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Terence Garrett

The University of Texas Rio Grande Valley

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A Real Ethical Dilemma: Professor Whistleblower and the Diary of the Lost Job*

Terence M. Garrett

*This story is a fictionalized account of an actual event. Names have been changed to protect the innocent and the guilty. Any similarities with other persons or events are purely coincidental. A version of this paper was presented at a Roundtable discussion of the 2002 Midwest Political Science Association Annual Meeting, April 2002, in Chicago, IL, Roundtable Title – “Administrators, Activists, and Academics: Political Science at the Bargaining Table.” In no way, shape, or form is this essay about my current employer.

Diary entry: January 27, 2003. *It finally came in the mail today: the arguments for appeal to the 15th U.S. Court of Appeals given by former Vice President for Academic Affairs at Directional Plains State University, John Bachelor. The name of the case is Francis P. McDonough, Ph.D. v. Hilda-Dean Joseph, Ed.D., John S. Bachelor, Ph.D., and the Regents of Directional Plains State University. I had won my case for wrongful termination from Directional Plains State University. The jury in the northeastern district of Plains State had decided in my favor! However, the Regents and VPAA Bachelor and their attorneys for Plains State have decided to appeal the decision of the jury. This chapter of my life will be dragging on for at least two more years. How disappointing!*

I have been able to rebound somewhat from the ill effects of having lost my assistant professorship at DPSU since the Spring Semester of 2000. I was in the fifth year in the Social Sciences Department and was approved for tenure and renewal unanimously by the faculty and the chair. The Dean of the College of Arts and Sciences had recommended renewal of my contract for the 2000-2001 academic year. Without any warning from the administration at DPSU, I was called in by VPAA Bachelor that fateful day, February 7, 2000, and was told my contract would not be renewed and that I would not be given a year to find another position elsewhere in the academy (this last aspect was in complete contradiction to DPSU practice). This is what I recall:

Diary entry: February 7, 2000. 8:30 a.m. – Dean Rao called me this morning to inform me that I had to meet with VPAA Bachelor at 11:00 a.m. in his office. I asked the Dean what the nature of the meeting was about and he told me that he could not say. At the time, I suspected that the meeting was about the classroom over-crowding issues I had raised the previous semester and that I was going to be punished in some capacity (perhaps even fired). In any case, I had never been to the VPAA office for any reason in my five years at DPSU, so I knew it would not be good. 11:00 a.m.-the meeting with VPAA Bachelor was short. Dean Rao was also present. Introductions were exchanged then the VPAA informed me (that is how they do it: they inform the victim rather than discuss the issue at hand) that (1) my contract was not going to be renewed for the 2000-1 academic year; (2) the DPSU administration (including himself) was not going to provide me with any reason for the termination; and (3) the DPSU administration was giving me three days to resign. Of course, being the university AAUP chapter president and ASPA state chapter president¹, I asked for reasons for the termination and for an extra year to find suitable employment, due to the difficulties of finding an academic position. I was informed by the VPAA that under DPSU Regents policy, that the university did not have to provide me any reasons for the contract termination. Needless to say, I was shocked and devastated! I told the VPAA that I believed the process of my termination to be unethical and unprofessional and left his office. I went back to the Social Sciences Department and told them the bad news.

For the remainder of the semester I taught my classes, went to professional conferences, and continued to serve in my capacity as faculty senator for the Social Sciences Department at DPSU. I attempted to proceed with the tenure process after having been encouraged to do so by my colleagues in the Social Sciences Department and others in the university community. I was thwarted by the DPSU administration at every turn in the process. In the meantime, I sent out curriculum vitae to prospective employers.

Trying to procure employment in the middle of the spring semester and into the following summer for the next academic year is extremely difficult. Even with the difficult circumstances, I was able to garner three interviews: two before the end of the semester and one in late summer. In all three instances I was asked why I was leaving DPSU. When I told two of the interviewers the circumstances, they were incredulous. Both told me they had problems with my story because there was no way any administrator at a university would be stupid enough to fire someone who was a whistleblower under those circumstances! And since DPSU would not provide any reason for my termination, they were hesitant to take a chance on hiring me because there were other qualified candidates. Finally, approximately three weeks prior to the 2000-2001 fall semester, Tropical State University decided to take a chance on me as a lecturer. I have been at TSU ever since.

Currently I am in the third academic year of a renewable lecturer position at Tropical State University. What is most disruptive in the past few years is that I have moved my family to Tropical State after having been away from them for a full academic year (2000-2001). The late hiring date meant that I had to leave my wife and two kids behind in Plains State. We had a

mortgage for our house in Capitol City and had to get the house ready for sale. My wife, Angela, had to find a position in the company she was working for in order to move to the new job location in Tropical State. These things take time but eventually we were able to overcome the adverse circumstances though at a considerable cost.

The Cause for Dismissal

The DPSU administration would never admit to firing me over contacting the state fire marshal's office, or the fact that I was the Personnel Policy Committee chair of the Faculty Senate and had persuaded my colleagues to not support the university administration in their attempts to deny reasons for non-continuance of untenured faculty. They had the entire process rigged in their favor. VPAA Bachelor made the non-continuance policy "the law" over the unanimous objection of the Faculty Senate. This aspect as well as the overall poor treatment of the faculty led to an eventual vote of "no confidence" in the VPAA that took place on February 10, 2000. I only wish that I had taken action directly on getting the vote to the faculty! However, disgruntled Music Department Faculty Senators had made the event possible. This action, though, was a major factor in the termination of VPAA Bachelor's contract within two years. However, I would like to think that I played a small part in his departure.

The primary cause for my dismissal stemmed from my contacting the state fire marshal. Classroom overcrowding was an issue for my colleagues and me for at least two years. The DPSU administration was placing seventy to seventy-five students into classrooms designed for no more than forty people. This last aspect came to my attention when one of my History colleagues told me on September 14, 1999. I was shocked by his story and went to the Assistant Dean/Acting Chair of the Social Sciences Department, Molly Bergstrom, to discuss the problem (the DPSU administration is real big on following the scalar chain of command). Assistant Dean Bergstrom, upon hearing about the problem, informed me that she had been to the room and determined that as many as 78 students could be placed in the room and that the History faculty members were fortunate that there were not that many assigned to the classrooms! I told her that there was only one doorway into the affected rooms in the Johnson Building and the students were squashed into the rooms as if they were sardines. I remarked that the matter was serious enough for me to contact the Plains State Fire Marshal and get room specifications. She told me to go ahead and "do what you need to do" regarding the fire safety issue. So, I sent an email to the state fire marshal as follows:

Email Message of September 14, 1999, 08:00a.m. — *To: State Fire Marshal Franklin; CC: Dean Bergstrom, Dean Rao, Members of the Social Sciences Department; From: Dr. Frank McDonough*

Dear Fire Marshal Franklin,

We may have a potential problem at DPSU regarding fire safety issues. The Johnson Building has 70-75 students crammed into classrooms with no doorways, sprinklers, or windows. This is a serious concern and may be a potential safety problem. I am no expert in these matters but feel obligated to get information from your office.

Please send me room specifications so that the DPSU administration may see if there are any problems. Administrators at DPSU seem unconcerned about the issue so I have contacted you. I may be jeopardizing my career at DPSU but I believe I have a professional responsibility to my colleagues and students.

Sincerely,

Francis P. McDonough, Ph.D.

Within ten minutes of the September 14 email transmission, I was in the office of Dean Rao. He was in an ill-tempered mood and immediately began to verbally attack me for sending the email message. Dean Rao wanted to know why I had not gone to him to discuss the matter. I explained that I was on a fact-finding mission to find out whether there were any problems regarding classroom fire safety issues and that I had been given the okay to contact State Fire Marshal Franklin by Assistant Dean Bergstrom. After my explanation, Dean Rao excused me from his office. Approximately four hours later, I received the following email message from the Associate Vice President for Academic Affairs, Dennis Pickles (VPAA Bachelor's chief assistant):

Email message of September 14, 1999, 12:30p.m. — To: Dr. Frank McDonough, From: AVPAA Pickles

Frank:

I spoke with Dean Bergstrom and I cannot believe that you were completely honest in your attempts to resolve the fire safety issues in the Johnson Building locally. If you had even bothered to ask around, you would have found that I have been working on fire safety issues for at least two years. Your conduct in this matter is unprofessional! I used to have respect for you but do no longer.

AVPAA Pickles

That same afternoon, I received via campus mail a note from DPSU President Hilda-Dean Joseph that was written on a copy of the email message that had been sent by Dean Rao to VPAA Bachelor's office. The handwritten note was as follows:

Frank,

Who have you contacted locally regarding the fire safety matter in the Johnson Building? We take safety matters seriously at DPSU! You need to be informed that AVPAA Pickles has been working on this matter for some time, so you need to contact him.

DPSU President Hilda-Dean Joseph

I believed that President Hilda-Dean Joseph did not quite get all of the facts straight regarding what I was doing, so I sent her copies of all the correspondence I received. I was particularly disturbed by the tone and tenor of AVPAA Pickles email and provided the President with the information. I did not hear from anyone in the DPSU administration until February 7, 2000 when I was summoned by VPAA Bachelor to hear my fate.

The following day, September 15, 1999, a vehicle from the Plains State Fire Marshal's office appeared in front of the DPSU Administration Building. At the time, no one knew why it was there, but I had a good idea as to why. In the November 1999 Faculty Senate agenda, the DPSU Regents report showed that the State Fire Marshal's office had determined that rooms on campus were in violation of state codes and the university was going to have to pay in excess of \$140,000 to put extra doors into the affected classrooms. Ever since that revelation, the DPSU faculty have referred to the new additions as "McDonough doors."

Frank McDonough's Lawyers, Tort and Lawsuit

Diary entry: June 13, 2000. Today my attorneys, George Prudhomme and Gary Warner, have filed a tort claim against the DPSU Regents! Under Plains State law, whistleblowers have protection against wrongful termination for speaking out on matters of public concern. George and Gary do not believe that the state will take any action on the claim within the requisite 180 days. At that time, we will file a federal claim in the Northeastern Plains State Federal District Court against President Joseph and VPAA Bachelor for 1st, 14th Amendment and 42 U.S.C. 1983 violations along with the DPSU Regents claim (pendant jurisdiction). Perhaps I'll eventually get satisfaction.

When the semester had ended in May of 2000, I was desperately searching for full-time employment. My health had deteriorated to the point that I was now on blood pressure and cholesterol medicine due primarily to stress as a consequence of the job termination. My colleagues at DPSU suggested that I get legal help and try to get my job back. So, I contacted the best employment-law attorney in Plains State, Mr. George Prudhomme. Mr. Prudhomme agreed to take the case. The lawsuit process had begun.

Right away it was clear to Mr. Prudhomme that my case involved issues of free speech on a matter of public concern. The strategy we employed turned out to be very effective, culminating in a jury verdict and award in my favor against VPAA Bachelor and the DPSU Regents. Unfortunately, DPSU President Hilda-Dean Joseph got off the hook. How this occurred is recounted in the next section. The Plains State Attorney General's Office under the guidance of Assistant Attorney General F. Leghorn, was the principal defender of the DPSU Regents as well as DPSU President Hilda-Dean Joseph and VPAA John S. Bachelor. The DPSU President, VPAA, AVPAA Pickles, Dean Rao and myself were all deposed during July and August 2001. The trial date was eventually set for June 17, 2002. My day in court would finally come!

The Trial—June 17 –24, 2002

The first day was spent picking the jury. There were seven people selected: three women, three men and one woman alternate. The alternate proved to be necessary as VPAA John S. Bachelor was caught by my attorneys outside the Federal Courthouse smoking and talking with Juror Number One (a male) during a lunch break half way through the trial! Bachelor's story was that they were talking simply about the weather and not jury tampering when he had to confront the federal judge. My attorneys and I believed that he was trying to get a "mistrial" because the case had gone so badly for Bachelor. We also think that his actions are indicative of his unethical character. However, the judge simply admonished VPAA Bachelor and removed Juror Number One and we completed the trial.

I gave testimony on the second day. Before that day, I had never testified or had ever been in a federal courtroom. The task was daunting and exhausting and lasted the entire day, but I made my case with the help of my attorneys and the inept attempts by AG Leghorn to trip me up and confuse me. I think that the jury believed me.

On the third day, VPAA Bachelor took the stand. He was making the argument that my scholarship and student teaching evaluations were sub-par for DPSU. Bachelor's arguments were refuted by the evidence. In fact, the faculty and student evaluations showed the opposite of Bachelor's claims. In addition to the problem of my good evaluations, Bachelor and other members of the DPSU chain of command had never counseled or advised any counseling for deficient student evaluations. The faculty evaluations of my teaching were all outstanding. It also came out during the testimony that I also had more peer-reviewed papers published than the DPSU President, VPAA, and AVPAA combined! Bachelor's credibility was shot. Bachelor had also made the recommendation to President Joseph for non-continuance of my contract for the 2000-2001, effectively firing me from DPSU.

During the rest of the week, faculty members from the DPSU Social Science Department gave evidence that strongly supported me. Even Dean Rao pointed out that *no fire plans had been in effect before or after the email message sent to the State Fire Marshal*. Rao's testimony was in direct contradiction to AVPAA Pickle's testimony that there was, and always has been, a DPSU Fire Plan of Action (though he has never shown it to anyone nor could he produce one at the trial!) Finally, DPSU President Joseph took the stand. She was now retired (reportedly she was told to step down by the DPSU Regents at the first meeting *after* the tort claim was filed and received an additional year after begging for it). President Joseph had admitted that she made her decision to the DPSU Regents for non-continuance of my contract based on VPAA Bachelor's recommendation. Also, she looked old and feeble and this may have impressed the jurors favorably.

The Verdict

On June 24, 2002, the jury decided against VPAA John S. Bachelor and the DPSU Regents and in my favor. President Hilda-Dean Joseph, however, was not found culpable of violating my civil rights. I was awarded approximately \$90,000 in direct economic damages and \$45,000 in

attorney's fees. I received no punitive damages in the award from the jury. This amount of money may seem to be a pittance, but at least I received some satisfaction at last. The defendants have appealed.

Diary entry: January 28, 2003. *Well, all things considered, it isn't so bad that my tormentors have appealed the case. I mean, it could be worse! I could have lost the case and not have any chance to appeal. It is better to have won with a jury of my peers and wait for the 15th Circuit Judges to either hear the case or not. I was fired for standing up for the faculty and students at DPSU. Both President Hilda-Dean Joseph and Vice President for Academic Affairs John S. Bachelor are gone. I receive periodic congratulatory emails from friends and colleagues at DPSU. I miss them. I don't have a tenure-track position, too. This is painful. Do I have any regrets and would I go through this terrible ordeal again? The answer to the first question is an unqualified "no." As to the second part of the question: you better believe it.*

*Francis P. McDonough
Tropical State University*

Postscript

Bad things can happen to whistleblowers when following their conscience. In this case, I lost my job, but then, so did the administrators at DPSU. When viewing the *ASPA Code of Ethics* as I was the former ASPA state chapter president, I found support and some small measure of comfort for my position in all five of the subsections of the code, i.e., "Serve the Public Interest," "Respect the Constitution and the Law," "Demonstrate Personal Integrity," "Promote Ethical Organizations," and "Strive for Professional Excellence." Unfortunately for me not all members of the organization at DPSU shared my respect for the document. As an untenured assistant professor, I was too far down the organizational chain to effectively fight the DPSU administration on a level playing field. The DPSU administration had intimidated the senior faculty to the point where they could no longer fight them on basic academic freedom issues and, indeed, safety issues for the faculty or their students. It took my lawsuit to bring about change at DPSU and I do not know whether the episode will have any lasting effects on the current leadership at the institution.

As a former chapter president of AAUP at DPSU, I received some support from that organization in the form of letters of support from the national office "Committee A" on academic freedom. The state chapter, too, provided some support. Primarily, though, the support came from my AAUP colleagues at the university. Additionally, I received help from my colleagues in the Social Science Department at DPSU in terms of letter writing and some financial support regarding the eventual lawsuit. In an episode like this, one quickly learns who one's friends are.

Dr. **Terence M. Garrett** is a professor with the Political Science Department, University of Texas-Pan American.

Notes

¹ AAUP is the American Association of University Professors and ASPA is the American Society for Public Administration.