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CAUT WILL REPORT ON WESTHUES GRIEVANCE

Now that all internal processes in Ken Westhues's grievance against sanctions imposed by the Chair of the Sociology Department, Ron Lambert, have ended without a resolution, the CAUT AF&T Committee has announced that it will be preparing a report on the case in the next few months. Since one of the duties of members of the local AF&T Committee is to review and monitor policies and processes that affect the terms and conditions of employment of all faculty, I believe it is important now to inform members of the processes that were followed in this case.

As Chair of the AF&T Committee I have dual

responsibilities. In my capacity as Chair I assign cases to other members of the Committee, offer them advice and assistance, report to the Board of the Association and to general meetings, and regularly consult with the President of the Association. As a member of the Committee I am also asked to take on cases myself and serve as advisor to individuals. Since the Committee is small and the case load is heavy, all members share in the role of advisors. This report is written in my capacity as AF&T Committee advisor to Ken Westhues. The views and opinions expressed here are my own, and on the few occasions

when the Committee as a whole offered advice to Westhues, I attribute that advice to the Committee.

Readers of *FAUW Forum* are likely familiar with Ken Westhues's regular articles on campus politics, but may not be aware of other aspects of his work during his twenty years of service at UW. Westhues was appointed Chair of the Sociology Department at UW in 1975, serving in that post until 1978. He has also served at various times as undergraduate and graduate officer of the Department. He was promoted to Full Professor in 1983. On various occasions he has been a visiting professor at other institutions (Fordham in 1979-80, Memorial in 1982-83, and Graz, Austria in 1991) and since 1993 has been co-ordinator of the Graz-Waterloo International Exchange Program. His university service includes membership on the Board of Directors of the Faculty Association from 1993-1995, and on the *FAUW Forum* Editorial Board since its founding in 1988. He has also been active in the wider community, serving as a member of the Board of Directors of the K-W Bilingual School since 1990, and president in 1993-94, and as a member of the Board of Directors of the Working Centre since 1988.

Westhues has been a prolific scholar during his career at UW. He is the author or editor of half a dozen books, including a major introductory text, and has authored studies in the sociology of community and religion. He is the author of some thirty journal articles and chapters. He has been the most active member of his Department in doctoral thesis supervision, having supervised seven to completion.

Not only has Westhues compiled an impressive scholarly record, but his effectiveness as a teacher was recognized in the Distinguished Teacher Award he received from the University in 1985.

EVENTS UP TO THE FORMAL IMPOSITION OF SANCTIONS

This case has its roots in conflict surrounding a doctoral student under Westhues's supervision who was failed on an oral methods exam on 11 November 1993. Earlier, Westhues had defended the student against what he believed was unfair treatment by Lambert, the Department Chair, in connection with a previous failed methods exam. When he met briefly with the Chair of the Examining Committee, Adie Nelson, he learned that the student had been failed for the second time. He admitted that in his frustration he spoke to her inappropriately and angrily. Westhues further states that, in a subsequent phone conversation, he sought to apologize to Nelson, but once again lost his temper and made comments which Nelson later reported she considered intimidating. After receiving the student's report on the exam and its process, Westhues wrote to Nelson, Lambert and James Heap

(Professor from O.I.S.E. with an adjunct appointment in the Department) seeking additional information and asking Lambert for a copy of the tape of the exam in order to review it and decide what advice to offer his student.

When he received no response to his request, Westhues asked me on 29 November 1993 to review the circumstances of the case and to offer assistance in obtaining the tape. I soon learned from Lambert that Nelson had written him a report on the exam, complaining about the questions that Westhues had raised both before and after the exam and alleging that his behaviour toward her was abusive and uncollegial.

Let me describe here by way of summary the process that unfolded in the following month or so. As an AF&T advisor, my role was to investigate the circumstances of the case, to seek to mediate and try to find informal solutions to the dispute, and to offer assistance and advice to Westhues. To that end I met with Lambert to discuss the issues, spoke to him on the phone, offered him written comments on some of the procedures he was proposing and arranged for a face-to-face meeting with myself and Westhues to see if an informal solution was possible. All these attempts to find an informal resolution were unsuccessful.

The processes that Lambert and some members of his Department followed are now known from Lambert's report submitted to the CAUT Fact-Finding Committee. Here is a summary of them. Lambert asked Nelson to report on the methods exam and on her interactions with Westhues both before and after. He did not reveal her report to Westhues or give him a copy until asked to by the Dean some three weeks later. He sought advice from several administrators and others. He accepted the advice of one to handle the issue internally. He rejected advice that he invite Nelson to take her complaint to the Ethics Committee. Instead he asked Westhues to appear before the Promotion and Tenure Committee to answer allegations against him. He dropped this plan when I pointed out that use of this Committee for this purpose was outside University policy. He agreed to meet with Westhues and me, but, at the meeting, would only elaborate his allegations and hint at penalties. Shortly before my meeting with Lambert and Westhues, several members of the Department had called a meeting (without inviting Westhues) to discuss Nelson's report. The result was two petitions, one insisting that the Chair suspend Westhues from all participation in the graduate program for five years, the other also urging him to suspend Westhues, but not specifying for how long. Though Jim Brox, then President of FAUW, wrote to the signatories of the first petition expressing concern about their lack of sensitivity to due process for Westhues, their petition appears to

have been accepted by Lambert and to have formed the basis of his imposition of formal sanctions on Westhues.

What stands out for me in reviewing the process up to the imposition of sanctions is the underlying assumption by Lambert, by the administrators he consulted, and by members of the Department that Westhues was guilty of serious misconduct, and the only question was what penalty would be appropriate. None of the administrators consulted by Lambert contacted Westhues and asked to hear his side of the story. His colleagues in the Department found him culpable and insisted on severe penalties at a meeting to which Westhues was not invited. Lambert gave me the strong impression that he was not inclined to serve as a kind of mediator in a departmental dispute or to insure that fair and impartial procedures were followed in dealing with the issue. He seemed convinced that Westhues was guilty of misconduct, and his main concern seemed to be with the type of penalties to impose. It was entirely appropriate for Nelson to raise complaints with the Chair, but in my judgment, the subsequent administrative handling of the complaints was not in accord with the principles of fairness and due process.

IMPOSITION OF SANCTIONS AND PREPARATION FOR GRIEVANCE HEARING

On 14 February 1994, Lambert detailed in writing his complaints about Westhues's conduct before and after the exam and about his abusive treatment of Nelson. He imposed the following penalties: (1) letter of reprimand; (2) suspension from graduate responsibilities until 1 July 1998; (3) unsatisfactory conduct to be reflected in Westhues's 1993 performance review. Once he received notice of the penalties, Westhues filed a Statement of Grievances with the Grievance Panel against Lambert and the signatories of the two petitions. He also asked me to seek the advice of the AF&T Committee regarding his grievance. The Committee concluded that Westhues's conduct to Nelson was improper and that an earlier letter of apology was unacceptable to Nelson. It advised him to send Nelson a much briefer and unelaborated letter of apology. As for Westhues's actions, aside from his personal interaction with Nelson, before and after the exam, the Committee concluded that only a full and fair hearing before an independent panel could determine whether they were appropriate. The Committee further noted that a complicated history seemed to be fueling the immediate issue and that Westhues's exchanges with Nelson may have served in part as a kind of flash-point to provoke the kind and extent of response that followed.

Westhues subsequently wrote a brief letter to Nelson apologizing again for having addressed her

rudely and offensively and for wrongfully arousing anxiety in her about her future in the Department. His letter was not acknowledged, but clearly was not satisfactory to Nelson as she subsequently filed a Policy 33 complaint against Westhues with the Ethics Committee.

THE ETHICS CASE AND THE GRIEVANCE CASE

Over the next month or so (March-April 1994), the informal stage of the grievance process proved unsuccessful. On 25 March 1994, Nelson, as was entirely her right, filed an ethics complaint against Westhues alleging that he attacked her professional integrity after the methods exam and was continuing to do so in his confidential brief filed with the Grievance Panel. For remedies, she asked that Westhues cease his attacks, that the sanctions imposed by Lambert on 14 February 1994 be ordered to stand, and that Westhues's grievance against his departmental colleagues be set aside as vexatious.

The filing of ethics charges initially complicated matters in that there were now two formal cases: an ethics case between Nelson and Westhues, with Westhues as the respondent, and a grievance case between Westhues and Lambert and his colleagues, with Westhues as the complainant. It was decided that the grievance case would be put on hold until the ethics case was completed. Effectively, this divided the issues into those dealt with under the ethics case concerning Westhues's interactions with Nelson, with sanctions, if any, to be recommended by the Ethics Committee and acted on by the Provost, and those dealt with under the grievance case concerning Westhues's questions and actions before and after the methods exam, with sanctions imposed by Lambert, the Department Chair.

The Ethics Committee upheld Nelson's complaint on 6 May 1994 and recommended the following sanctions against Westhues: that he be required to write an apology that was to be vetted by the Committee, that he distribute the apology to recipients of a letter sent to his friends by a colleague, that he publish the apology in the Gazette and post it on the Internet. The Provost accepted the recommendations. The sanctions included none of those imposed on Westhues by Lambert on 14 February 1994. Therefore, in keeping with the principle that one not be judged twice for the same action (no double jeopardy), the AF&T Committee advised Westhues that Lambert's sanctions of 14 February 1994 could only be for actions outlined in his memorandum to Westhues exclusive of Westhues's treatment of Nelson. Upon resumption of the grievance case, the Grievance Committee would have the information to do this disentangling, for the Ethics Committee had directed

the Provost to pass on its finds to other tribunals dealing with the issues of this case.

One issue from the ethics case that must be commented on is the Provost's decision on 6 June 1994 to make public the report of the Ethics Committee, and to instruct the Gazette to print his Open Letter to the University of Waterloo Community, accusing Westhues of violating his undertaking to him and spreading misinformation in a covering letter to friends and colleagues accompanying his letter of apology. The Provost supported his claim by quoting an excerpt from Westhues's letter out of context. Westhues had written that he hoped that now that the issue of his personal offense to a colleague had been laid to rest, his grievance against his disbarment from graduate teaching would proceed. He took responsibility for speaking harshly to a colleague, but believed that in raising questions about the disputed exam, he had done nothing contrary to University policy or standard academic norms. Though the Provost chose to interpret this last comment as spreading misinformation, fair-minded readers may conclude with me that it was nothing of the sort.

Many aspects of the Ethics Committee process and the Provost's actions remain troubling and will need to be addressed on an appropriate occasion.

THE GRIEVANCE PROCESS

In order to facilitate the hearing of his grievance, Westhues accepted the advice of the FAUW Board and reduced the number of respondents to his Department Chair alone.

The Grievance Committee process and hearings were so bizarre and convoluted that it is difficult providing a coherent account. Let me here merely touch on some of its aspects. Before the hearings began, Lambert had tabled a long list of objections with the Grievance Panel. On the first day of the hearings I was disqualified as Westhues's advisor on the grounds that Lambert wanted to call me as a witness, though I had not been informed about this beforehand and had not been offered an opportunity to challenge this ruling. After protests from me, I was reinstated, though Lambert protested against my reinstatement. The Chair of the Committee instructed me to restrict my consultations to Westhues or to Westhues's counsel, a restriction I rejected on the grounds that it violated my civil rights, and, equally important, militated against my ability to provide effective counsel. Lambert expressed doubts whether Westhues and I would respect the confidentiality of the hearings and argued that because we were untrustworthy, he would have difficulty persuading his witnesses to appear before the hearing. He further claimed that he was told that some female witnesses were reluctant to

attend the hearings for fear of their physical safety. This claim is rather surprising given that the Westhues-Nelson issue had been resolved by the ethics case, and, properly, was no longer part of the grievance case.

This litany of complaints, protests and restrictions finally led Westhues to ask the Chair of the Committee to adhere to Policy 63 literally and conduct the hearing by means of independent, serial testimony. He was willing to waive some of his rights in order that the hearings could continue without further protests by Lambert. Rather than doing so, the Grievance Committee suspended the hearings, refusing Westhues's request that the hearings continue in accord with the letter of Policy 63 and accusing him of an unwillingness to adhere to the Committee's process. No mention was made of Lambert's numerous objections, his declaration that he would be unable to get a fair hearing because he didn't trust Westhues and me to respect confidentiality, and his report that women he intended to call as witnesses feared for their physical safety.

Attempts to resume the hearings continued for about a month without success. On 6 September 1994 Bennett reported that the hearings were cancelled. While waiting for the final report of the Grievance Committee, Brox and I made several attempts with Kalbfleisch and Downey to find an internal solution to the dispute, but with no success. Having run out of internal options, Westhues asked the CAUT to investigate his case, a request supported by the FAUW Board. On 11 October 1994, the CAUT announced it was sending a Fact-Finding Committee to Waterloo to investigate the case.

The final report of the Grievance Committee (25 November 1994) attached much of the blame for the failure of the process to Westhues and myself, while ignoring nearly all of Lambert's objections and protests and without explaining why it rejected Westhues's legitimate request that the Committee follow the actual procedures mandated by Policy 63. The formal procedures of Policy 63 have absolutely failed in this case. The substance of Westhues's grievance against severe sanctions imposed by his Chair depriving him of his right to carry out the normal duties of a faculty member - a matter of great significance to all faculty - was not considered by the Grievance Committee because it could not get past purely procedural issues.

Downey accepted the recommendations and informed Westhues that he was to blame for the breakdown in the process and that there would be no further proceedings under Policy 63. He did offer to engage an outside mediator, if the parties agreed, to attempt to effect a reconciliation. Westhues agreed to the mediation process on 1 December 1994, reserving

the right to seek satisfaction for his grievance under the terms of Policy 63 if mediation failed.

THE MEDIATION PROPOSAL

The CAUT Fact-Finding Committee came to Waterloo on 22 February 1995 to conduct its investigation of the case. It interviewed many of the principals in the case, with the exception of Lambert who declined to appear before it. Instead he sent the Committee a 38-page report with copies to Westhues and about 25 officials at UW and FAUW. I have learned that some copies of the report were received anonymously by professors at UW and elsewhere who were known to be friendly to Westhues.

The CAUT Fact-Finding Committee does not release its findings, but reports directly to the CAUT AF&T Committee. I learned that informal talks between UW officers and CAUT had taken place in the spring of 1995.

On 20 June 1995, Downey renewed his offer of a professional mediator indicating that, after consultation with Lambert, he believed there existed enough good will on the part of Lambert and his colleagues to justify the time, cost and emotional energies this activity would consume, a belief that turned out to be wrong. On 30 June 1995, Westhues pledged to take part in the process in good faith and without preconditions. During July 1995, I worked with Robin Banks (in Downey's absence) to select possible mediators. On 27 July 1995 Banks proposed a list of four possible mediators. I met with Downey on 11 August 1995 to assure him of Westhues's intention to participate in good faith and without preconditions and to inform him that all of the four proposed mediators were acceptable to Westhues.

On 6 September 1995, Downey informed me in person that he was withdrawing his proposal for

mediation because of opposition from most members of the Department. Some would accept mediation only with significant preconditions. Others refused mediation altogether. Lambert finally indicated that he would agree to mediation only on condition that Westhues not use an AF&T (or any other) advisor and that the sanctions Lambert imposed on Westhues not be part of the mediation agenda. Whatever Lambert may have said in his discussion with Downey in June, clearly he had no real intention of trying to reach a mediated resolution of his dispute with Westhues. It is regrettable that, although the failure of the mediation attempt was caused by the refusal of a University administrator to participate contrary to his earlier apparent assurances to the President, Downey was unwilling to intervene to insure that the substance of Westhues's grievance received a hearing.

When the CAUT learned that the mediation process was withdrawn, it decided on 15-16 September 1995 to proceed directly to appoint two members of its AF&T Committee to write a report on the case. An interim report will be circulated to principals for comment, and then a final report will be prepared. The decision whether to make the report public will be made at that time. The FAUW Board has endorsed this decision of the CAUT.

As has become apparent throughout this report, this case raises many issues of importance about the various processes at UW, both administrative and others. I expect that the CAUT will address some of these, and when its report is released, I plan to update the case and initiate discussion and analysis of these issues.

Roman Dubinski
AF&T Committee Advisor