculty Grievance Committee (the “Committee”) to dismiss Professor Smith’s grievance due to mootness because Smith’s History 383 course recently had been added to the Spring 2018 schedule. The Committee Chair shared the Respondents’ reply with Professor Smith, who submitted an amended grievance on August 14, 2017, requesting that the Committee proceed with a hearing on the matter.

After carefully reviewing the amended grievance, the Committee chair concluded that Professor Smith’s grievance remained appropriate for review by the Committee despite the addition of History 383 to the Spring 2018 schedule. Although that change satisfied the primary relief requested by Professor Smith in his original grievance, it did not address Professor Smith’s request that the Committee recommend that future course scheduling decisions be made without improper outside interference as Professor Smith alleges occurred with the initial decision to keep History 383 off of the 2017-18 course offerings.

Professor Smith’s amended grievance sought four separate items of relief:

- (i) An apology from Provost Dean, Dean Guskiewicz, and Professor Hartlyn and an admission of wrongdoing for their alleged improper interference with the scheduling of History 383;
- (ii) Truthful testimony from the Respondents about the initial decision to keep History 383 off of the 2017-18 course schedule;
- (iii) A public affirmation from Provost Dean and Dean Guskiewicz at a Faculty Council meeting that Smith will be able to teach History 383 whenever he chooses subject to departmental or College curricular needs; and,
- (iv) A requirement that all communication between the dean and/or senior associate deans of the College and department chairs concerning curricular issues be put in writing.

Prior to proceeding with the grievance, the Committee Chair informed Professor Smith that most of his requested relief was beyond the scope of that which the Committee could offer. The Committee’s charge is to review decisions made by University officials concerning faculty to ensure that those decisions comply with established University policies and customs. Specifically, the Committee Chair concluded that items (i) and (iv) fell outside of that charge because item (i) addressed personal relationships between the parties while item (iv) sought a proposed change to University-wide policies that affect far more than the specific matter and the parties at hand. Similarly, the request in item (iii) that two of the Respondents make a public comment on the matter at a Faculty Council was beyond what the Committee is charged to recommend.

As a result, the Committee Chair advised Professor Smith that (a) the Committee's review of his grievance would focus solely on whether the scheduling decisions concerning History 383 conformed to University and departmental policies and customs and (b) if the Committee determined that those policies and customs were in fact violated then the relief offered by the Committee would be limited to a recommendation that future scheduling decisions of History 383 and all Department course offerings be made in conformance with University and departmental policies and customs and be made free from inappropriate interference by officials from outside the Department. Regardless of its factual conclusions, the Committee would not recommend personal apologies, public pronouncements by University officials, or changes to University-wide policies.

With an understanding of those limitations, the Professor Smith agreed to proceed.

After the parties declined to pursue the University-mandated mediation option, a hearing on the matter was held on September 8, 2017. In attendance were Professor Smith, the Respondents, the three subcommittee members, and two representatives from the Office of University Counsel. A transcript of that hearing was prepared and shared with the parties.

Via email, the subcommittee also questioned the current Senior Associate Dean for Social Sciences, Rudi Colloredo-Mansfeld, about the addition of History 383 to the Spring 2018 schedule. The Committee Chair shared Dean Colloredo-Mansfeld's responses with the parties on September 11, 2017. The subcommittee did not question any additional witnesses.

II. Observations

a. History 383 received an extraordinary amount of attention from the Dean and Senior Associate Dean.

The fact that History 383 would draw more attention from senior University officials than the average College course is not surprising. History 383 focuses in part on the University's athletic/academic scandal and that remains in the news today. It is taught by a professor who has written a book on that scandal and who has been fiercely critical of the University administration's response to that scandal. Soon after History 383 was first made available to students as part of the summer 2016 curriculum, College and Department officials began receiving critical questions about the course from inside and outside the University. Dean Guskiewicz and Professor Hartlyn both offered testimony indicating that they had received inquiries about the course in the spring of 2016. It was not clear from whom these inquiries came, but it was implied that they were in the nature of phone calls, emails, and in-person requests for information from some combination of the public, students, faculty, and/or alumni.

The need to respond to those questions or criticisms about the course explains in part why Dean Guskiewicz and Professor Hartlyn asked probing questions of Professor Brundage and Professor Smith in the spring of 2016 about the development and approval of History 383. That said, the extent, duration, and impact of those questions went far beyond what the Committee views as reasonably necessary to respond to critics of the course. Specifically, the Respondents stated that they quickly received the information they needed from Professor Brundage and Professor Smith to conclude that

History 383 offered substantial pedagogical value and that Professor Smith was qualified to teach the course. Nevertheless, Dean Guskiewicz and Professor Hartlyn continued to focus an unusual amount of attention on the scheduling details of History 383.

Professor Brundage testified that at the end of a meeting with Professor Hartlyn in the spring of 2016 in which Professor Brundage provided details about the approval process for History 383, Professor Hartlyn asked to be informed if the course would be offered during a subsequent fall or spring academic schedule. Professor Brundage had never been asked that of any other History course. Professor Hartlyn testified that he had asked similar questions about a few other specific courses in the past, but admitted that it was not a common practice.

The attention paid to History 383 by senior College officials affected subsequent scheduling decisions for that course. Professor Smith first offered History 383 during the summer 2016 term. After a few successful class meetings Professor Smith proposed to Professor Brundage that History 383 be added to the fall 2016 schedule as a replacement for History 516H, an honors course to be taught by Professor Smith that had attracted only a very small enrollment. Professor Smith believed that History 383 would attract a larger enrollment than History 516H had in the past, an assumption later proven correct.¹

Professor Brundage replied to Professor Smith's proposal about the fall 2016 semester a few days later, stating via email, "I will have to discuss this request with Dean Hartlyn. I am more than willing to fight for your right to teach this course in the regular academic year. . . . But I suspect there will be resistance from the usual suspects. I have no idea on what basis the higher administration can interfere with course scheduling but I anticipate they will try to do so."

Similar concerns about University oversight of History 383 were raised with Professor Smith by Louise McReynolds, the Department's associate chair who handled most scheduling details on behalf of the chair. Professor McReynolds' email to Professor Smith about the proposed replacement of History 516H with History 383 for fall 2016 stated, "Here's the situation: Hartlyn does not want you to teach that course in the fall. Hartlyn had specifically asked Fitz to let him know. Fitz does not to let the admin intervene, but of course he will have to pay a price for scheduling the course." Professor McReynolds stated in a subsequent email message, "I don't know why the admin had to be brought in. Lisa [another Department faculty member with scheduling responsibilities] and I were just fine scheduling it."

Dean Guskiewicz and Professor Hartlyn explained that their concerns about the potential addition of History 383 to the fall 2016 schedule related solely to the fact that adding it to the schedule at that relatively late date (May/June 2016) meant it would replace an honors History course in which students had already enrolled. Both Dean Guskiewicz and Professor Hartlyn testified that one of their strategic priorities was offering a wide variety of honors courses every semester and that they would have been equally concerned about any replacement of an honors course with a non-honors course.

¹ The parties disagreed on whether enrollment for History 516H was four or six students at the time of its cancellation in late spring/early summer 2016, but even if one accepts the larger figure, it was still an extremely low number of students that were affected by the change. In contrast, History 383, the course that replaced History 516H for the Fall 2016 semester, attracted 29 students. Professor Smith testified that the most recent prior offering of History 516H had attracted only 9 students.

The Committee accepts the argument that College leadership values honors courses over non-honors courses. Regardless, the Committee concludes that it was extremely unusual for the Dean and Associate Dean to scrutinize the elimination of a single honors course in a single department. A search of the University honors website indicates that the College offers over 70 different honors courses in any given semester. The Department alone offers six or more honors courses every semester. Given those statistics, the Committee finds it unreasonable to assume that the loss of one honors course would threaten the College's strategic priorities, especially one with very low enrollment. The Committee concludes that the opposition raised by Dean Guskiewicz and Professor Hartlyn to offering History 383 in fall 2016 was not based on the fact that it replaced an honors course nor was it rooted in any particular curricular need in the Department or in the College.

This conclusion is supported by evidence that the administrators' resistance to the addition of History 383 to the regular academic schedule extended into early planning discussions about the 2017-18 curriculum. When these discussions took place in the fall of 2016, the inclusion of History 383 on the fall 2017 schedule would not have required the removal of an existing honors course. Presumably that fact would have eliminated the Respondents' concerns about History 383. The evidence suggests otherwise.

When Professor Smith proposed in October 2016 that he would again teach History 383 in the fall 2017, Professor McReynolds replied, "I can't be scheduling 383 for the next academic year. For which, of course, there are multiple sources." Professor Brundage confirmed Professor McReynolds' belief when he testified, "Louise [McReynolds] and I talked about it and my perception of the College's intent, desire, was not to offer this course. . . . Because my understanding of what I was hearing was that this course did not mesh with the college's larger strategic plans."

The concerns shared with Smith by Brundage and McReynolds were based on the initial opposition to History 383 raised by the Respondents earlier in 2016 as well as the continued critical attention paid to the course by the Respondents in the fall of 2016. Testimony from the Respondents confirmed that the scheduling of History 383 was raised with Brundage by Hartlyn and Guskiewicz multiple times at different meetings while Brundage was considering Smith's request to add the course to the fall 2017 schedule. According to Brundage, Hartlyn and Guskiewicz had never raised similar concerns about the scheduling of any other individual course.

Despite Professor Smith's repeated requests, History 383 did not make the Department's 2017-2018 course list until July 2017, after Professor Smith filed a grievance and Professor Hartlyn's term as senior associate dean ended. History 383 is now scheduled to be taught by Professor Smith in the spring 2018 semester. Professor Brundage testified that he made this decision, at least in part, with the input of the new Senior Associate Dean for Social Sciences, Rudi Collredo-Mansfeld, who replaced Professor Hartlyn in that role as of July 1, 2017. Brundage stated that by July 2017 he had concluded that the removal of the course from the fall 2017 schedule, particularly in the current political atmosphere, had adversely affected the "climate" in the Department. [*Transcript, page 41*]

b. The Department Chair interpreted the attention focused on History 383 by the Dean and the Senior Associate Dean as pressure to keep History 383 off of the regular academic schedule.

No College official ever explicitly told Professor Brundage that the Department should prevent Professor Smith from teaching History 383 again. Professor Hartlyn and Dean Guskiewicz repeatedly stated that they told Professor Brundage the decision to offer History 383 in a regular academic semester was his to make based on departmental needs and the College's "strategic plan." But Professor Brundage interpreted these consistent but ambiguous instructions to be "strategic" about scheduling History 383 as pressure to refuse Professor Smith's request to teach the course again. The Committee views this interpretation as reasonable, especially given Dean Guskiewicz's description of the Department's "declining enrollments, declining majors," and its reputation as "being over-resourced."

Professor Brundage stated, "My perception was that it was in the interest of the Department collectively that I decide not to offer this course. . . . I knew that we were a large department that often needs to go to the College and ask for resources, and I was acutely aware that it was important for the Department to be able to make those requests for resources with the greatest likelihood of having success, so I was concerned about positioning the Department at the time when I understand resources are going elsewhere in the University. . . . Let's put it this way: I was not certain what consequences there would be if I approved this course being taught."

Although Dean Guskiewicz strenuously denied the use of the word "threat" when speaking with Professor Brundage about History 383, Professor Brundage stated that he communicated to Professor Smith that Dean Guskiewicz had used some version of the phrase "This is not a threat, but . . ." when describing how College leadership might view the Department's decision to offer History 383 again. Putting aside questions of memory or veracity, it does appear that Professor Brundage felt under an extreme amount of duress regarding the scheduling of History 383. Furthermore, although Dean Guskiewicz denied the use of coercion, he conceded throughout his testimony that he has spent much of the first two years of his term focusing on the strategic needs of the College in such a way that requires that departments, such as History, think carefully about their resources. The language used around comprehensive strategic planning and resource allocation, particularly in the context of the scheduling of History 383, suggests that Professor Brundage was made to feel that placing History 383 on the 2017-18 schedule might result in negative consequences for the Department.

In sum, the Committee concludes that Professor Brundage reasonably believed that if he agreed to offer History 383 again in a regular academic semester the Department would suffer financially at the hands of College leadership.

c. The pressure placed on the Department Chair by College administrators to keep History 383 off of the regular academic schedule was inconsistent with the University's commitment to academic freedom and with the Department's traditional deference to course selection decisions made by its faculty.

The University's commitment to academic freedom is enshrined in its Tenure Policy: "It is the policy of the University to maintain and encourage full freedom, within the law, of inquiry, discourse, teaching, research, and publication and to protect any member of the faculty against influences, from within or without the University, which would restrict the faculty member in the exercise of these freedoms in his

or her area of scholarly interest.”² Similar language appears in the University Code: “The University therefore supports and encourages freedom of inquiry for faculty members and students, to the end that they may responsibly pursue these goals through teaching, learning, research, discussion, and publication, free from internal or external restraints that would unreasonably restrict their academic endeavors.”³

The parties generally agree that this commitment to academic freedom means that faculty members should have broad discretion to choose which courses they teach so long as those choices over time conform with University, College, and department strategic curriculum goals and needs. The disagreement between the parties focuses on whether the Department’s initial decision to exclude History 383 from the 2017-18 course schedule was consistent with that commitment. The Committee concludes that it was not.

The Committee assumes that concerns for academic freedom would lead senior College administrators to focus on the big curricular picture and not micromanage the scheduling of an individual course as they did with History 383. The argument that the addition of one course out of the thousands offered by the College each semester would threaten the College’s long-term strategic goals strains credulity.

The Committee believes that academic freedom concerns are best satisfied when senior University officials set broad, long-term curricular goals but allow department chairs the autonomy to decide how best to meet those goals. If department leadership believes that a particular course satisfies departmental needs, College officials should defer to the department’s scheduling decisions so long as the department as a whole is satisfying the College’s strategic goals.

In the situation at hand, there is no evidence that the Department curriculum as a whole was failing to meet the College’s strategic goals. Furthermore, there is strong evidence that the addition of History 383 to the Department’s curriculum would be beneficial to the department’s overall health. When asked why he supported replacing History 516H with History 383 for the fall 2016 semester, Professor Brundage observed,

[A]nytime we can substitute a course [that] somebody wants to teach, [and] it will attract a higher enrollment in a course than [what] we have on the books, we're willing to do that. Assuming it's not grievously inconvenient for any of the undergraduates. At this point with six or eight or whatever [enrolled in History 516H] and at that point in the summer there was the assumption that they could certainly find other courses to take. If we could have a course we'd have 30, 35 students in it as opposed to course we'd have 12, while we were still meeting our honors obligation, let's seize that opportunity. Cause it was again, my gravest concern is that our history enrollments will decline the way they have nationally.

[Transcript, page 20]

² *Trustee Policies and Regulations Governing Academic Tenure in the University of North Carolina at Chapel Hill*, Section 1: Academic Freedom.

³ *The Code of the Board of Governors of The University of North Carolina Pertaining to Academic Tenure*, Chapter VI, Academic Freedom And Tenure, Section 600: Freedom And Responsibility In The University Community

Equally important is the fact that Professor Brundage's desire to honor Professor Smith's teaching preference was consistent with the course-selection autonomy the Department has traditionally offered its faculty. He testified at length on that issue:

In retrospect, I would have done much more to try to educate Jonathan [Hartlyn] and Kevin [Guskiewicz] on the culture of course assignment in the history department. Because it is very different than say, the math department. Or chemistry. In history, you have certain obligations to teach certain courses. . . . We are most concerned that every faculty, regardless of rank, teach one large course. We don't want senior faculty abandoning the large course to the assistant professor. And that hasn't always been the case, but during my time as chair, we impose that on everyone now. So once [a faculty member] ticks that box, everything else he teaches is up to him and a broad curriculum need, so he can't just go off and teach random courses but he has very wide discretion. That's different from some of these other departments and I could have done a better job of educating I think, Kevin and Jonathan about that so that the questions about this course could be understood as violating the traditions of the department and curricular allocations.

[Transcript, page 30]

III. Conclusion and Recommendation

The Committee concludes that the initial decision to keep History 383 off of the 2017-18 curriculum was the result of pressure by senior College administrators and was inconsistent with the course scheduling practices of the History Department and the University's commitment to academic freedom.

The Committee wishes to note that it does not find any evidence of personal bias against Professor Smith by any of the Respondents. The fact that Dean Guskiewicz, a nationally renowned expert on sports concussions, agreed to guest lecture in the fall 2016 offering of History 383 is strong evidence that he held no animosity toward Professor Smith or his academic interest in college athletics. The Committee will not speculate as to the reasons for the Respondents' opposition to History 383, but we do not wish to suggest there any personal animus or bias against Professor Smith.

As noted above, the majority of the relief recommended by Professor Smith falls outside the purview of the Committee. However, the inclusion of History 383 in the spring 2018 schedule after Professor Smith filed his grievance does not provide adequate relief because it does not eliminate the Committee's concerns about the initial course scheduling process. The fact that Professor Brundage now feels empowered to add History 383 to the regular academic schedule does not change the fact that he did not feel so empowered in fall 2016. Therefore, based on its observations and conclusions, the Committee is authorized to recommend the following adjustment by the Respondents and future officials who hold those same roles and authority:

Course selection decisions should be made by department administrators based on departmental curricula needs and the long-term strategic goals of the department, school, and University. Senior University officials have a right to set those goals and to expect that department scheduling decisions, in the aggregate, support those goals. But University officials should not interfere in individual course selection decisions made by department officials nor should they pressure department officials in favor of or against particular courses. University officials should not state or imply that a department will lose financial resources or otherwise suffer negative consequences if it were to approve a particular course, so long as in the aggregate the department is consistently supporting the University's strategic goals.