

MEMORANDUM

TO: Faculty Affairs Committee

FROM: Daniel N. Keck
Provost

SUBJECT: Tenure and Continuing Contract Status

DATE: October 14, 2002

I am writing in response to the request of the Faculty Affairs Committee that I “present concrete proposals that address the issue of tenure and continuing contract.” Before addressing the issue, I want to make it very clear that I am presenting my own views on this important issue. I have not discussed my position with the President nor with the members of the Academic Affairs Committee of the Board of Trustees. I am, however, sending copies of my response to those individuals.

It also is important to state at the outset that my position on various issues that I will discuss is based on more than three decades of observing developments in higher education and on my experience as chief academic officer at three other institutions before my arrival at Greensboro College in 1991. In applying my conclusions to Greensboro College, I am not suggesting what will happen, but rather what might happen at some point in the future. On many occasions over the past eleven years, I have argued that it is unwise for the faculty to make decisions on the basis of individuals who currently are in leadership positions in the institution. I know from personal experience how suddenly the leadership and the direction of an institution can change.

My first recommendation is that no change be made to the current requirement of the Board of Trustees that an approximate balance be maintained between tenure and continuing contract appointments. (This requirement was established by the Board of Trustees on November 12, 1992.)

At that time, the Academic Affairs Committee, which recommended this policy to the Board of Trustees, clearly saw this requirement as a guard against a majority of the eligible faculty being granted tenure or being appointed to tenure-track positions. Indeed, during the first year when faculty had the option of requesting one or the other of these options, all three faculty requested tenure. In the second year, four of the six faculty completing their probationary period requested tenure. In each of those years, one faculty member who had requested tenure instead was granted continuing contract status in order to maintain the balance mandated by the Board of Trustees.

At the present time, of course, the situation is far different. The number of faculty with continuing contract status now exceeds the number with tenure (15-14). In recent years, four faculty with tenure have requested and been granted a change in status. A fifth request is pending. Of the eight faculty who have completed their third year but are still in their probationary period, one has requested tenure, six have requested continuing contract status, and one is undecided. The trend, in my opinion, is unmistakably clear.

The question then is this: Is the move away from tenure, as the preferred contractual status, in the best interests of the faculty and the academic program at Greensboro College? My answer to that question is no, it is not. My reasons are primarily philosophical in nature. There are some practical considerations as well, but those, in my view, are of much less consequence.

In 1997, Richard Chait, Professor of Higher Education at the Harvard University Graduate School of Education, co-authored a working paper for the American Association of Higher Education entitled: "Where Tenure Does Not Reign: Colleges with Contract Systems." Dick Chait, who had been one of my instructors in Harvard's Institute for Educational Management in 1978, came to Greensboro College as he was preparing this monograph and talked with faculty about our dual system. He and I also had several lengthy conversations. One of the questions he asked me was whether, philosophically, I thought our system was preferable to a pure tenure system. My response was no. I explained that, in my view, the development of the dual system was a pragmatic response to the situation which Greensboro College found itself in at the time the system was proposed; that is, a large number of young, capable faculty, the majority of whom would complete their probationary period within a five year period, and a Board of Trustees that, because of recent experiences, was very concerned about having a high percentage of the faculty on tenure.

Why do I believe, philosophically, in the importance of tenure? Primarily it is because I believe that tenure provides some protection, both real and perceived, to faculty who speak their minds about issues related to the academic integrity of the institution, the management of the institution, and the future directions of the institution. One of my fellow chief academic officers addressed this issue recently on a Council of Independent Colleges listserv:

What I like about tenure is that it makes the senior faculty serious partners in the management of the institution: above all, they can speak very freely in opposition to an administrative policy or initiative, and I think that helps keep me honest. To be an effective dean I need to get many of the senior faculty on board. In faculty meetings especially, and to some extent in committee meetings, untenured faculty seem far less willing to be outspoken. (Christopher Ames, Provost, Oglethorpe University)

Now, I realize that some will contend that the principle of academic freedom, which is guaranteed at Greensboro College to all faculty, protects faculty who speak their minds on these issues. I would caution against such an interpretation. In an issue entitled "Professors and Classroom Controversy," the editors of *Lex Collegii*, a legal newsletter for independent higher education, addressed the issue of academic freedom. (Volume 16, No. 1, Summer 1992)

The editors begin by acknowledging that "academic freedom means many things to many people." (p. 1) They go on to state that, over the years, courts have grappled with defining the scope of academic freedom. In looking at the position of the courts, the editors state the following:

Probably the most famous and widely quoted judicial statement of academic freedom emanates from Justice Felix Frankfurter in a concurring opinion in *Sweezy* in which he relies on the statement from a conference of South African professors regarding open universities. The statement identified the four essential freedoms of a university: "to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study." (p. 2)

My conclusion is that the courts will define academic freedom narrowly and will focus primarily on the issue of instruction--"what may be taught [and] how it shall be taught." Faculty members who contend that

academic freedom provides protection beyond that will, I think, face an uphill battle if the matter enters the legal system.

I have another more practical concern. Faculty members with continuing contract status may have their employment at the College terminated at any time and for any reason (except when academic freedom is involved) upon payment of a year's severance pay. I would contend that, in most cases, a faculty member with continuing contract status who is outspoken in his or her criticism of an administration and whose contract is subsequently terminated will choose to take the severance package and move on rather than to commit the time and resources in a legal battle where, as I have suggested, the burden of proof will be on the faculty member to prove that the principle of academic freedom is applicable to his or her case. The process of terminating the employment of a tenured faculty member is much more complex and, in most instances, the burden of proof will be on the institution.

There is another related issue--the degree of trust that exists between the faculty and administration. In his monograph about alternatives to tenure, Dick Chait noted that, at Greensboro College, faculty on continuing contract status viewed the salary supplement, the summer stipend, and the guarantee of one year's severance pay as "valuable." "Nevertheless," he concluded, "faculty consistently emphasized that these emoluments would not be sufficient lures under a different, less trustworthy administration." (Where Tenure Does Not Reign, p. 16)

Both the faculty and the administration at Greensboro College have worked hard to establish and maintain the level of trust that Chait was referring to and that, in my opinion, continues to exist. But, it is clear to me from my observations of higher education that this level of trust is unusual. The decision of so many of our junior faculty, who may be spending another two or three decades at this institution, to seek continuing contract status appears to be based on the assumption that this level of trust always will be present. While we can all hope that this is the case, my observation and experience suggest that there is a possibility that this may not be so. If my concerns were to prove to be correct, then it seems to me to be unwise for a growing majority of the faculty to have a contractual relationship with the College that is dependent on a high level of trust for it to meet the expectations of the faculty who have chosen it.

My conclusion, then, is that having a critical mass of tenured faculty is essential for the protection of the faculty and the academic program at any institution. Therefore, I do not believe that it is in the best interests of the faculty, either collectively or, in some instances, individually, for us to abandon the goal of maintaining a balance between

the number of faculty on tenure and those who have been granted continuing contract status. And, from my perspective, it also is not ultimately in the best interests of the academic program or the College itself.

I do realize that, if we continue with the present policy, then a number of faculty are not likely to receive their preferred contractual status. I regret this, just as I regretted recommending continuing contract status for faculty who had requested tenure. But, in my view, this is a case where long-term institutional interests must take precedence over individual ones.

I would recommend, however, changing our current policy regarding changes from tenure to continuing contract status to give priority to those faculty members who previously had requested continuing contract status but who had been placed on a tenure-track or granted tenure because of the institutional requirement that a balance be maintained between these two types of appointments. (Our present policies state that length of service as a full-time faculty member is the sole factor to be used in determining priority for changes in status.) These faculty, of course, would not be required to change their contractual status, but rather given the option to do so. If there were more faculty who wished to change than spaces available, then length of service could be the determining factor.

If, after careful consideration, the Faculty Affairs Committee decides to consider seriously recommending the removal of the restriction in question then I will be glad to offer some suggestions as to how the practical concerns associated with such a change might be addressed.

I appreciate the opportunity to state my position on this important topic before the Faculty Affairs Committee and I hope that the Committee will find my views of some help in focusing its attention on what I believe are some critical issues.

cc: Craven Williams
Academic Affairs Committee