CASE IN POINT: STRONACH V. VIRGINIA STATE U. (2008)

Does Academic Freedom Give a Professor the Final Say on Grades?

By LAWRENCE WHITE

Carey E. Stronach, for more than 40 years a tenured professor of physics at Virginia State University, assigned an undergraduate a final grade of D after the student had failed three classroom quizzes. The student claimed to have received A's on two of the quizzes. He submitted faxed copies of his score sheets to Stronach, who concluded that the student had doctored his scores. The student appealed to the chairman of the physics department, who sided with the student and changed his final course grade to an A.

Stronach sued the department chairman and other university officials on the grounds that they had violated his constitutionally protected right to academic freedom by changing the grade he had given.

Status: In a decision issued on January 15, Judge Henry E. Hudson, of the U.S. District Court for the Eastern District of Virginia, dismissed Stronach's academic-freedom claim. Judge Hudson ruled that "no constitutional right to academic freedom exists that would prohibit senior VSU officials from changing a grade given by Stronach to one of his physics students against his will."

Implications for higher education: The trial-court decision in Stronach is the latest in a series of cases in which faculty members at public institutions have complained, on the basis of academic freedom, that senior administrators have no right to change a previously assigned grade. In most of those cases, but not all, the faculty plaintiffs lost. But the Stronach decision marks a significant departure from precedent and a potentially troubling manifestation of judicial confusion over one of the most fundamental questions in academic-freedom litigation: Is academic freedom a right enjoyed by faculty members or by the institutions that employ them?

Judge Hudson held that academic freedom — the italics in the phrase that follows are his, not mine — "is the university's right and not the professor's right." The judge concluded that, while academic freedom arguably protects a professor's right to assign a grade, it also, and even more compellingly, protects the prerogative of the university — in the person of deans, department heads, and other academic administrators — to change the grade over the professor's objection.

Most of the cases Judge Hudson cited in his opinion involved grade disputes very different from Stronach's. The plaintiffs in earlier cases were faculty members who had refused to comply with reasonable institutional grading policies — for example, a policy against grade inflation or requiring the assignment of an "incomplete" rather than a failing letter grade to a student with a specified number of
class absences. The one decision before Judge Hudson's that involved a faculty member who was actually commanded to change a specific letter grade — *Parate v. Isibor*, decided by a federal appellate court in 1989 — resulted in an unequivocal holding that "[an] individual professor may not be compelled, by university officials, to change a grade that the professor previously assigned to [a] student." The court in *Parate* characterized a professor's assignment of a letter grade as "protected speech" and held that university officials would violate a faculty member's constitutionally protected rights if it were to "compel the professor to alter that grade."

How, then, will judges decide future disputes over faculty grading prerogatives? Will they agree with the appellate court in *Parate* that a professor can assign grades free from administrative interference and second-guessing? Or will they adopt Judge Hudson's somewhat attenuated conclusion in *Stronach* that even if a faculty member is entitled to assign a grade, a department head is nevertheless free to alter it?

The answer — as is so often the case in higher education — may rest on the geographic location of the college employing the complaining faculty member. The *Stronach* decision represents the view of a single trial-court judge in half of one state (the eastern half of Virginia) and has no precedential weight beyond those boundaries. Unless and until the U.S. Supreme Court intercedes, the law may evolve differently in other parts of the country — and college administrators may be forced to check with campus counsel before taking the potentially problematic step of siding with a student in a grade dispute.

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