

Academic Staff Appeals Committee
University of Wisconsin - Madison

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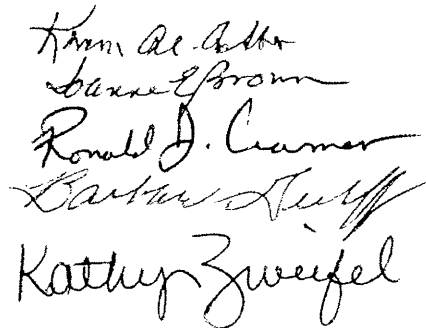
Kathy Zweifel
Department of Genetics

TO: Provost Patrick Farrell
FROM: Academic Staff Appeals Committee
DATE: May 8, 2006
RE: The Case of Paul Barrows

Enclosed please find the summary report and recommendation of the Academic Staff Appeals Committee in the case of Paul Barrows.

If you wish to discuss any aspect of this enclosure or the final determination in this matter, please contact the Committee through Colleen McCabe.

For the Committee:



Xc: Paul Barrows
Lester Pines
John Wiley
Nancy Lynch
Robin Van Harpen
Academic Personnel Office

IN THE CASE OF PAUL BARROWS

INTRODUCTION AND PROCEDURAL BACKGROUND

On September 21, 2005, Provost Peter Spear issued a letter of discipline to Paul Barrows. At the time of the letter, Mr. Barrows held the position of Senior Administrative Program Specialist in the Office of the Provost, and was on administrative leave.

In letters dated September 28, 2005 and October 21, 2005, Mr. Barrows, through his attorney Lester Pines, submitted to the Academic Staff Appeals Committee (ASAC) grievances related to different aspects of the disciplinary letter. In a teleconference between Karen Al-Ashkar, ASAC chair, Nancy Lynch, attorney for the University, and Lester Pines, the parties agreed that there were three preliminary issues to be decided before proceeding with a substantive review of Mr. Barrows' case. Those issues were:

1. Whether the grievance described in the October 21, 2005 letter was timely;
2. Whether Mr. Barrows was entitled to a review or hearing for the grievance described in the September 21, 2005 letter; and
3. Whether Mr. Barrows was entitled to a review for the October 21 grievance if it were determined to be timely.

On December 13, the Committee decided that 1) the grievance from October 21 was not timely, and 2) Mr. Barrows was entitled to a hearing for the grievance described in the September 28, 2005 letter. The third possible decision was rendered moot by the Committee's decision on the first point.

Subsequently, the University requested reconsideration of the Committee's decision on the hearing and provided additional information, to which Mr. Barrows responded. The Committee reconvened on January 10, 2006 to reconsider this decision and determined that a hearing was still appropriate.

The Committee held a hearing on the grievance on April 10 and 11, 2006, under the jurisdiction of Chapters 6, 7, and 9 of the University of Wisconsin-Madison Academic Staff Policies and Procedures (ASPP). Because Mr. Barrows requested an open hearing under Wisconsin Statutes Section 19.85(1)(b), the taking of testimony in the matter was held in open session.

The issue for the hearing was, "Did the employer meet the burden of proof in establishing that there was just cause to support the September 21, 2005 discipline of Mr. Paul Barrows?"

FINDINGS OF FACT

The University of Wisconsin first employed Paul Barrows in 1989, as a special assistant to Chancellor Donna Shalala. He was promoted to progressively more responsible positions until Chancellor David Ward appointed him as Vice Chancellor of Student

Affairs in July 1999. At that time was charged with the administration of the University Health Services, Academic Services, and the Office of the Dean of Students. He also received an indefinite appointment in a "backup" position to be determined at the time of the backup assignment. He remained in the position of Vice Chancellor of Student Affairs when John Wiley succeeded David Ward as Chancellor in January 2001. Until November 2004 there was no criticism of his performance.

One area of focus for Paul Barrows was campus diversity initiatives; in fact, he was considered the point person for this aspect of campus life. In the late 1990s and early 2000s, the Multicultural Student Coalition (MCSC) received funding through student segregated fees to start the Diversity Education Program (DEP), whose staff was to work with students and others to enhance diversity programs and training issues. One of the founders of DEP was Tshaka Barrows, Paul Barrows' son. Since DEP was a program for students, it fell under the purview of the Dean of Students, and thus under Paul Barrows' ultimate direction.

In September 2004, Mr. Barrows had a conversation with Casey Nagy, the Chancellor's Assistant, concerning a relationship between Mr. Barrows and a 40-year-old graduate student. In the discussion, Mr. Barrows told Mr. Nagy that the relationship was consensual; Mr. Nagy determined that while the relationship was inappropriate and showed bad judgment, there was no violation of university policy. The next day, Mr. Barrows talked to Mr. Wiley about the same issue, and Mr. Wiley concluded there was no violation of the consensual relationship policy.

Early in November 2004, according to the Steingass Report, John Wiley took Paul Barrows aside at a mock crisis drill held at the Kohl Center and told him that he was to resign or be removed from his position as Vice Chancellor. According to Mr. Wiley, two of Mr. Barrows' directors, Luo Luo Hong, the Dean of Students, and Kathy Poi, the Director of University Health Services, had lost confidence in Mr. Barrows. Mr. Wiley offered no other specifics for the demotion. Mr. Wiley told Mr. Barrows to take a leave of absence using personal leave and that there would be a position available for Mr. Barrows on January 1, 2005, developing Posse and PEOPLE programs in Milwaukee. At that time Mr. Wiley also decided to reorganize the Office of the Vice Chancellor for Student Affairs.

Unknown to Mr. Barrows, on November 1, 2004, Dean of Students Hong had written a long confidential memo to Mr. Wiley detailing allegations about Paul Barrows' conduct in relation to a graduate student called Jane Doe in the Steingass Report. Mr. Wiley took his action demoting Mr. Barrows in apparent reliance on contentions contained in Hong's memo. Neither the memorandum nor the information contained therein were shared with Mr. Barrows.

Mr. Barrows was shocked and angered by the demotion because it had happened so suddenly. He immediately resigned from his position as Vice Chancellor, saying publicly that he was stepping down to deal with family and medical issues. Mr. Wiley accepted the resignation in a letter dated November 2, 2004. In that letter he wrote:

I'll schedule a time to talk with your about your role going forward, but here is what I propose in the short term: (1) you take leave as necessary to address your personal issues; (2) following the expiration of your leave, you complete fundraising initiatives currently underway, and you conduct a comprehensive feasibility study regarding the establishment of a Milwaukee-based field office for the PEOPLE program; and (3) if, after completing the assignments above, you are interested in additional roles at UW-Madison, you should work with Provost Spear to address that interest as part of your academic staff backup appointment. (Mr. Barrows Exhibit 16)

Beginning in early January 2005 Mr. Barrows tried to return to work. On or about January 6, 2005 Mr. Barrows, Vice Chancellor Darrell Bazzell and Mr. Wiley met to discuss Mr. Barrows' return from his leave of absence. At that time, Mr. Barrows expected to return to work as an Associate Vice Chancellor, focusing on diversity initiatives and other duties. (Barrows Exhibit 4)

Mr. Barrows also looked for positions outside of the University, but had a difficult time finding suitable employment. Questions naturally arose about his resignation and the dismantling of the Division of Student Affairs. Mr. Wiley offered assistance in the job search, and acted as a reference for Mr. Barrows, but initially a job search was unsuccessful. According to Mr. Barrows' testimony, h continued to request to return to work for the University, but each time Mr. Wiley declined, saying that Mr. Barrows was too much of a "lightning rod", according to Mr. Barrows' testimony.

Use of Leave

In February 2005, the Madison media reported on Mr. Barrows' extended leave. In response to a media request, Stephen Lund, the Director of the Office of Academic Personnel for the Madison campus, inquired of Mr. Nagy what Mr. Barrows' current work status was supposed to be. In an email dated February 15, 2005, Mr. Lund wrote:

Hi Casey,

I thought the estimate of how much sick leave was needed was 2 months, followed by use of vacation/ALRA/holiday, followed by leave without pay. As of 1/31/05, he has been gone nearly 3 months and has been using sick leave. He has enough sick leave left to take him into May and then enough vacation/ALRA to take him into August. What's the current status? (University Exhibit 10)

Mr. Nagy indicated he would get back to Lund the next day.

What Mr. Nagy actually did with Mr. Lund's request is unknown, as there was no testimony or written evidence regarding this issue. Around this time, Mr. Bazzell suggested to Mr. Barrows that he use vacation time for January and February. Mr.

Bazzell made no comments about what leave to use after February 2005. On or about February 17, 2005, Mr. Barrows asked through his assistant Paula Gates that the sick leave claimed for January should be switched to vacation. According to Mary Bingham, the person responsible for Mr. Barrows' leave accounting, this change was made on February 17. Mr. Barrows then changed his February leave to vacation and ALRA. Subsequent leave statements, all signed by Mr. Wiley, show Mr. Barrows claiming sick leave.

Mr. Barrows testified that he received a job offer from Hunter College in mid-April 2005. He brought this information to both Mr. Nagy and Mr. Wiley. Mr. Wiley then told Mr. Barrows that he could start again at the Madison campus as an Associate Vice Chancellor or Special Assistant to the Chancellor, beginning June 20, 2005. Mr. Barrows was still looking at other positions and was in contention for positions at the University of Texas and the University of Toledo. He withdrew himself from consideration at Texas when there was adverse publicity in the Texas student newspaper.

On June 15, Mr. Barrows again notified Mr. Wiley he was ready to start work. (Barrows Exhibit 26) Two days later, Mr. Lund drafted an appointment letter for Mr. Barrows for a limited appointment as Consultant (working title: Special Assistant to the Chancellor), effective June 23, 2005. Around this time, as well, there were again reports about Mr. Barrows' leave in the Madison media. On June 18, Mr. Spear called Mr. Barrows from his vacation and told him that he (Spear) had heard "allegations" about sexual harassment charges against Mr. Barrows and that Mr. Barrows ought to resign if they were true. When Mr. Spear returned from vacation the next day, he and Mr. Barrows spoke again, and Mr. Spear suggested that Mr. Barrows resign if the allegations were true, but if not, he should not resign.

Also on June 19, both Mr. Wiley and Mr. Nagy spoke with Mr. Barrows at Olin House. For the first time, Mr. Barrows saw the November 2004 memo from Dean Hong, which had precipitated the initial demotion. Mr. Wiley, Mr. Nagy and Mr. Barrows discussed some of the content of the memo (which focused on Mr. Barrows' relationship with Jane Doe in the prior summer) and Mr. Barrows' return to work. Mr. Barrows was angry. Nevertheless, he returned to work on June 20, and worked in a small room in the lower level of Bascom Hall for 2-1/2 days.

On the afternoon of June 22nd, according to Mr. Barrows' testimony, Mr. Wiley told Mr. Barrows that there were numerous allegations, that some would stick, and that he should resign from the consultant position or he would be terminated from that appointment. Mr. Wiley then sent Mr. Barrows a letter on June 23rd which stated:

As you know, we anticipated you beginning the Consultant Limited Appointment on June 23, 2005. Before providing the appointment letter and formally implementing the employment change, I lost confidence in your ability to carry out the duties associated with the Consultant position. As a result, I write to inform you that, effective immediately, I am ending

your limited appointment as Vice Chancellor and am placing you in your academic staff back-up position beginning June 24, 2005.

I must also inform you that during the last 24 hours I have received information that, if true, is inconsistent with answers you have given me regarding your conduct. Therefore, I will begin an investigation to determine whether disciplinary action, up to and including dismissal, is appropriate. Effective immediately, I am placing you on administrative leave with pay for the duration of the investigation. During this leave you will have no university responsibilities and should not be on campus.

Again, Mr. Wiley provided Mr. Barrows with no specifics, although he claimed that there were several women prepared to come forward with sexual harassment allegations, and that he believed Mr. Barrows had lied to him in their June 19, 2005 meeting in Olin House.

Steingass Investigation

As a result of the June 23rd letter, Peter Spear became Mr. Barrows' supervisor. On July 8, 2005, Mr. Spear appointed Susan Steingass, a former Dane County judge and prominent local attorney, to investigate a personnel matter involving Mr. Barrows. Her charge, as presented in her report (the Steingass Report), was to:

- 1) determine the facts regarding allegations of inappropriate behavior made against Dr. Paul Barrows, former Vice Chancellor for Student Affairs;
- 2) determine the facts regarding all aspects of Dr. Barrows' leave from the University of Wisconsin-Madison;
- 3) identify appropriate standards of conduct and applicable policies and laws;
- 4) investigate all allegations of violations of applicable rules, policies and procedures by Dr. Barrows related to his employment at the University of Wisconsin-Madison; and
- 5) investigate the University's application of leave policies as they relate to Dr. Barrows. (University Exhibit 17)

Ms. Steingass undertook this effort by several means. She asked for documents about university policies and procedures, asked for information about how legal standards had been used, reviewed documents three or four times at Bascom Hall, and interviewed numerous witnesses. In all, she spoke to 27 people, some by telephone and some in person. Ms. Steingass spoke to Chandrika Mahadeva and Sara Fuller, identified in the Steingass Report as SS and SF, respectively, only by telephone, and only briefly. Her practice was to take handwritten notes that she typed up and then either read back or sent to the interviewees for their corrections and additions. She evaluated witnesses' credibility based on the consistency of their statements, the details provided, and the available documentation.

