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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

KOLAN DAVIS, STAFF DIRECTOR AND CHIEF COUNSEL
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September 25, 2019

Dr. Vincent E. Price
Office of the President
Duke University
207 Allen Building
Box 90001
Durham, North Carolina 27708-0001

Dear Dr. Price:

The United States Senate Committee on Finance has exclusive jurisdiction within the U.S. Senate over matters of federal taxation, and as its chairman I am committed to making sure the United States' tax laws are administered fairly and effectively. As part of that commitment, it is my job to make sure that entities exempt from tax are fulfilling their tax-exempt purposes. As you are surely aware, Duke University is an educational institution exempt from tax by way of 26 U.S.C. § 501(c)(3) and, according to its Form 990 for year 2016,

The mission of Duke University is to provide a superior liberal education to undergraduate students, attending not only to their intellectual growth but also to their development as adults committed to high ethical standards and full participation as leaders in their communities ... to advance the frontiers of knowledge and contribute boldly to the international community of scholarship; to promote an intellectual environment built on a commitment to free and open inquiry... and to promote a deep appreciation for the range of human difference and potential, a sense of the obligations and rewards and citizenship, and a commitment to learning, freedom and truth.¹

Unfortunately, over the past year I have read a variety of media reports discussing incidents in higher education involving faculty suffering difficulties with or expressing concerns about teaching or researching topics that might challenge or encourage critical thinking about the conventional wisdom or a popular ideology of the day. Recently in the

¹ Duke University 2016 Form 990 Schedule O, available at <https://projects.propublica.org/nonprofits/organizations/560532129/201801359349312415/IRS990ScheduleO>.

Wall Street Journal, former Yale Law School dean and current professor Anthony Kronman criticized U.S. higher education for failing to live up to its purpose of “preserving, within the larger democratic order, islands of culture devoted to the undemocratic values of excellence and truth.”² If this is true, it strikes at the heart of why U.S. universities are generally exempt from tax. In a case involving a college’s tax-exempt status, the U.S. Supreme Court described the reason for tax exemption in this way: “Charitable exemptions are justified on the basis that the exempt entity confers a public benefit -- a benefit which the society or the community may not itself choose or be able to provide, or which supplements and advances the work of public institutions already supported by tax revenues.”³ The Association of American Universities (AAU) describes the tax-exempt purpose in the context of higher education as “fundamental to fostering the productive and civic capacity of [the Nation’s] citizens.”⁴ Prof. Kronman invokes Tocqueville to describe this purpose as challenging “the instinct to believe what others do in order to avoid the labor and risk of thinking for oneself.”⁵ I agree with both the AAU and Prof. Kronman. Students who can work and think critically for themselves are best equipped to tackle the most difficult challenges we face and participate fully and effectively in our democracy.

A fundamental piece of this democracy-enabling purpose is that college and university professors should be free to teach and research – and students should be free to learn – to the best of their abilities in defiance of an undiscerning “instinct to believe what others do.” The United States’ higher education has long been the envy of the world for its ability to do just that. This letter respectfully requests information regarding the university’s commitment to creating such an educational environment in which its faculty can teach topics and take positions on matters that defy conventional wisdom and challenge orthodoxies in necessary but perhaps uncomfortable ways, what Duke University describes as “a commitment to free and open inquiry.”

It is my understanding that the recently completed academic year was the last of 20 years that Prof. Evan Charney was an associate professor at Duke University’s Sanford School of Public Policy. I understand Prof. Charney to have been a non-tenured professor at Duke with a five-year contract that concluded with the 2018-19 academic year. I also understand that Duke chose in April 2018 to not renew Prof. Charney’s contract. According to Prof. Charney,

The end of the spring semester marks the 20th anniversary of my professorship at Duke, first as an assistant professor and then as an associate professor of the practice at the Sanford School of Public Policy. During this time, I regularly taught the required ethics class for all undergraduate public policy majors. I won multiple teaching awards,

² Anthony Kronman, *The Downside of Diversity*, WALL STREET JOURNAL, August 3, 2019, <https://www.wsj.com/articles/the-downside-of-diversity-11564758009>.

³ *Bob Jones Univ. v. United States*, 461 U.S. 574, 591 (1983).

⁴ Nonprofit Tax Compliance, Association of American Universities, at <https://www.aau.edu/issues/nonprofit-tax-compliance>.

⁵ Anthony Kronman, *The Downside of Diversity*, WALL STREET JOURNAL, August 3, 2019, <https://www.wsj.com/articles/the-downside-of-diversity-11564758009>.

consistently received scores on student teaching evaluations above the school average and, in a Duke Chronicle poll of undergraduates, was ranked as one of the three most popular professors at Duke University for several years.

Therefore, I was blindsided last April when informed that my contract would not be renewed, particularly given that for the past five years (I was on a five-year renewable contract) I was never informed of any problem with any aspect of my performance. Nor was I given an evaluation, despite a change to the Duke bylaws in 2017 mandating such reviews (see here).

When word of the non-renewal of my contract got out, a letter written in my defense, signed by 100 former students, was published in the Duke Chronicle, and these same students and others began a letter-writing campaign imploring the Sanford administration to reconsider their decision.

Last April, I filed a complaint with the Faculty Hearing Committee (FHC), a university-wide committee tasked with hearing faculty complaints on matters such as tenure and contract renewal. In their written report, they made clear (as Sanford never did) the actual reason for the loss of my job: Dissatisfaction with my “classroom performance.” Specifically, according to Sanford:

Professor Charney’s tendency to provoke negative reactions, and perhaps harm, among some students in the classroom due to his confrontational teaching style—a style that had a tendency to be polarizing among students, particularly in a required Sanford course in which not all students could choose to have Professor Charney as an instructor.

Prof. Charney continues in this statement, which is attached to this letter in full, to discuss his belief that his contract with Duke was not renewed on the basis of a handful of student complaints in one class that discussed on-campus racism. Prof. Charney concludes his statement with the following:

What happened to me is being repeated at colleges and universities throughout the country. Unfortunately, a growing number of university students equate being made uncomfortable in the classroom with being “harmed.” And in this they are encouraged by a growing number of faculty and administrators who view the mission of the university as more about shielding students from such “harm” (for the sake of “inclusivity”) and less about meaningful education. In the “surveillance university,” students are encouraged to report on the transgressions of faculty, and in

what has been called an impulse of “vindictive protectiveness,” faculty are judged guilty and harshly punished.⁶

The purpose of this letter is not to re-litigate Duke University’s decision not to renew Prof. Charney’s contract nor is it to question the adequacy of procedures afforded to Prof. Charney in the wake of that non-renewal. However, Prof. Charney more generally raises serious concerns about the state of higher education. In his statement listed above, Prof. Charney quotes from a written report of a Faculty Hearing Committee, which he purports to be “a university-wide committee tasked with hearing faculty complaints on matters such as tenure and contract renewal.” That report, which is also attached in full to this letter, substantively concludes as follows:

Professor Charney’s complaint argues that the criticisms of his classroom performance, and thus the decision not to renew his appointment, really had to do with his “radical free speech” approach, in which he forced his students to discuss controversial viewpoints on hotly contested issues of politics and public policy. The panel finds no evidence, however, that anyone at Sanford objected to Professor Charney’s raising of any particular issue, or expression of any particular viewpoint, in his classroom. Indeed, Professor Charney stressed that he intentionally introduces provocative views on all sides of issues and that students would have difficulty determining his personal views.

The issue was not what Professor Charney discussed but how he handled discussion of difficult and emotional issues with and among students. Professor Charney perhaps could have made more effort to learn to manage classroom discussion of difficult topics in a manner that would have left all students feeling fully heard and respected. But, again, that is not a matter for this Committee. Sanford was entitled, wisely or not, to choose a classroom environment for itself in which no student was left feeling mistreated by an instructor. Whether students or faculty, or both, should adapt their sensitivities and behavior, be separated from curricula or even departments and schools, or simply be left to their own devices in such situations, are pedagogical questions outside the jurisdiction of the Faculty Hearing Committee.⁷

⁶ Evan Charney, *The End of Being a Duke Professor and What It Means for the Future of Higher Education*, The James G. Martin Center for Academic Renewal, April 22, 2019, <https://www.jamesgmartin.center/2019/04/the-end-of-being-a-duke-professor-and-what-it-means-for-the-future-of-higher-education/>.

⁷ Duke University Faculty Hearing Committee Appendix 1, *Findings of Fact and Recommendation Involving Claim of Evan Charney*, PhD, January 8, 2019, available at https://drive.google.com/file/d/1qrGaqKye_5hJxEAFYmTrzNYLJeXVlnF7/view.

I have the following questions about this matter:

1. Do you understand the facts discussed in the partially reprinted statement above by Prof. Charney to be accurate? If not, what factual allegations in that statement require correction and what are those corrections?
2. Do you understand the report discussed in Prof. Charney's statement, and partially quoted above and attached to this letter in full, as an authentic copy of the report from Duke University's Faculty Hearing Committee on the matter of Prof. Charney? If not, please provide an authentic copy of that report.
3. Do you understand the facts discussed in that report to be an accurate portrayal of the processes and reasons for Duke University's decision not to renew Prof. Charney's contract? If not, what factual allegations in that report require correction and what are those corrections?
4. Is Prof. Charney correct in his statement that over the last 20 years he regularly taught an ethics class required of all undergraduate public policy majors at Duke University?
5. Is Prof. Charney correct in his statement that over the last 20 years he won multiple teaching awards? If so, what awards did he win and when did he win those awards?
6. Is Prof. Charney correct in his statement that over the last 20 years he consistently received scores on student teaching evaluations above the Duke University average? Is Prof. Charney correct in his statement that in a Duke Chronicle poll of undergraduates, he was ranked as one of the three most popular professors at Duke University for several years? If so, what years did he poll as such?
7. Did Prof. Charney alter his course materials or his teaching methods substantially in the past two academic years compared to prior years when he was reportedly highly rated by students?
8. Is Prof. Charney correct in his statement that Duke University's Faculty Hearing Committee found the reason the university did not renew his contract was his classroom practice of "provok[ing] negative reactions, and perhaps harm, among some students in the classroom due to his confrontational teaching style—a style that had a tendency to be polarizing among students, particularly in a required Sanford course in which not all students could choose to have Professor Charney as an instructor"?

- a. If so, in what ways did Prof. Charney “provoke negative reactions”?
 - b. How are such provocations antithetical to an intellectual environment built on a commitment to free and open inquiry?
 - c. In what specific ways did Prof. Charney’s classroom practice provoke harm to students at Duke University?
9. Does the quote above accurately reflect Duke University’s Faculty Hearing Committee report regarding Prof. Charney in its statement, “The issue was not *what* Professor Charney discussed but *how* he handled discussion of difficult and emotional issues with and among students.”? If so, what specifically did Duke University find disagreeable in the way that Prof. Charney handled discussion of “difficult and emotional issues with and among students?”
10. Does the quote above accurately reflect Duke University’s Faculty Hearing Committee report regarding Prof. Charney in its statement, “Professor Charney perhaps could have made more effort to learn to manage classroom discussion of difficult topics in a manner that would have left all students feeling fully heard and respected.”?
- a. If so, in what ways could Prof. Charney have made more effort to learn to manage classroom discussion of difficult topics in a manner that would have left students feeling fully heard and respected? Did any university official work with Prof. Charney to address such a perceived inadequacy prior to deciding not to renew Prof. Charney’s contract?
 - b. How is such an effort not tantamount to giving preferred weight to certain student perspectives over others in a classroom setting, and how does it coexist with Duke University’s purported purpose of “promot[ing] an intellectual environment built on a commitment to free and open inquiry... and ... promot[ing] a deep appreciation for the range of human difference and potential”?
 - c. Can a university fulfill its commitment to “learning, freedom and truth” without potentially causing its students to have their perspectives challenged?
 - d. Can a university fulfill its commitment to “provid[ing] a superior liberal education to undergraduate students” without potentially causing its students to have their perspectives challenged?
 - e. Can a university fulfill its commitment to developing its students into adults without potentially causing its students to have their perspectives challenged?

11. Prof. Charney alleges “a growing number of university students equate being made uncomfortable in the classroom with being ‘harmed.’ And in this they are encouraged by a growing number of faculty and administrators who view the mission of the university as more about shielding students from such ‘harm’ (for the sake of ‘inclusivity’) and less about meaningful education.” Do you agree with this statement?
- If so, what efforts is Duke University making to ensure that “shielding students from ‘harm’” does not impede “meaningful education”?
 - If not, how do you disagree with this statement by Prof. Charney?
12. In his statement Prof. Charney quotes from a student who supported his teaching methods as follows:

As a woman of color, I write to bring attention to an aspect of Charney's teaching that will be as missed as much as it is needed in today's political climate... The climate at Duke reflects the polarization of the country at large. Conversations are halted before they can even begin. Instead of listening, instead of understanding or trying to understand, people on both sides are combative and dismissive... Charney taught us how to have those conversations, how to navigate race relations, how to empathize.

Did the sentiment expressed in this paragraph above factor into Duke University's decision not to renew Prof. Charney's contract? If so, please elaborate on how it factored into that decision-making process.

13. Does the non-renewal of Prof. Charney's contract with Duke University because of undergraduate students not “feeling fully heard and respected” give reason for other non-tenured professors at Duke University to err on the side of making students feel heard and respected, as opposed to challenged, and if so, how does that affect Duke University's purpose of boldly advancing the frontiers of knowledge?

I also ask for responses to the following questions about what Duke University describes as its Bias Response Advisory Committee. According to the university's website, “Duke Student Affairs has established a Bias Response Advisory Committee to advise the Vice President for Student Affairs when allegations of bias-related incidents may impact the Duke community.”⁸ One of the purported missions of the Bias Response Advisory Committee is to “make recommendations for educational interventions to help

⁸ Bias Response Advisory Committee, Duke University Student Affairs, <https://studentaffairs.duke.edu/bias-response>.

the larger University community deepen awareness and fluency on the diversity of human experience.”⁹ Furthermore, according to Duke’s website, a “bias incident” is defined as

*an act or behavior motivated by the offender’s bias against the identity of an individual or community. Bias occurs whether the act is intentional or unintentional and may be directed toward an individual or group. A bias incident may take the form of a verbal interaction, cyber-interaction, physical interaction, or interaction with property. Bias often contributes to or creates an unsafe/unwelcoming environment.*¹⁰

In discussing university discipline of those who in engage in “bias-related incidents,” that website states,

*The University takes seriously its responsibility to appropriately balance its core values of protecting individual freedoms (e.g., freedom of speech, artistic expression, freedom of association, academic freedom) and ensuring equal and fair treatment of all. These values may sometimes be in conflict. There are many considerations when determining whether bias-related conduct violates the University’s expectations of members of our community. In so doing, the University is always mindful that academia is a unique place where the exchange of ideas, robust debate and artistic expression are critical to the University’s teaching and research missions. Investigation and adjudication of possible violations of university policy as the result of reported bias-related incidents are handled by the Office of Student Conduct.*¹¹

According to that website, Duke “[s]tudents affirm their commitment to foster this climate by signing a pledge that includes taking constructive action if they witness or know about behavior they perceive to be inconsistent with the [Duke Community Standard], which may include violation of university policies.”¹²

My questions about Duke University’s Bias Response Advisory Committee are as follows:

14. Was the non-renewal of Prof. Charney’s contract with Duke University precipitated by students reporting him to Duke University’s Bias Response Advisory Committee?
 - a. If so, how many of such complaints were there, and what were the nature of those complaints?

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

- b. If not, was the non-renewal of Prof. Charney's contract with Duke University precipitated by students reporting him to any other individual, body, or entity associated with Duke University? If so, how many of such complaints were there, and what were the nature of those complaints?
15. Does the University have a written policy defining "Bias Response Advisory Committee" as well as its policies and procedures for receiving, evaluating, and referring complaints beyond what is described on the Duke University Student Affairs website? If so, please provide a copy of that policy.
16. Duke University's website lists nine individuals as members of the Bias Response Advisory Committee.¹³ What individuals are eligible to serve on the Bias Response Advisory Committee, and how are they selected?
17. What type of conduct rises to the level of a "bias incident"? Does the Bias Response Advisory Committee distinguish between incidents that are (1) so severe, pervasive, and objectively offensive, and that so undermine and detract from a student's educational experience, that the student is effectively denied equal access to the university's resources, and those that are (2) merely the expression of heterodox ideas made or offered in a spirit of free and open inquiry?
18. As stated above, Duke University purports to "take seriously its responsibility to appropriately balance its core values of protecting individual freedoms (e.g., freedom of speech, artistic expression, freedom of association, academic freedom)." What training, if any, does Duke University provide to members of its Bias Response Advisory Committee for the purpose of helping them distinguish between "bias incidents" that are (1) so severe, pervasive, and objectively offensive, and that so undermine and detract from a student's educational experience, that the student is effectively denied equal access to the university's resources, and (2) those that are merely the exercise of individual freedoms, such as the freedom of speech, artistic expression, freedom of association, and academic freedom? Please provide copies of those materials.
19. What training, if any, does Duke University provide to other individuals in its community who might be responsible for handling reports of "bias incidents" for the purpose of helping them distinguish between "bias incidents" that are (1) so severe, pervasive, and objectively offensive, and that so undermine and detract from a student's educational experience, that the student is effectively denied equal access to the university's resources, and (2) those that are merely the exercise of individual freedoms, such as the freedom of speech, artistic expression, freedom of association, and academic freedom? Please provide copies of those materials.

¹³ *Id.*

20. Since the beginning of the 2017-2018 academic year, how many complaints has Duke University's Bias Response Advisory Committee received, and does the Bias Response Advisory Committee keep records of such complaints? If so, please provide copies of those complaints that involve allegations of bias committed by faculty, with personal information redacted.
21. Does the Duke University Bias Response Advisory Committee accept anonymous complaints, and, if so, does the Bias Response Advisory Committee keep records of anonymous complaints?
22. How does Duke University's Bias Response Advisory Committee address "bias incidents" that are not so severe, pervasive, and objectively offensive, and that so undermine and detract from a student's educational experience, that the student is effectively denied equal access to the university's resources, or do not otherwise violate any laws?
 - a. Since the beginning of the 2018-2019 academic year, have there been any such incidents that resulted in discipline of student or faculty?
 - b. If so, how many of such incidents resulted in discipline of student or faculty, and what types of discipline ensued on account of such incidents?
 - c. How many of such incidents involved subject matters taught by faculty? How many of such incidents involved faculty behavior?
23. I assume Duke University has orientation programming for its new students. During such programming, how does Duke University communicate to those new students the importance of academic freedom, if at all? Please provide copies of any materials used for such programming.

This is to ask that you respond to the Committee no later than October 25, 2019. Furthermore, please answer the questions on a question-by-question basis, indicating which questions you are answering. Of course, while the Finance Committee has a responsibility to ensure the tax laws are administered fairly and effectively, I do not wish to interfere with the legitimate exercise of Duke's academic freedom and I would certainly invite a discussion of that as well, if you are so inclined. Should you have any questions, please contact John Schoenecker or Quinton Brady at (202) 224-4515. Thank you in advance for your assistance in this matter.



Charles E. Grassley
Chairman
Senate Finance Committee



The End of Being a Duke Professor and What It Means for the Future of Higher Education

APR 22, 2019



Evan Charney 299 Comments

THE END OF THE SPRING SEMESTER MARKS THE 20TH ANNIVERSARY OF MY PROFESSORSHIP AT DUKE, first as an assistant professor and then as an associate professor of the practice at the Sanford School of Public Policy. During this time, I regularly taught the required ethics class for all undergraduate public policy majors. I won multiple teaching awards, consistently received scores on student teaching

evaluations above the school average and, in a *Duke Chronicle* poll of undergraduates, was ranked as one of the three most popular professors at Duke University for several years.

Therefore, I was blindsided last April when informed that my contract would not be renewed, particularly given that for the past five years (I was on a five-year renewable contract) I was never informed of any problem with any aspect of my performance. Nor was I given an evaluation, despite a change to the Duke bylaws in 2017 mandating such reviews (see here).

When word of the non-renewal of my contract got out, a letter written in my defense, signed by 100 former students, was published in the *Duke Chronicle*, and these same students and others began a letter-writing campaign imploring the Sanford administration to reconsider their decision.

Last April, I filed a complaint with the Faculty Hearing Committee (FHC), a university-wide committee tasked with hearing faculty complaints on matters such as tenure and contract renewal. In their written report, they made clear (as Sanford never did) the actual reason for the loss of my job: Dissatisfaction with my “classroom performance.” Specifically, according to Sanford:

Professor Charney's tendency to provoke negative reactions, and perhaps harm, among some students in the classroom due to his confrontational teaching style—a style that had a tendency to be polarizing among students, particularly in a required Sanford course in which not all students could choose to have Professor Charney as an instructor.

That's an astonishing claim that stands in stark contrast to the assessment of the FHC itself:

The members of the panel were disappointed with Sanford's handling of Professor Charney's reappointment. Professor Charney was, for many years at Duke, a highly-rated, University-decorated, and—for many, many students—beloved and formative professor. He was an asset to Duke.

Last April, I was informed that my contract would expire in one year—and was then assigned to teach two classes of the *very same required Sanford course*, one in the fall and one this spring, in which I supposedly had a tendency to harm students. If Sanford actually believed their own rhetoric, they would be guilty of knowingly endangering their students.

Why did I lose my job on the basis of my purportedly having a tendency to harm students, when there was no evidence of such a tendency, either in my student evaluations or any other feedback I received from students and faculty?

The answer, I believe, is twofold: First, the complaint of a handful of students concerning the events of a single class in which we discussed racism at Duke; second, an administration willing to give this complaint absolute credence and greater weight than a record of 20 years as an outstanding teacher, and to distort that record to ensure a negative vote of the faculty.

It is extremely troubling that the complaint of a handful of students proved dispositive, inasmuch as most students who were in the very same class had very different reactions to my teaching. Here is one representative example:

As a woman of color, I write to bring attention to an aspect of Charney's teaching that will be as missed as much as it is needed in today's political climate...The climate at Duke reflects the polarization of the country at large. Conversations are halted before they can even begin. Instead of listening, instead of understanding or trying to understand, people on both sides are combative and dismissive...Charney taught us how to have those conversations, how to navigate race relations, how to empathize.

To be sure, I am a provocative professor. I challenge students' deeply held beliefs and expose them to material some would find shocking and offensive. Far from having a tendency to provoke negative reactions, harm, and polarization, it is precisely my method of teaching that has made me such a popular teacher and has led student after student to assert that my class changed her life.

An ideologically driven and enforced conception of harm is fundamentally at odds with the principle of faculty free expression.

What happened to me is being repeated at colleges and universities throughout the country. Unfortunately, a growing number of university students equate being made uncomfortable in the classroom with being "harmed." And in this they are encouraged by a growing number of faculty and administrators who view the mission of the university as more about shielding students from such "harm" (for the sake of "inclusivity") and less about meaningful education. In the "surveillance university," students are encouraged to report on

the transgressions of faculty, and in what has been called an impulse of "vindictive protectiveness," faculty are judged guilty and harshly punished.

Such protectiveness is motivated less by a reasonable concern for students' mental health and more by political ideology. The complaint of a group of conservative students who felt singled out or disrespected or uncomfortable in class would be taken far less seriously. I have been on the receiving end of faculty emails making light of just such complaints.

Nor would a complaint by religious students that God and Christianity were mocked by their professor have much purchase. And I have never heard that Sanford's "safe space" is a welcome refuge for the (generally reviled) minority of "open" Trump supporters on campus, nor have I heard of "trigger warnings" for depictions of disrespect to the American flag or harm to the unborn.

Such an ideologically driven and enforced conception of harm is fundamentally at odds with the principle of faculty free expression (teaching *style* is as much a matter of free expression as course content or ideological viewpoint). It is, to borrow a phrase from First Amendment jurisprudence, a content-based restriction on speech.

To be clear: I am not calling for an expansion of the ethos of vindictive protectiveness to be all-inclusive. I am, rather, calling for its abandonment as it is deeply corrosive to the educational mission of a university.

Finally, Duke, like colleges and universities throughout the country, is relying ever more on non-tenure track faculty. Given that tenure was instituted to protect faculty speech in all of its manifestations, this is a cause for concern. The political climate on campuses may be such that even tenured faculty have something to fear, but the threat is particularly great for the growing ranks of non-tenured faculty. It creates a strong incentive to

avoid any style of teaching that might conceivably cause discomfort to students who fall within the ambit of an ideologically driven protectiveness.

Teaching shaped by fear, especially when dealing with controversial topics (assuming such topics are not avoided altogether) will never be effective teaching.

As the FHC noted in this regard, “even if every member of this panel viewed it as deeply wrongheaded, a school or department at Duke could decide that it simply did not want a POP [Professor of the Practice] in any of its classrooms who would make any student feel uncomfortable at any time.”

Here's to being deeply wrongheaded.

Evan Charney is an associate professor of the practice of public policy and political science at the Sanford School of Public Policy.

[Duke University](#) [inclusivity](#) [North Carolina](#) [racism](#) [Tenure](#)



AUTHOR
Evan Charney

The End of Being a Duke Professor and What It Means for the Future of Higher Education

APR 22, 2019 › Academics, Politicization

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Appendix 1

**FINDINGS OF FACT AND RECOMMENDATION INVOLVING CLAIM
OF EVAN CHARNEY, PHD**

January 8, 2019

January 8, 2019

FINDINGS OF FACT AND RECOMMENDATION INVOLVING CLAIM OF EVAN CHARNEY, PHD

Evan Charney, PhD, Associate Professor of the Practice of Public Policy and Political Science in the Sanford School of Public Policy, received notice on April 11, 2018 informing him that Duke University was not renewing his faculty position. Professor Charney filed a complaint with the Faculty Hearing Committee on June 13, 2018, naming various members of the Sanford School as respondents.

A hearing was held on this matter on December 7, 2018. The faculty hearing panel was composed of Samuel Buell (Law School and chair of the panel), Stefano Cutarolo (Pratt School of Engineering), Julie Edell (Fuqua School of Business), Douglas Marchuk (Department of Molecular Genetics and Microbiology, School of Medicine), and David McClay (Department of Biology). Tracey Rupp, who was identified as working in epidemiology at the University of North Carolina, attended as an adviser on behalf of the complainant. All of the respondents were in attendance: Judith Kelley (Dean, and former Senior Associate Dean), Kelly Brownell (former Dean), Billy Pizer (Associate Dean), Kathryn Whetten (Professor of Public Policy), and Robert Korstad (Professor of Public Policy).

I. The Problem of Document Access

Prior to the hearing on this complaint, the panel was compelled to address a matter of access to documentary evidence that was vexing and unsatisfactory. Appendix N to the Faculty Rules states that a panel of the Faculty Hearing Committee “upon request, shall have access to such university records, accounts, and other sources of information as may be pertinent to the complaint or respondent’s reply.”

At the request of the complainant, the panel obtained access to four categories of material that were not available to the complainant: (1) the committee report that was submitted to the Sanford faculty in connection with the decision whether to renew Professor Charney’s appointment; (2) a letter to the Provost summarizing the Sanford faculty’s deliberations and decision; (3) additional documents regarding Professor Charney’s teaching performance that were prepared and distributed to the Sanford faculty, after a first faculty meeting on Professor Charney’s reappointment and before a second meeting and vote; and (4) letters submitted to the Provost by students and alumni objecting to Sanford’s decision not to reappoint Professor Charney.

The complainant urged the panel to make all of these documents available to him as well, arguing that he could not effectively contest his non-reappointment before the Faculty Hearing Committee without access to the information in the documents. The respondents objected to such access on the grounds that providing such confidential appointments materials to a disappointed candidate would damage Sanford’s and Duke’s appointments and promotion processes, in which confidentiality is designed, among other purposes, to ensure that faculty members and outside reviewers and references are uninhibited in candidly sharing information and views about candidates for appointment and promotion.

The panel determined that materials under item (4) were not relevant to its consideration of Professor Charney's complaint because these materials were not before the Sanford faculty in connection with its decision whether to renew Professor Charney. As to materials in items (1), (2), and (3), the panel determined not to provide Professor Charney with access.

It is far from desirable to conduct a proceeding such as this one without allowing all parties to marshal arguments on the basis of all relevant evidence. However, the panel found itself inhibited from disclosing the materials by the compelling argument that the simple filing of a complaint with the Faculty Hearing Committee not be a means of automatically piercing the confidentiality of Duke's appointments and promotion processes. We concluded that, at a minimum, a single panel of the Faculty Hearing Committee is not the appropriate body to decide on behalf of the University how to balance important policy matters regarding fairness and confidentiality that affect University-wide practices. We thus were compelled to maintain confidentiality of the documents, while urging Professor Charney to rely on the panel to consider all of the contested materials carefully and fairly.

The Faculty Hearing Committee requests that the Provost and the Executive Committee of the Academic Council take up and resolve the policy matter of access to such documents in the Faculty Hearing Committee process, and that the Academic Council amend Appendix N accordingly. We were very surprised to be told that this issue had not squarely come up in past hearings. We expect that it will recur and we view it as an important matter of University policy that must be addressed.

II. Findings of Fact

Professor Charney's complaint to this Committee alleges, under Appendix N to the Faculty Rules, that in connection with the decision not to reappoint him he suffered "violation of academic freedom" (jurisdictional item 6) and "violation of academic due process with respect to an adverse employment ... action" (jurisdictional item 7).

Professor Charney joined the Sanford faculty in 1999 as an Instructor. In 2000, he was promoted to Assistant Professor (tenure track). In 2008, Professor Charney and Sanford agreed, because of a chronic neuromuscular disorder affecting Professor Charney, that his publication record would be insufficient for tenure and that he would be moved to an appointment as an Associate Professor of the Practice (POP). Professor Charney's POP appointment was renewed for two years and then, in 2014, renewed under a five-year contract until June 30, 2019. The decision not to renew Professor Charney beyond that date is the subject of this complaint.

At the time of Professor Charney's 2018 review for reappointment, Sanford's standards for POP appointments required (1) "satisfactory performance in administration, program development, research and writing, and fundraising, to the extent these activities are included in the job definition"; (2) "evidence of continued engagement and achievement in [the POP's] professions outside [the POP's] University responsibilities"; and (3) "satisfactory performance as a teacher of undergraduate or professional students."

On October 26, 2017, Sanford provided Professor Charney with a letter asking him to collect and supply materials relating to twelve listed items relevant to these reappointment criteria. Professor Charney did so. Sanford next formed a committee to consider the reappointment decision and report to the faculty on the matter. This committee, which was comprised of Professors Whetten and Korstad, prepared a 13-page report that was provided to the Sanford faculty and dated "March 2018." The report, which described and, in important respects, criticized Professor Charney's teaching, research, and service activities, conveyed no committee vote or clear, formal recommendation to the faculty on whether to reappoint Professor Charney.

The Sanford faculty met to discuss Professor Charney's reappointment on April 9, 2018. We were told at the hearing that, while Sanford has no rule requiring a second faculty meeting on a POP reappointment, the faculty decided to consider the matter further and hold a second meeting when it became clear at the first meeting that Professor Charney's reappointment was in doubt. On April 10, 2018, additional documents were made available to Sanford faculty on an internal server regarding Professor Charney's teaching, apparently in response to questions raised by faculty members at the first meeting. These documents (some of which Professor Charney acquired by unknown means after the filing of his complaint) highlighted the extent to which Professor Charney had received some low students evaluation scores ("2s" and "3s") and reported accounts of individual students and other members of the University community about negative interactions with Professor Charney inside and outside of the classroom. (The materials made available to the faculty before the first meeting included a comprehensive record of all of Professor Charney's teaching evaluations.)

The Sanford faculty met again on April 11, 2018, and voted not to renew Professor Charney's appointment. In a letter provided to Professor Charney on April 19, 2018, Senior Associate Dean Kelley explained in some detail the faculty's views of Professor Charney's unsatisfactory performance in the areas of teaching, research, and service.

III. Conclusions

The members of the panel were disappointed with Sanford's handling of Professor Charney's reappointment. Professor Charney was, for many years at Duke, a highly-rated, University-decorated, and--for many, many students--beloved and formative teacher. He was an asset to Duke. His research and writing did not appear, on the surface, to be of the quantity or prestige of a tenured faculty member, but he continued to publish throughout his service as a POP. Professor Charney's service and other engagement at Sanford became minimal over time, mostly due to deteriorating relations between the faculty and Professor Charney that appear to have caused all concerned to lose interest in pursuing or following through on collaboration.

Prior to 2018, Sanford made no sustained effort to document or cure its concerns about Professor Charney. Indeed, it remains unclear to the panel how substantial Sanford's criticisms of Professor Charney's performance were prior to 2018. In 2018, faculty and administrators began to consider non-renewal of their relationship with Professor Charney. This was largely due to unhappiness with Professor Charney's tendency to provoke negative reactions, and perhaps harm, among some students in the classroom due to his confrontational teaching style--a style that had a

tendency to be polarizing among students, particularly in a required Sanford course in which not all students could choose to have Professor Charney as an instructor.

Sanford then ended its relationship with Professor Charney through a process that included, oddly, a two-person committee and a report with no formal vote or recommendation, followed by a faculty-wide deliberation and vote. Sanford chose to evaluate Professor Charney's research and service quite negatively, even though it would be fair to say that these had not been major concerns for Sanford prior to 2018 and that dissatisfaction with Professor Charney's classroom performance was plainly the primary motive for his nonrenewal. (Professor Charney complains that, prior to 2018, he did not receive formal annual reviews. But Sanford's rules did not provide for such reviews until the rules were amended just before Professor Charney was due for the 2018 renewal decision, which of course constituted a formal review.)

While no model for personnel management and faculty governance, nothing Sanford did in this case implicates the Faculty Hearing Committee's jurisdiction.

As to academic due process, Professor Charney's five-year POP appointment came with no guarantee of renewal. Sanford followed its own written procedures in considering Professor Charney for reappointment and its faculty was entitled to vote against reappointing him. This Committee has neither jurisdiction nor competence to question Sanford's substantive assessments of the merits of Professor Charney's teaching, research, and service. Indeed, Sanford would be entitled to be quite wrong on those matters, as long as it genuinely considered them, which we find that it did in this case. (Professor Charney complains that Sanford did not obtain outside reviews of his research but Sanford's procedures do not provide for such reviews in the case of POP reappointments.) For example, even if every member of this panel viewed it as deeply wrongheaded, a school or department at Duke could decide that it simply did not want a POP in any of its classrooms who would make any student feel uncomfortable at any time.

As to academic freedom, Professor Charney's complaint argues that the criticisms of his classroom performance, and thus the decision not to renew his appointment, really had to do with his "radical free speech" approach, in which he forced his students to discuss controversial viewpoints on hotly contested issues of politics and public policy. The panel finds no evidence, however, that anyone at Sanford objected to Professor Charney's raising of any particular issue, or expression of any particular viewpoint, in his classroom. Indeed, Professor Charney stressed that he intentionally introduces provocative views on all sides of issues and that students would have difficulty determining his personal views.

The issue was not *what* Professor Charney discussed but *how* he handled discussion of difficult and emotional issues with and among students. Professor Charney perhaps could have made more effort to learn to manage classroom discussion of difficult topics in a manner that would have left all students feeling fully heard and respected. But, again, that is not a matter for this Committee. Sanford was entitled, wisely or not, to choose a classroom environment for itself in which no student was left feeling mistreated by an instructor. Whether students or faculty, or both, should adapt their sensitivities and behavior, be separated from curricula or even departments and schools, or simply be left to their own devices in such situations, are pedagogical questions outside the jurisdiction of the Faculty Hearing Committee.

IV. Recommendation

Unanimously, the panel recommends no further action on the decision of the Sanford School not to renew Professor Charney's appointment.