

Final Report:  
In the Matter of a Complaint by William H. Reader

Submitted by:  
The Office for Institutional Equity  
July 30, 2009

## Introduction

The Office for Institutional Equity received this case as a formal complaint of discrimination and harassment from William H. Reader, M.A., Assistant Professor in the School of Journalism, by letter dated May 14, 2009.

## Background

William Reader has been employed by Ohio University as a faculty member in the E.W. Scripps School of Journalism since 2002. During Academic year 2002-2003, Reader was contracted as visiting faculty. Beginning in 2003, Reader was hired into a tenure track position as an Assistant Professor. His areas of expertise include community news and journalism ethics.

On January 21, 2009, the Promotion and Tenure Committee of the E.W. Scripps School voted seven to five in favor of recommending Reader for tenure. On the issue of promotion, the committee voted six to four with one abstention. One committee member, an associate professor, was unable to vote on the issue of promotion, per departmental rule. The chair of the school Promotion and Tenure Committee, Dr. Patrick Washburn, reported the positive vote to Director Thomas Hodson by letter dated January 30, 2009. Washburn's letter included several positive comments about Reader's external reviews, scholarly research, teaching, and service. Washburn's letter contained no negative comments. Reader was informed of the vote on or about January 21, 2009.

On February 11, 2009, three faculty members, Dr. Marilyn Greenwald, Prof. Bojinka Bishop, and Dr. Patricia Cambridge filed complaints against Reader with Director Hodson, who subsequently filed the complaints with the Office for Legal Affairs, which forwarded the complaints to University Human Resources. The complaints allege threats, direct or implied intimidation, or retaliation. The three complaints are virtually identical and state that Reader made threatening comments to third parties about individuals whom he had identified as likely to have voted against him on January 21, 2009. Two of the complainants, Greenwald and Bishop, state that third parties told them of the alleged threats. Cambridge states that she learned of the alleged threats from Director Hodson and one of the other complainants.

Reader states that he was disappointed, upset, and angry that five colleagues voted against tenure. He states that he did have some idea of who voted against him through process of elimination; according to Reader, several tenured faculty members disclosed that they had voted in favor of his tenure and expressed surprise and disbelief that the vote was so close. Reader recounts conversations with two untenured faculty members that briefly touched on his feelings of disappointment and anger that the vote was so close. Reader denies that he sought to intimidate, harass, or threaten any person in connection with the tenure vote.

On February 25, 2009, during a meeting between Hodson, Reader, and Associate Director Robert Stewart, Reader was informed by Director Hodson that Hodson's letter to the Dean of the College of Communication recommended against tenure. The parties agree that Reader was shown a copy of

Hodson's letter, dated February 16, 2009. Hodson's letter refers to concerns by some faculty that they feared "retaliation, harassment, threats or intimidation" and to reports of "volatile and bullying behavior" that had been brought to Hodson's attention in the past. Hodson reports that he orally informed Reader that three faculty members had filed complaints with University Human Resources and that said complaints were being investigated by University Human Resources. Hodson did not disclose the names of the individual complainants to Reader. Reader states that during the meeting with Hodson and Stewart, he rolled up his sleeves to reveal self-injury scars on his arms where he had allegedly carved the words "comfort" and "truth" during a divorce nearly two years ago. Reader states that he did so to demonstrate his commitment to his work because his work had contributed to the disintegration of his first marriage. Reader denies threatening behavior towards Hodson and states that he "pleaded" with Hodson to reconsider his decision to recommend against tenure. Hodson and Stewart state that Reader, at some point during the conversation admonished Hodson, saying "don't make me put you on my list."

On March 4, 2009, the Scripps College of Communication Promotion and Tenure Committee recommended against tenure, on the stated basis of the close vote (7-5) and Director Hodson's letter against tenure. A plain clothes officer from the Ohio University Police Department was summoned by Dean Shepherd to wait outside the conference room as a "safety precaution." Reader did not attend the meeting and by his account, was not on campus at the time of the meeting. Tom Daniels, Chair of the Committee, reported the recommendation against tenure by memorandum to Dean Shepherd dated March 10, 2009.

On March 10, 2009 Reader filed a complaint with University Human Resources against Director Hodson, Dean Shepherd, the three complainants who were at that point unknown to him, and others, alleging that he was subject to a hostile work environment in violation of University Policy 41.135. Brenda Noftz, the reviewer, dismissed Reader's complaint on the stated basis that another university procedure, appeal of denial of promotion and tenure via the Faculty Handbook, was the proper venue for consideration of the issues Reader raised.

University Human Resources issued a report dated "February/March 2009" with no finding of violation of University Policy 41.135 "Workplace Violence." Brenda Noftz, the UHR reviewer, states that the report was provided to Shepherd on March 31, 2009.

By letter dated April 1, 2009, Dean Shepherd denied Reader tenure.

By letter dated May 6, 2009, Reader appealed Dean Shepherd's decision to deny tenure to Provost Kathy Krendl.

In a letter dated June 25, 2009, Provost Kathy Krendl denied tenure to William Reader. Institutional Equity was notified of Provost Krendl's decision on July 23, 2009 during a telephone conversation with Associate Provost Martin Tuck and has since received a fax copy of the letter.

## Allegations

Reader alleges that employees of Ohio University discriminated and/or harassed him in violation of University policy and federal law. Reader specifically alleges:

- Improper denial of tenure and promotion;
- filing of baseless complaints against Reader through University Human Resources;
- improper investigation of Unacceptable Behavior complaints by University Human Resources;
- adverse employment action that is retaliatory;
- disclosure of confidential medical information;
- being regarded as having a mental, emotional, or psychological impairment that makes him a danger to the workplace.

Reader's alleges that he was "regarded as" having a mental, emotional, or psychological impairment that makes a danger to the workplace. Reader states that he believes Scripps College Dean Gregory Shepherd, E.W. Scripps School Director Thomas Hodson, and tenured faculty Dr. Patrick Washburn, Dr. Marilyn Greenwald, Professor Bojinka Bishop, Dr. Patricia Cambridge, and possibly others intentionally made statements to other employees that Reader suffers from a "mental condition," "lunacy," or "emotional instability." Reader further states that these false statements incited fear among other faculty that he was mentally ill and dangerous and/or was a threat to the personal safety and professional reputations of his colleagues. Reader alleges that as a result of some of his colleagues and supervisors regarding him as having a mental, emotional, or psychological impairment, his employment status was adversely impacted and he was denied tenure.

Reader's complaint is attached hereto.

### Ohio University Policy against Discrimination and Harassment

Ohio University prohibits discrimination and harassment on the basis of federal, state, and university-policy protected status.

Ohio University Policy 40.001 "Equal Employment and Educational Opportunity" states, in relevant part:

*It is the policy of Ohio University that there shall be no discrimination against any individual in educational or employment opportunities because of race, color, religion, national origin, sex, veteran status, sexual orientation or handicap.*

Ohio University Policy 03.004 "Harassment" sets forth the definition of harassment, in relevant part:

*Ohio University will make its educational programs and employment opportunities equitably available to students and employees without discrimination on the basis of race, religion, color, sex, sexual orientation, national origin, ancestry, age gender, gender identity or expression, mental or physical disability, or veteran status. Harassment is a form of discrimination and, therefore, harassment directed toward an individual or group, or experienced by an individual or group, violates this policy.*

\* \* \*

*Harassment is defined as any conduct directed toward an individual or group...and severe enough so as to deny or limit a person's ability to participate in or fully benefit from the University's educational and employment environments, or activities, or severe enough that it creates an intimidating, offensive, or hostile environment.*

The standard for behavior that rises to the level of violation of policy is whether the conduct is severe or pervasive. Burden of proof remains with the complainant to demonstrate harassment in violation of Policy 40.001, 41.135, and Policy 03.004.

Ohio University Policy 03.003 "Americans With Disabilities Act Compliance" states, in relevant part:

*Ohio University recognizes the spirit and the letter of the Americans with Disabilities Act (ADA) of 1990. Therefore, in compliance with this federal law, no qualified individual with a disability shall be discriminated against or excluded from: consideration for employment; participation in or the benefits of the services, programs or activities of Ohio University.*

Ohio University Policy 03.003 "Americans With Disabilities Act Compliance" is reflective of the University's responsibilities under the federal Americans With Disabilities Act of 1990. Policy 03.003 further sets forth the definition of a covered individual:

*An individual with a disability is defined as an individual who:*

- *has a physical or mental impairment that substantially limits one (1) or more major life activities;*
- *has a record of such impairment;*
- *is regarded as having such an impairment.*

The Americans with Disabilities Act Amendment Act of 2008 reiterates prohibition against discrimination on the basis of actual disability and against those persons who are regarded as having a disability, regardless of whether a covered impairment exists.

### **Investigation**

The Office for Institutional Equity met with Reader twice prior to the filing of this complaint and interviewed him twice subsequently. In addition, the Office interviewed twenty four faculty and administrators who were identified as parties or potential witnesses. Two witnesses declined to be interviewed despite repeated requests.

The Office for Institutional Equity also reviewed documents submitted by the parties.

## Findings

The appropriateness of the decision to deny tenure on the basis of academic criteria, the timeliness and adherence to procedure, and the integrity of the P& T process are, for the most part, beyond the scope of this inquiry.

### “Regarded As” Disabled

This Office considered witness statements and documents in light of University policy to determine whether Reader was discriminated against because he was “regarded as” having a mental, emotional, or psychological impairment.

UHR’s Workplace Violence Report: UHR’s report on the outcome of the three complaints filed against Reader does not, on its face, suggest that witnesses regarded Reader as impaired by mental illness, as alleged. Noftz denies that any witness she interviewed stated directly or implied that Reader was mentally ill. There is insufficient evidence to support a finding that Reader was discriminated against *on the basis of being regarded as disabled* during UHR’s investigation or in the report of the findings of UHR’s investigation.

Rumor/Innuendo: Reader and some witnesses suggested that respondents Shepherd, Washburn, Hodson, Greenwald, Bishop, and/or Cambridge tainted Reader’s promotion and tenure process by spreading false rumors that he is a threat to the safety and well-being to individuals and the department because of mental illness. All individuals who were identified as overhearing or being told directly by one of the named respondents that Reader was mentally, emotionally, or psychologically impaired were interviewed. No witnesses verified that they heard rumors or were told directly that Reader was mentally, emotionally, or psychologically impaired by any of the respondents. Given that these allegations are based upon hearsay that cannot be corroborated, there is insufficient evidence to support a finding that Reader was discriminated against *on the basis of being regarded as disabled* by any of the named respondents or others engaged in conduct or a pattern of conduct that sought to discredit Reader by suggesting that he is mentally, emotionally, or psychologically impaired.

~~In an attempt to discern what role, if any, perceptions of a “dangerous” disability tainted Reader’s promotion and tenure process, this Office considered the stated reasons for feeling threatened or intimidated by Reader, as expressed by a few faculty members. The reasons given by these witnesses as to why Reader was perceived of as threatening, intimidating, or retaliatory were vague and appeared to be themselves based in hearsay. No witness stated that Reader made direct threatening statements to them. One witness stated that she heard Reader say that he felt he had been “stabbed in the back” by his colleagues who voted against him and that this statement made her feel threatened. The other faculty member who heard the remark at the same time did not describe Reader’s voice, demeanor, or body language as threatening. This office interviewed the only two individuals who were identified as having heard Reader’s original threats and as having communicated those threats to others. Neither individual described Reader’s statements, demeanor, body language, or other actions as threatening. Both emphatically denied having repeated to any other person that they believed Reader to be a threat~~

to his colleagues. Nevertheless, as Reader's comments about being disappointed and angry were repeated from person to person, concern about "what he might do" seemed to escalate. While there is no corroborating evidence of discussion about disability, there was considerable evidence about individuals discussing Reader's promotion and tenure case and his expressed feelings of disappointment and anger. This Office did not find clear evidence of discrimination on the basis of actual or perceived disability, but a compounding anxiety among some faculty who heard and repeated statements attributed to Reader.

Feelings about Reader as a colleague can best be described metaphorically as running hot and cold. Some faculty, all of whom were tenured, described him as a bully, angry, belittling, and rude. Many faculty members, including tenured, tenure-track, part-time, emeriti, and adjunct faculty described him as passionate about his work, friendly, inspiring, and helpful. Many of those who were supportive of him describe him as sometimes acting on principle but against self-interest by challenging tenured faculty and administration.

The individuals who described Reader as threatening recounted past interactions with Reader that were perceived as rude or bullying on his part. Concerns about "what he might do" were based in accounts of past interactions which they described as belittling of their scholarly accomplishments, scornful of individuals for their opinions, and questioning the integrity of some departmental procedures.

Documents: The many documents generated in this case do not reflect clearly prohibited statements or corroborating evidence of rumor or innuendo that support Reader's allegations. Hodson's letter and Shepherd's letter refer to "volatile" behavior, "bullying" behavior, and conduct perceived as non-collegial. A review of departmental and peer evaluations contained strongly positive comments with no negative commentary in regards to Reader's collegiality or progress towards tenure. Within Reader's annual reviews, there were no assertions of volatile, bullying, or other anti-social behaviors from actual or perceived disability or any other cause.

Hodson stated that Reader has not been subject to disciplinary action. This office did not find any documentation of discipline that reflected volatile, bullying, or other anti-social behaviors from actual or perceived disability or any other cause.

### Disclosure of Disability

Separate from the allegations of discrimination on the basis of being "regarded as" disabled as discussed above, Reader alleges that protected health information was improperly disclosed by Hodson, Noftz, and others. Reader discloses in his letter of complaint to Institutional Equity that he does have an actual disability that manifests episodically and has been triggered by the stress of what he believes was improper denial of tenure. Jesse Raney, Director of Disability Services at Ohio University confirms that Reader has a verified medical condition that qualifies under the Americans with Disability Act of 1990 as a disability.

There is insufficient evidence to support a finding that respondents in this case violated University Policy by improperly disclosing impairment that rises to the level of a disabling medical condition under the ADA of 1990 or the ADA Amendment Act of 2008.

Based upon the interviews with witnesses and documents in this case, there is insufficient evidence to demonstrate an improper disclosure of protected health information. Noftz, in her report, refers to Reader's disclosure to her that he had previously experienced anxiety and depression. Her report does not describe Reader's disclosure in terms of medical or psychological diagnoses, and does not link Reader's disclosure to behaviors alleged by the complainants. Noftz denies that she considered Reader's description of his emotional state as medical diagnosis. Use of these terms, in the context in which they were used, does not clearly rise to the level of a prohibited disclosure of personal health information.

### Conclusion

Institutional Equity's inquiry in this matter is focused on the issue of discrimination on the basis of disability, or the perception of disability ("regarded as" disabled) in accordance with University policy and federal and state law. There is insufficient evidence to support a finding of violation of University Policies that protect employees from discrimination *on the basis of disability* or any other status protected by federal or state civil rights law.

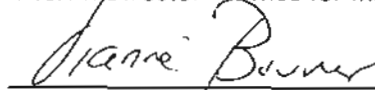
Examination of other issues surrounding the decisions that resulted in denial of tenure that are beyond the scope of this inquiry are subject to appeal procedure described in the Ohio University Faculty Handbook.

The Office for Disability Services should continue to work with Reader and the School to coordinate accommodation for the duration of Reader's qualified disability while an employee of Ohio University in accordance with federal regulation and professional criteria for determining an appropriate accommodation. Employees with knowledge that Reader has registered with Disability Services should safeguard the information and act in good faith to provide accommodation consistent with University policy and federal/state disability law.

Respectfully Submitted,

  
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Laura L. Myers, J.D., M.A. 7/30/09  
date

Interim Director – Office for Institutional Equity

  
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