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MESSAGE			
Dear Dr. Merten – the attached is the .pdf version of a letter regarding Dr. Caroline Crocker. IMMEDIATE attention required.			
Best Wishes, Ed Sisson			

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August 15, 2005

Dr. Alan G. Merten
President
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Dear Dr. Merten:

I represent Dr. Caroline Crocker concerning matters that I understand you have already discussed with Virginia Delegate J. Chapman Peterson. I have reviewed your July 22, 2005 letter to Del. Peterson, and his response dated August 3, 2005. There are several matters that require your most immediate and prompt attention.

First, Dr. Crocker is currently under contract with George Mason University ("Mason") for the upcoming fall term and thereafter through the end of the Spring term 2007. She is entitled to and expects that Mason will timely perform all of its obligations pursuant to that contract. The term stated on the first page of the document that Mason delivered to Dr. Crocker after the hearing on her grievance does *not* reflect the agreement that she reached with Mason in April, 2004. At that time, as Dr. Crocker's then-current term contract was in its final semester, Dr. Christensen offered to Dr. Crocker a new contract whose term was three years, ending at the conclusion of the Spring semester 2007. Dr. Crocker received that contract offer in her Mason mailbox on a Friday morning, immediately prior to the regular 9:30 AM lab meeting. At the beginning of that meeting she informed others present at the meeting that Mason had offered her a new three-year contract. After the meeting Dr. Crocker took that contract home, and showed the document to her husband and to another person, and each of these persons independently recall that they read therein that the term was three years. Dr. Crocker signed that contract and returned the signed original to Dr. Christensen. She did not keep a copy. By signing and delivering the contract document that Mason had given her, Dr. Crocker formed a three-year contract with Mason.

Subsequent to her signing and delivering the three-year contract, Dr. Crocker spoke to Dr. Christensen about assuming an additional duty not stated in the three-year contract. Specifically, she offered to teach a second "large section of BIOL 213 Cell Biology" that Dr. Christensen was going to teach in the fall of 2004. Dr. Christensen agreed. Dr. Christensen stated that Dr. Crocker would have to sign a modified contract that would specify the additional teaching duties. On May 14, Dr. Christensen

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approached Dr. Crocker while Dr. Crocker was in the midst of meeting with several students in a seminar room. He said that she had to sign a revised contract immediately because of an administrative deadline, and handed to her a document to sign (the "May 14 Document"). Dr. Crocker, relying on Dr. Christensen's representation that the only change in the contract was the description of the workload (the teaching of the second large section) signed the last page of the three-page May 14 Document without examining the statement of the term of the contract. Dr. Christensen promptly took the May 14 Document from Dr. Crocker and never gave her a copy. Thus she had no opportunity to review it. Nor did she believe she needed to. She justifiably relied on the representations of her departmental superior that the only change in the contract was the teaching of the additional lecture section.

Subsequently, as you are aware if you have examined the record of Dr. Crocker's grievance, at a meeting on Dec. 16, 2004, Dr. Christensen barred Dr. Crocker from teaching the lecture class for the Spring 2005 semester. Dr. Crocker filed a grievance. In that grievance, the first remedy she requested was "Reinstatement to teaching the lecture, starting Fall, 2005." Obviously, if Dr. Crocker had believed that her contract extended only through the end of the Spring 2005 semester, which would conclude shortly after the decision on the grievance, she would not have requested this remedy. Similarly, her fourth request in the grievance, that her "annual evaluation" be conducted "by a person other than Dr. Christensen," would not have been included, because she would have understood that there would be no future "annual evaluations." And she stated in her cover letter that she had a multi-year contract.

Moreover, department administrator Betty Ann Oakes sent Dr. Crocker questions about classroom requirements for Fall 2005, which demonstrates that she understood that Dr. Crocker's contract extended longer than the end of the Spring 2005 semester. And Dr. Christensen did not demur when TAC suggested that Dr. Crocker do one grant in 2004/2005 and the next in 2005/2006.

Dr. Christensen's assertion, in his response to the grievance, that her contract expired on May 24, 2005, was the first notice Dr. Crocker had that anyone associated with Mason believed that this was the date on which her contract terminated. In her written reply to Dr. Christensen's response, she stated that "My contract ... ends in 2007."

The document delivered to Dr. Crocker after the grievance proceeding – purportedly the May 14 Document – thus does not reflect the agreement of the parties

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regarding the term of the contract. Since Dr. Christensen did not alert Dr. Crocker that the May 14 Document changed the term of the contract (if, in fact, the document he presented her on May 14 *did* contain a change in the term; the front page that appears on the document delivered to Dr. Crocker after the grievance hearing may have been substituted *after* May 14), and since he presented the May 14 Document to her with the statement that she must sign it immediately so that he could comply with an administrative deadline, the document presented to Dr. Crocker after the grievance proceeding incorrectly states the *agreed* term of the contract, which is that she will remain as a term professor until May, 2007.

The Resolution of Grievance issued by Dean Struppa on May 17, 2005, states that the contract "expires in May 2005." However, the term of the contract was not raised by Dr. Crocker in her grievance, and it is outside the scope of the grievance proceedings to render binding decisions concerning the contract obligations of Mason. The facts related above were never before the grievance committee, nor was there any requirement that Dr. Crocker present those facts to the grievance committee.

Dr. Crocker has never accepted any attempt by Mason whereby Mason could shorten the term of the contract or otherwise modify or escape its contract obligations. If Mason wished to shorten the term of the contract, it was incumbent upon Mason to ask Dr. Crocker to agree to shorten the term. Mason has never made such request. Instead, Mason has attempted to cause Dr. Crocker to believe, erroneously, that Mason had a unilateral authority to change the contract term. But Mason did not have, and does not have, the authority unilaterally to reduce the contract term.

Accordingly, Dean Struppa's "finding" is incorrect. In your July 22, 2005 letter, you state that you "have every confidence in the faculty who review matters such as this, and rely on their findings." Thus, because this finding is incorrect, your reliance on that finding is misplaced. Your statement that Dr. Crocker's contract "was simply not renewed" is factually incorrect. Mason renewed her contract in April, 2004, for a term extending to late May, 2007, and that contract remains in force.

Dr. Crocker is ready, willing, and able to perform all of her duties under the contract. Dr. Crocker insists on all of her rights under that contract. If Mason refuses to honor its obligations, that act of refusal will be a breach of Mason's contract with Dr. Crocker and a repudiation of that contract and will cause severe injury and harm to Dr. Crocker. I strongly urge you to cause Mason to honor its contract on time and in every particular, *and I expect you to inform me immediately that Mason will do so.*

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Second, the record clearly shows that Dr. Christensen on Dec. 16, 2004, removed Dr. Crocker from teaching the lecture course in the Spring 2005 semester for an improper and discriminatory reason, in violation of her constitutionally-protected and statutorily-protected rights and her rights to academic freedom. Moreover, regardless of the general authority Dr. Christensen may have had to assign teaching assignments in the Department, Dr. Crocker's contract clearly stated that she was to teach the lecture course, and thus Dr. Christensen's discretion to remove her from the lecture course was constricted by Mason's contractual promise to Dr. Crocker, such that his removal of her from the teaching of that course caused Mason to breach its contract with Dr. Crocker, again causing her injury and harm.

Dean Struppa found that Dr. Christensen did not "violate[] any procedures or rules" in "assign[ing] the teaching load to Dr. Crocker," *i.e.*, removing Dr. Crocker from the lecture course for the Spring 2005 semester. But this completely misses the point. Dr. Crocker's grievance alleged that Dr. Christensen's removing Dr. Crocker from the lecture course for the Spring 2005 semester violated Dr. Crocker's "right to unrestricted expositions of subjects (including controversial questions) within one's field ... in a professionally responsible manner ... without fear of censorship or penalty." Dean Struppa did not rule on whether Dr. Christensen's action violated Dr. Crocker's *rights*. Instead, Dean Struppa merely found that Dr. Christensen's action did not violate a Mason rule or a Mason procedure. But Dr. Crocker's complaint was not that Dr. Christensen had failed to comply with procedures or rules, it was that the substance of Dr. Christensen's action violated Dr. Crocker's *rights*, even if we accept for purposes of argument Dean Struppa's finding that he performed the action in a manner that followed Mason's procedural rules. Thus, Dean Struppa's May 17 Resolution of Grievance does not in fact represent a resolution of the question presented by Dr. Crocker's grievance.

The question presented by Dr. Crocker's grievance was whether evolution and intelligent design, even if considered "controversial questions," are "subjects ... within [Dr. Crocker's] field." *See* Faculty Right and Privilege 2.12.1 (1). If those subjects are within Dr. Crocker's field, then Right and Privilege 2.12.1 (1) assures Dr. Crocker "the right to unrestricted exposition" of those subjects in the lecture course that Mason contracted with her to teach.

Dr. Christensen in his response to the grievance appeared to focus on whether "evolution" is properly part of the subject-matter of the lecture course in question, Biol. 213. But he never said that evolution is outside *Dr. Crocker's* field – a field which is

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larger than just the field covered in Biol. 213. Faculty Right and Privilege 2.12.1 (1) protects Dr. Crocker's right to teach subjects within *her* field – not just subjects within the field of a particular course that she is teaching.

Moreover, even if Faculty Right and Privilege 2.12.1 (1) only applied to subjects within the field of the course in question, Dr. Christensen did *not* say that the subjects of evolution *or* intelligent design are outside the field of cell structure and function, which is the stated field of Biol. 213. And had he done so, he would have been rebutted by Mason's own course catalog, which states that Biol. 213 includes "evolution of cells," and by the textbooks Mason assigned for the class, Campbell's *Biology* (the assigned text for the Fall 2004 semester) and Albert's *Essential Cell Biology* (the assigned text in previous semesters). The subject of evolution also pervades other leading textbooks, such as *Molecular Biology of the Cell*, 4th ed..

Evolution is broadly claimed by many educators to be one of the fundamental facts of biology. Thus, the fact that other courses such as Biol. 303 and Biol. 307 may address evolution in the contexts, respectively, of animal biology and of ecology, cannot be taken as demonstrating that it is inappropriate to cover evolution in the context of cell structure and function. One wonders what Dr. Christensen's response would be if persons opposed to the teaching of evolution cited his position here as supporting a demand that evolution **not** be taught in **any** cell biology class, because, *according to Dr. Christensen*, evolution is not part of the field of cell biology. It should be readily apparent that Dr. Christensen would deny that such a statement accurately presented his position concerning evolution and cell biology.

Indeed, Dr. Christensen did not even assert that the *other* teachers of Biol. 213 omitted evolution from their *lectures*. He said only that the other professors omitted the word "evolution" from their *syllabi* for Biol. 213. While his statement may have been intended to lead the grievance committee to conclude that evolution was never taught in *lectures* in Biol. 213 by any other teacher, there is no basis for assuming that these other professors omitted this subject from their *lectures*. To the contrary, Mason provided to Dr. Crocker the lecture notes of a prior teacher of Biol. 213, Dr. Andrykovitz, and she discovered therein that Dr. Andrykovitz taught evolution in Biol. 213. And even if some of these professors omitted evolution, Dr. Christensen provides no basis for concluding that the omission of the subject stemmed from a judgment that the subject was not properly included in the course. Omission of the subject may have reflected individual professors' judgment that other topics were simply more important to cover in the limited time available. Indeed, Dr. Crocker herself omitted the lecture in the Fall 2004 due to the

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needs of a grant she obtained that required her to devote the class time to a different subject.

If Mason justifies Dr. Crocker's removal from Biol. 213 on the grounds that evolution may not be discussed in Biol. 213 *lectures*, we must then inquire whether other instructors of Biol. 213 – including Dr. Christensen himself – have been and are being instructed that they must not discuss evolution in *lectures* in that course, and have been or are threatened with removal from the course if they lecture on evolution. If the results of such an inquiry demonstrate that all teachers *except* Dr. Crocker have been and are permitted to lecture on evolution in Biol. 213 – including Dr. Christensen himself – then it will be abundantly clear that Dr. Christensen's action singled out Dr. Crocker, discriminated against her, and denied her right of academic freedom.

The reason for that unique discrimination is easy to find: it is Dr. Christensen's accusation that Dr. Crocker was teaching "creationism" in her lecture. According to Dr. Christensen, "intelligent design" is equated with "creationism." It is this assertion that is the cause of the discrimination against her. In equating "intelligent design" with "creationism" Dr. Christensen is asserting in substance that Dr. Crocker taught religion, not science, in a science class. She denies this, and asserts that everything she taught in Biol. 213 was science. Dean Struppa's decision makes no ruling on this question, perhaps because Dean Struppa apparently believed – erroneously – that Dr. Christensen could remove Dr. Crocker from the lecture course regardless. To the contrary, being science, all the material Dr. Crocker taught was appropriate for the class, and she had the right to teach it under Mason's Right and Privilege 2.12.1 (1), and under the constitutions and statutes of the Commonwealth and of the federal government – even if some persons believe that the scientific data she taught may lead some persons to conclusions that may affect some religious beliefs of some people. Indeed, that very argument typically is made to justify the teaching of natural selection as the cause of evolution: that, being science, it must be taught in science classes, even if the teaching may lead some persons to conclusions that may affect some religious beliefs of some people.

Ultimately, therefore, Dr. Christensen discriminated against Dr. Crocker because the scientific evidence Dr. Crocker taught might cause some persons to reach certain conclusions regarding some religious beliefs that are contrary to the conclusions many people reach when they are taught only the scientific evidence that Dr. Christensen finds acceptable. His removal of Dr. Crocker from the lecture course is an act of religious viewpoint discrimination based on the effect he perceives her *science* teaching may have on the *religious* beliefs of some students. Since Mason is a Virginia

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Commonwealth institution, federal and Commonwealth statutory and constitutional provisions apply, and they bar Mason from discriminating against Dr. Crocker in this fashion.

Dr. Crocker's right to teach the lecture course continues for the remaining term of her contract, which as we have established above, continues through the end of the Spring 2007 semester. Accordingly, in insisting that Mason honor its contract with Dr. Crocker for the Fall semester that will soon begin, and for the succeeding three semesters, please understand that this demand specifically includes the demand that Mason assign Dr. Crocker to teach the lecture course, pursuant to Mason's contract promise.

However, please also understand that we expect Mason to continue Dr. Crocker's salary payments, and to treat her as a term professor, pursuant to the contract, even if Mason disputes that the contract and the law require that Mason assign her to teach Biol. 213. In other words, we do *not* agree that Mason may escape its *payment* obligations, and its obligations to accord Dr. Crocker continuing recognition as a term professor through the end of the Spring 2007 semester, if it were determined that the scope of her contract and constitutional rights did not extend so far as to mandate that Mason must assign her to Biol. 213, but would instead allow Mason to assign her to other lab or lecture classes.

I look forward to Mason's *prompt* performance of its contract obligations, including prompt salary payments to Dr. Crocker, the scheduling of her lecture class and the selection of students for that class, and all other performance by Mason called for under the contract.

Sincerely yours,



Edward Sisson