

UNITED STATES DISTRICT COURT

SOUTHERN DIVISION
Case No.: 7-07-CV-64

MICHAEL S. ADAMS,)
)
 Plaintiff)
)
 vs.)
)
 The Board of Trustees of the University of)
 North Carolina-Wilmington—M. TERRY)
 COFFEY, JEFF D. ETHERIDGE, JR.,)
 CHARLES D. EVANS, LEE BREWER)
 GARRETT, JOHN A. MCNEILL, JR., WENDY)
 F. MURPHY, LINDA A. PEARCE, R. ALLEN)
 RIPPY, SR., GEORGE M. TEAGUE, KRISTA)

University of North Carolina-Wilmington; Rosemary DePaolo, Chancellor of the University of
North Carolina-Wilmington; David P. Cordle, Dean of the College of Arts and Sciences at the

[REDACTED]

often based on obviously false charges—designed only to harass and defame Dr. Adams because he exercised his First Amendment rights in a manner that Defendants disliked. Ultimately, De

Defendants refused to promote Dr. Adams to full professor for the same reason. Defendants initially refused to explain this decision, and only later provided an explanation, one that lacks even a pretense of credibility. As a result, Defendants have violated Dr. Adams' First Amendment right to free speech, unlawfully retaliated against Dr. Adams for exercising his First Amendment freedoms, deprived him of equal protection of the laws, discriminated against him because of his religious beliefs, and excluded him from full membership in the [REDACTED]

JURISDICTION AND VENUE

3. This civil rights action raises federal questions under the First and Fourteenth Amendments to the United States Constitution, the Civil Rights Act of 1871, 42 U.S.C. § 1983, and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*

4. This Court has original jurisdiction over these federal claims pursuant to 28 U.S.C. §§ 1331 and 1343. This Court has authority to award the requested damages pursuant to 28 U.S.C. § 1343; the requested declaratory relief pursuant to 28 U.S.C. § 2201–02; and costs and attorneys fees under 42 U.S.C. §§ 1988 and 2000e-5(k).

5. Venue is proper in this district.

lina-Wilmington, a public university organized and existing under the laws of the State of North Carolina, is responsible for overseeing the Board of Trustees' administration and policy-making, including the policies and procedures contained herein, and is sued both in her individual and

official capacities.

8. Defendant M. Terry Coffey is a member of the Board of Trustees of the University of North Carolina-Wilmington, a public university organized and existing under the laws of the State of North Carolina, is responsible for overseeing the Board of Trustees' administration and policy-making, including the policies and procedures contained herein, and is sued both in her individual and official capacities.

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the State of North Carolina, is responsible for the Board of Trustees' administration and policy-making, including the policies and procedures contained herein, and is sued both in her individual and official capacities.

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12. Defendant John A. McNeill, Jr. is a member of the Board of Trustees of the University of North Carolina-Wilmington, a public university organized and existing under the laws of the State of North Carolina, is responsible for the Board of Trustees' administration and policy-making, including the policies and procedures contained herein, and is sued both in his individual and official capacities.

13. Defendant Wendy F. Murphy is a member of the Board of Trustees of the University of North Carolina-Wilmington, a public university organized and existing under the laws of the State of North Carolina, is responsible for the Board of Trustees' administration and policy-making, including the policies and procedures contained herein, and is sued both in her individual and official capacities.

14. Defendant Linda A. Pearce is a member of the Board of Trustees of the University of North Carolina-Wilmington, a public university organized and existing under the laws of the State of North Carolina, is responsible for the Board of Trustees' administration and policy-

making, including the policies and procedures contained herein, and is sued both in her individual and official capacities.

1. Defendant [REDACTED] is responsible for the Board of Trustees' administration and policy-

making, including the policies and procedures contained herein, and is sued both in his individual and official capacities.

17. Defendant Krista S. Tillman is a member of the Board of Trustees of the Univer-

sity of [REDACTED] which is a public university organized and existing under the laws of [REDACTED]

Justice at the University North Carolina-Wilmington, is responsible for overseeing campus administration including the policies and procedures contained herein, and is sued both in her official and individual capacities.

22. Defendant Diane Levy, the former interim Chair of the Department of Criminology and Sociology at the University of North Carolina-Wilmington, is responsible for overseeing

in her official and individual capacities.

The University of North Carolina at Wilmington is a public comprehensive university dedicated to learning through the integration of teaching and mentoring with research and service. The college of arts and sciences . . . seek[s] to stimulate intellectual curiosity, imagination, critical thinking, and thoughtful expression in a broad range of disciplines and professional fields. . . . Our goal is excellence in teaching, scholarship, research, artistic achievement, and service.

UNCW . . . is committed to diversity, international perspectives, and regional service. Our campus community strives to create a safe, supportive, and technologically progressive environment in which students, faculty, and staff work together

A copy of the UNCW mission statement is attached as Exhibit 2 to this Complaint.

scholarly and professional interest and responsibility.” (*Id.*)

27. In accordance with the Code of the Board of Governors, the UNCW faculty handbook values the academic freedom of faculty members, by stating:

The University of North Carolina at Wilmington is dedicated to the transmission and advancement of knowledge and understanding. Academic freedom is essential to the achievement of these purposes. This institution therefore supports and encourages freedom of inquiry for faculty members and students, to the end that they may reasonably pursue these goals through teaching, learning, research, discussion, and publication, free from internal or external restraints that would unreasonably restrict their academic endeavors.

Like UNC, UNCW “protect[s] faculty and students in their responsible exercise of the freedom to teach, to learn, and otherwise to seek and speak the truth.” A copy of the relevant portions of

the UNCW faculty handbook is attached as Exhibit 4 to this Complaint.

28. Further, UNCW has established policies to protect the academic freedom of faculty members: “It is the policy of the University of North Carolina at Wilmington to support and encourage full freedom, within the law, of inquiry, discourse, teaching, research, and publication for all members of the academic staff of this institution.” (Ex. 4.) Thus, UNCW “will neither penalize nor discipline members of the faculty because of the exercise of academic freedom in the lawful pursuit of their respective areas of scholarly and professional interest and responsibility.” (*Id.*)

29. In addition to guaranteeing that its faculty members receive full academic freedom, UNC also guarantees that its employees will receive equal employment opportunity by

prohibiting discrimination in employment decisions. The Code of the Board of Governors sets out UNC’s policy regarding discrimination:

Admission to, employment by, and promotion in the University of North Carolina and all of its constituent institutions shall be on the basis of merit and there shall

as Exhibit 5 to this Complaint.

30. Likewise, UNCW prohibits discrimination to ensure that all of its employees receive equal opportunity in employment, promotion, and tenure. Its Equal Opportunity and Affirmative Action Policy states as follows:

[UNCW] is committed to and will provide equality of . . . employment opportunity for all persons regardless of race, sex (such as gender, marital status, and pregnancy), age, color, national origin (including ethnicity), creed, religion, disability, sexual orientation, political affiliation, veteran status, or relative to

A copy of the UNCW Equal Opportunity and Affirmative Action Policy is attached as Exhibit 6 to this Complaint.

B. DEFENDANTS' DISCRIMINATION AGAINST DR. ADAMS

31. In 1993, UNCW interviewed and hired Dr. Adams as an assistant professor of criminology, a position he held for the next five (5) years. At this time, he was an atheist who held to liberal political beliefs.

32. Between 1993 and 2004, Dr. Adams received excellent annual reviews from two

and thorough courses, and his productive research. As early as his 1993 annual evaluation of Dr. Adams, Dr. McNamee praised him as a "gifted teacher" with "great potential as a scholar" and as

a "very good department and

[REDACTED]

Baptist church.

40. Beginning in 1995, Dr. Diane Levy and her husband, Dr. Gary Faulkner, adopted a tag-team approach to attending department meetings. As both of them taught in the department, one would attend and take notes for the other. Hence, each of them attended only half of these meetings. Their conduct was so pervasive that D. Adams

ams. However, their conduct continued, without reprimand, for at least five (5) years.

41. In 1996, Dr. Adams received his first teaching award at UNCW and was honored in the 1996 Who's Who Among College Teachers.

pressive one" A . . . C.D. . . .

is attached as Exhibit 11 to this Complaint.

44. In 1998, the Dean of Students Office recognized Dr. Adams as the UNCW Faculty Member of the Year. A copy of the award letter is attached as Exhibit 12 to this Complaint.

45. On August 1, 1998, Dr. Adams was promoted to his current position of associate professor of criminology. In her recommendation of Dr. Adams, Dean Jo Ann Seiple recounted Dr. Adams' "outstanding teaching record," "impressive record of research" and "impressive"

service record. She specifically noted that "[s]uch accomplishments are remarkable . . . for one who completed his doctorate little more than four years ago." In her opinion, Dr. Adams was a "natural teacher" and an "emerging scholar." A copy of Dr. Seiple's recommendation of Dr. Adams

politically conservative.

49. During the summer of 2000, Dr. Adams commented on the lack of ideological diversity on campus. Because of this comment, Dr. Lynn Snowden, the Faculty Senate President at the time, removed Dr. Adams from the Faculty Senate mailing list. Upon information and belief, when questioned about this decision, she wrote that she had removed Dr. Adams from the list because he was "campaigning for Bush."

50. In his 2000 annual evaluation of Dr. Adams, Dr. Willis wrote: "Dr. Adams is a skilled, passionate, and dedicated teacher, productive and enthusiastic scholar, and good departmental and university citizen. He continues to demonstrate that he is one of the best instructors in our department and in the university." Yet again, Dr. Willis noted that Dr. Adams' teaching scores were in the "excellent" category, that Dr. Adams was a "conscientious and capable academic advisor," and that faculty peer evaluations of Dr. Adams' research placed it in the "outstanding" category. In addition, Dr. Adams chaired a departmental search committee, served on several self-study committees, and served on a UNCW Housing Grievance Committee. He continued to write newspaper columns and served on a panel before the North Carolina Legislature. A copy of Dr. Willis' 2000 annual evaluation of Dr. Adams, dated June 20, 2001, is attached as Exhibit 16 to this Complaint.

5 [REDACTED]. On September 17, 2001, Dr. Adams received an e-mail from Ms. D. Fuller [REDACTED]

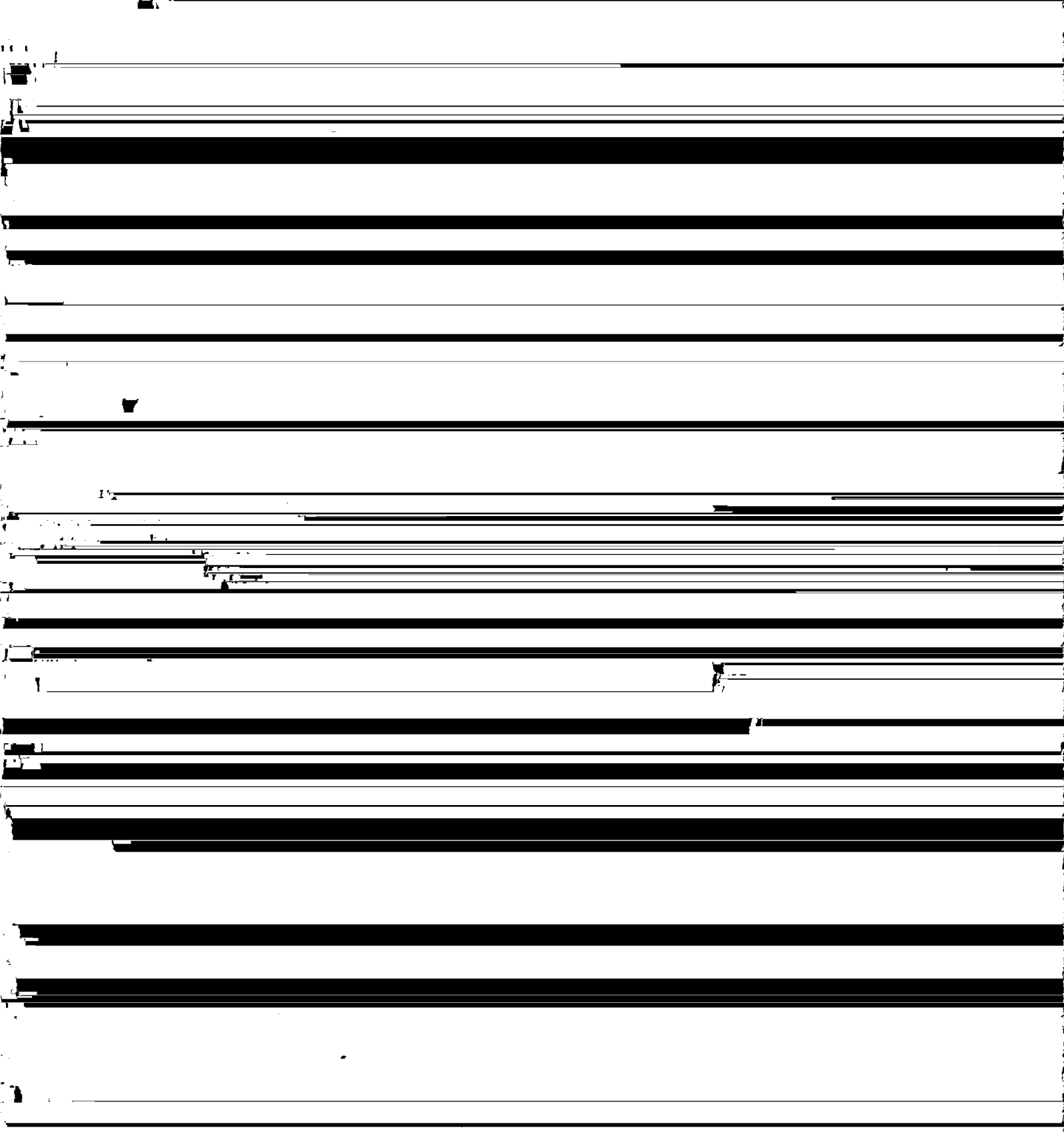
UNCW student and daughter of Philosophy Professor Patti Turrisi, the director of the Center for Teaching Excellence at UNCW. Ms. Fuller's e-mail was entitled "In Dedication to an Undivided Humanity" and blamed the attacks of September 11, 2001, on the foreign policy of the United

e-mail to friends and acquaintances both on and off campus.” A copy of Ms. Fuller’s e-mail of September 17, 2001, is attached as Exhibit 17 to this Complaint.

52. Dr. Adams forwarded Ms. Fuller’s e-mail to six (6) friends. The names of these

claimed interest in promoting rational discussion is dishonest. It is an intentionally divisive diatribe.” However, Dr. Adams continued by saying, “The Constitution protects your speech just as it has protected bipedal speech.”

epithets,” the intent of which was “intimidation and defamation.” She also alleged that he had sent copies of his “false representation of [her] to others, inside and outside the University community.” Therefore, she insisted that the “Office of Information Technology, and any other appropriate officer or officers, . . . let me and my representatives inspect the e-mail messages Ad-
ms sent from September 15 to September 19, 2007. . . .”



an examination of his correspondence. A copy of Dr. Adams' e-mail to Provost Cavanaugh on September 23, 2001, is attached as Exhibit 19 to this Complaint.

60. At 8:00 a.m. on September 24, 2001, Dr. Adams received a telephone call from Krysten Scott (now Mrs. Adams) of JNCW [REDACTED]

[REDACTED]

was not providing evaluation to a student in one of his courses, not commenting on the academic soundness of an argument in a class, not speaking on behalf of the university, and not transacting public business on behalf of the State of North Carolina.” Thus, his e-mails were personal and

constitute private property. A copy of Mr. White’s letter to Ms. Fuller on September 26, 2001, is attached as Exhibit 21 to the Complaint.

63. On September 28, 2001, Ms. Fuller responded to Mr. White’s letter by stating in a

66. In a telephone conversation on October 10, 2001, Mr. White again instructed Dr. Adams to preserve all of his e-mail messages.

67. Between October 3–11, 2001, Mr. White and Ms. Fuller exchanged more letters, with Ms. Fullers' becoming increasingly hostile and sarcastic. Mr. White remained steadfast in his position that the e-mails were not public records and reiterated that UNCW would not force Dr. Adams to produce his e-mails for inspection. Ms. Fuller continued to demand that UNCW allow her to inspect all of the non-confidential e-mails Dr. Adams sent during September 15–18, 2001. These letters between Mr. White and Ms. Fuller are attached as Exhibit 25 to this Complaint.

68. On October 15, 2001, Ms. Fuller wrote Mr. White demanding a final decision as to whether she or her representatives could have access to the requested e-mail messages. After repeating her demands, she concluded:

If the University refuses to do an inventory of the e-mail letters Mike Adams sent on the relevant dates, or refuses to let me see his "official" messages, other than ones exempt under the law, then it stands in open and absolute defiance of State law. The matter will then have to be finally decided in another forum.

A copy of Ms. Fuller's letter of October 15, 2001, is attached as Exhibit 26 to this Complaint.

69. In response to Ms. Fuller's letter of October 15, 2001, Dr. Adams

Dr. Adams to inform him that UNCW

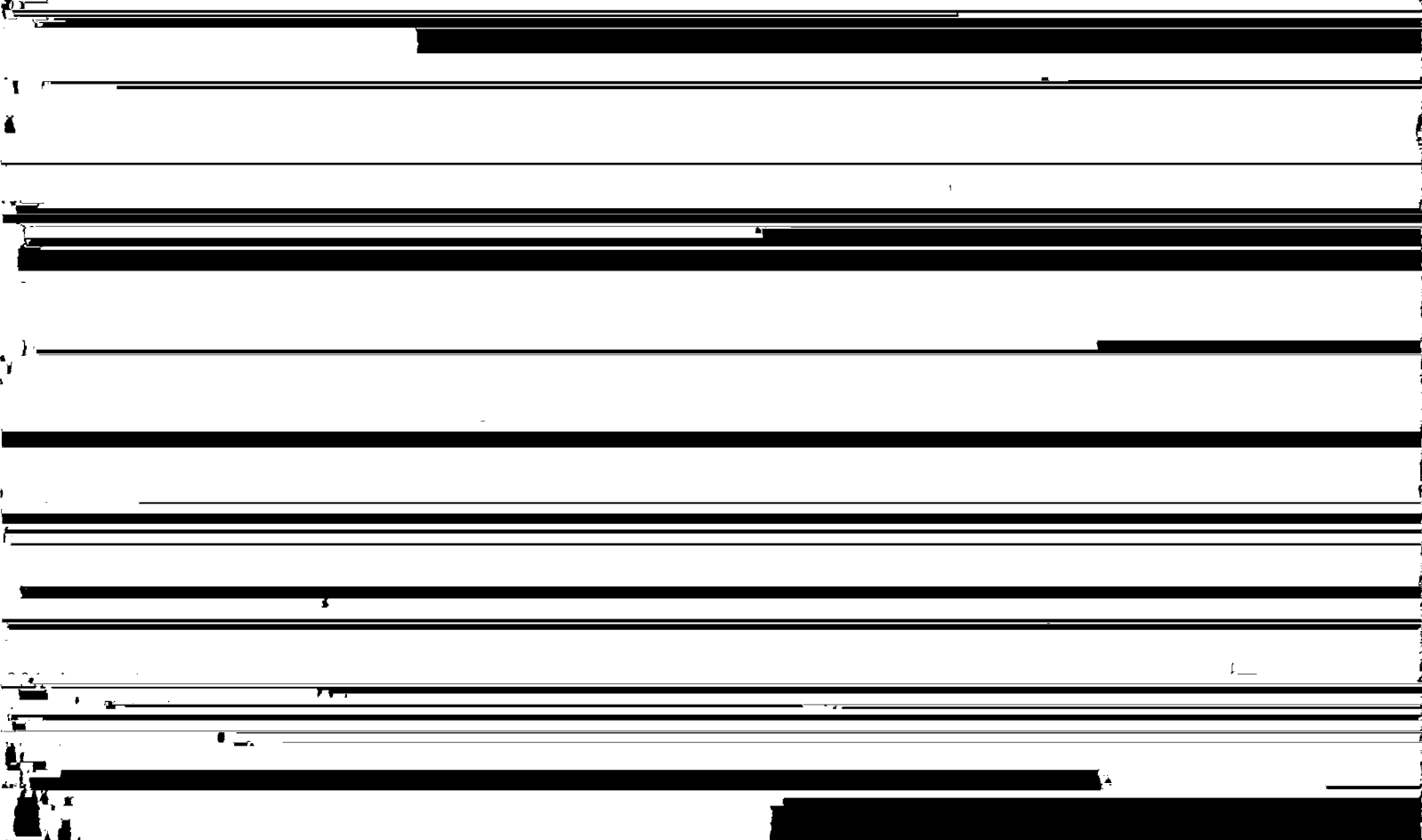
statements of September 28, 2001

71. As Mr. White and Ms. Gurganious were leaving his office, Dr. Adams said, "I know you can't comment on what I have to say, but this is a truly psychotic act of retaliation over nothing more than petty difference of political opinion." Both of them agreed, and Mr. White apologized for the intrusion. Mr. White had previously told Dr. Adams that the whole thing was, in his opinion, an act of retaliation and political harassment.

72. After this, Mr. White contacted Ms. Scott (now Mrs. Adams) and Dr. Donna King, a UNCW professor, to inform them that UNCW would be checking its backup tapes in order to read the messages that Dr. Adams had sent them as part of its investigation into whether these messages needed to be turned over to Ms. Fuller and her family. Both Ms. Scott and Dr. King objected to this invasion of their privacy.

73. After consulting with her attorney, Ms. Scott demanded to be present if any of the

76. After this meeting, Mr. White wrote Ms. Fuller a letter stating that the two messages recovered from the backup tapes were not public records, and thus, she would not receive a copy of them. However, he agreed to give her and her family other information concerning Dr. Adams' e-mail communications. A copy of Mr. White's letter to Ms. Fuller is attached as Exhibit 284.



77. On October 29, 2001, Ms. Fuller accused Dr. Adams of libel in a complaint to UNCW. She alleged that the request in her original e-mail that readers forward her message to others applied *only* to those who agreed with her perspective. Thus, Dr. Adams' distribution of her e-mail was improper and constituted libel. A copy of Ms. Fullers' complaint of October 29, 2001, is attached as Exhibit 284.

Adams had ever been “investigated, threatened, or sanctioned for saying anything”; (2) claimed that UNCW had fully supported Dr. Adams’ free speech; (3) claimed that Dr. Adams

on national television that UNCW had protected his free speech.

turn over any records to Ms. Fuller. A copy of Provost Cavanaugh’s form response is attached as Exhibit 30 to this Complaint.

81. In April 2002, Dr. Adams informally requested that all records, items, reports, and transcripts related to the investigation of Dr. Snowden’s alleged incident of “workplace terrorism” be disclosed to him. When these requests failed, he formally requested the same in a letter to Mr. White on May 3, 2002. A copy of Dr. Adams’ letter of May 3, 2002, to Mr. White is at-

84. Upon information and belief, in March 2003, Dr. Jammie Price cancelled class for one (1) full week in order to protest Operation Iraqi Freedom. She gave students extra credit for assisting her in this protest and used the department copy card to cover the cost of producing the anti-war fliers.

85. In his 2002 annual evaluation of Dr. Adams, Dr. Willis repeated many of his comments from his 2001 annual evaluation. In addition to noting Dr. Adams' "excellent" teaching scores, his research, and his department and university service, Dr. Willis praised Dr. Adams for his community service in the form of three public lectures and appearances on radio talk shows. A copy of Dr. Willis' 2002 annual evaluation of Dr. Adams, dated June 3, 2003, is attached as Exhibit 34 to this Complaint.

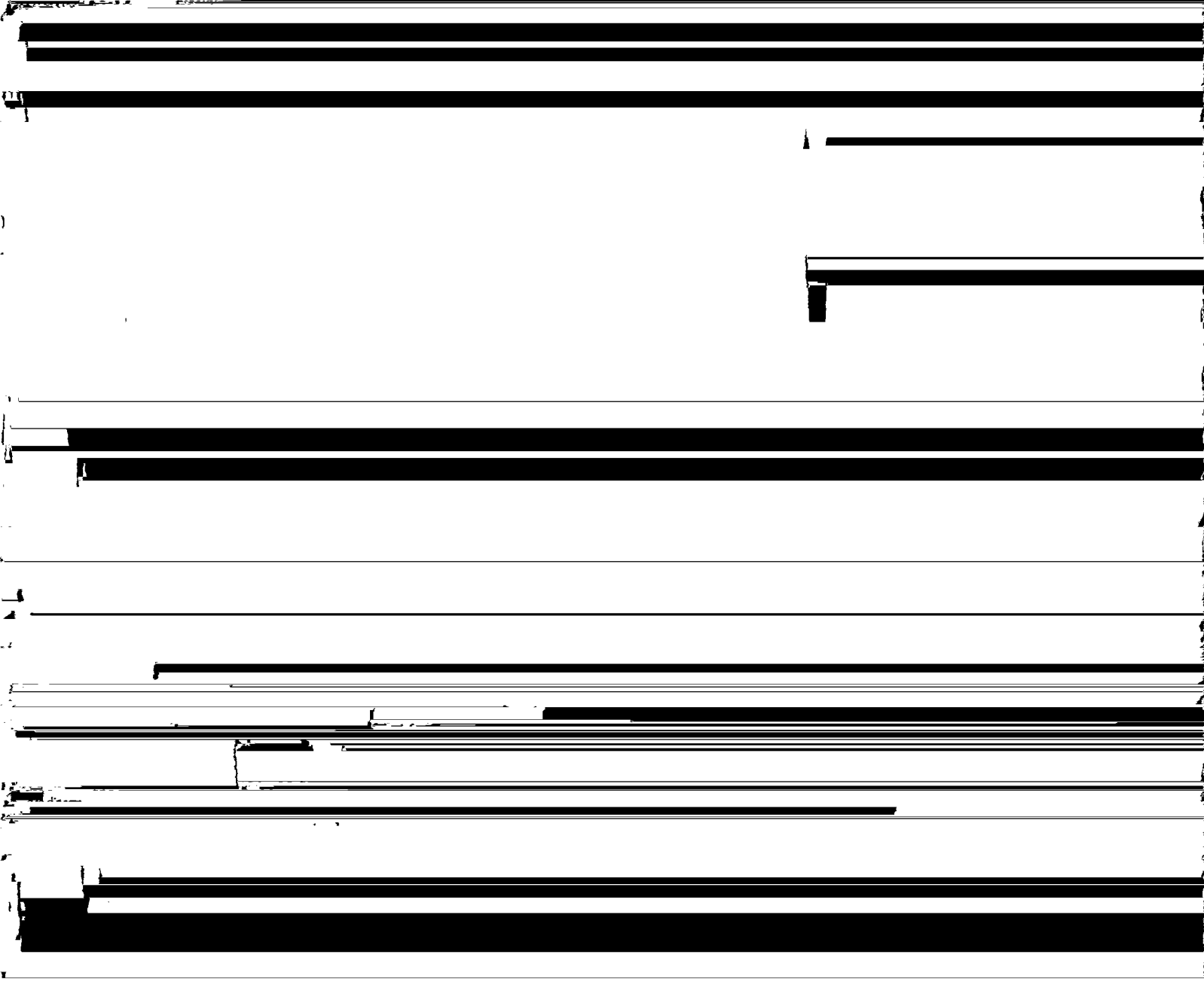
Dr. Willis stated that Dr. Adams "is

an enthusiastic, knowledgeable, and skilled instructive and active researcher who is involved in varied service activities, especially in the larger community. He remains, by all indications, one of the most skilled and popular instructors in our department and the university." In addition to commenting on Dr. Adams' "excellent" teaching scores, "good" to "outstanding" course materials, and continuing research, Dr. Willis praised Dr. Adams for his service on department committees and as an advisor to various student organizations. Furthermore, he praised Dr. Adams for his community service, which "included an internet column and guest appearances on televi-

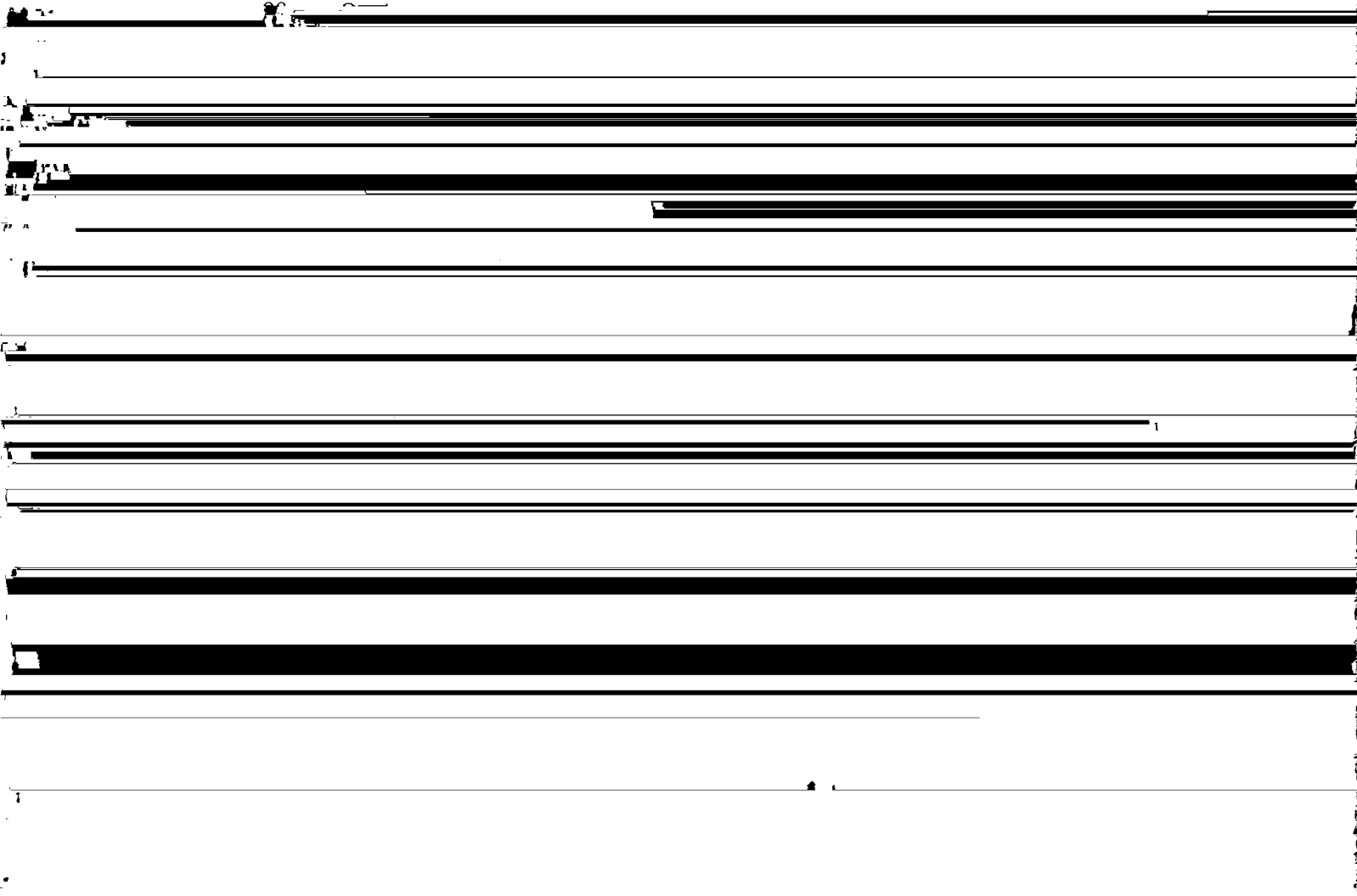
88. Upon information and belief, the two previous chairs of the department—Drs. McNamee and Willis—had stated that ten peer-reviewed publications as a “safe” number to secure promotion to full professor.

89. Besides teaching and research, Dr. Adams has been active in his service to the community. His service activities include sitting on or leading various University boards and committees, sitting on or leading various department committees, advising a variety of student organizations, and utilizing his weekly column and national appearances to support academic freedom and assist students in defending their First Amendment freedoms. A complete list of

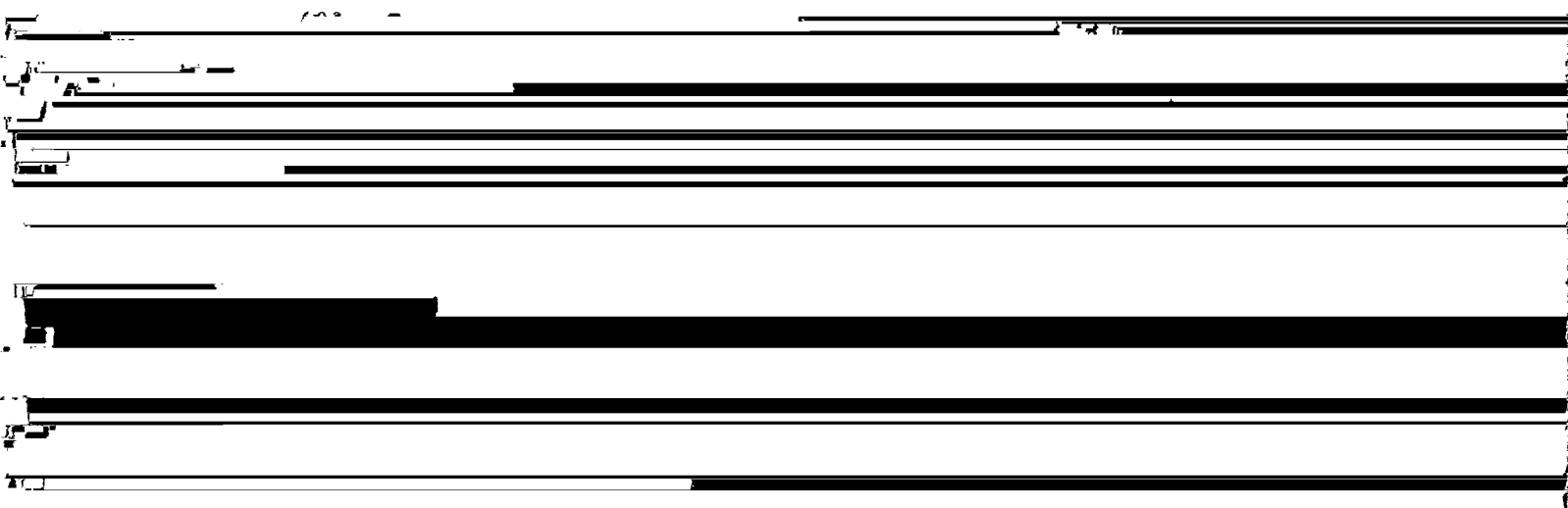
Dr. Adams' service activities is attached as Exhibit 2 to the Plaintiff's Complaint.



98. Upon information and belief, during the 2005–06 academic year, Dr. Cook said the following to the recruitment committee: “My image of a perfect job candidate is a lesbian with spiked hair and a dog collar.”¹



Resource Center. At that time, she was given the option of whether or not to attend departmental meetings. Although she initially chose not to attend, she did decide to attend at least one (1) of the fifteen (15) meetings since she assumed her position.



as Exhibit 43 to this Complaint.

103. On June 5, 2006, Dr. Cook filed her 2005 annual evaluation of Dr. Adams. After recounting his accomplishments as a teacher, research efforts, and service both on and off campus, she concluded that "Dr. Adams['] work performance is satisfactory in all areas of review."

A copy of Dr. Cook's 2005 annual evaluation of Dr. Adams is attached as Exhibit 43 to this Complaint.



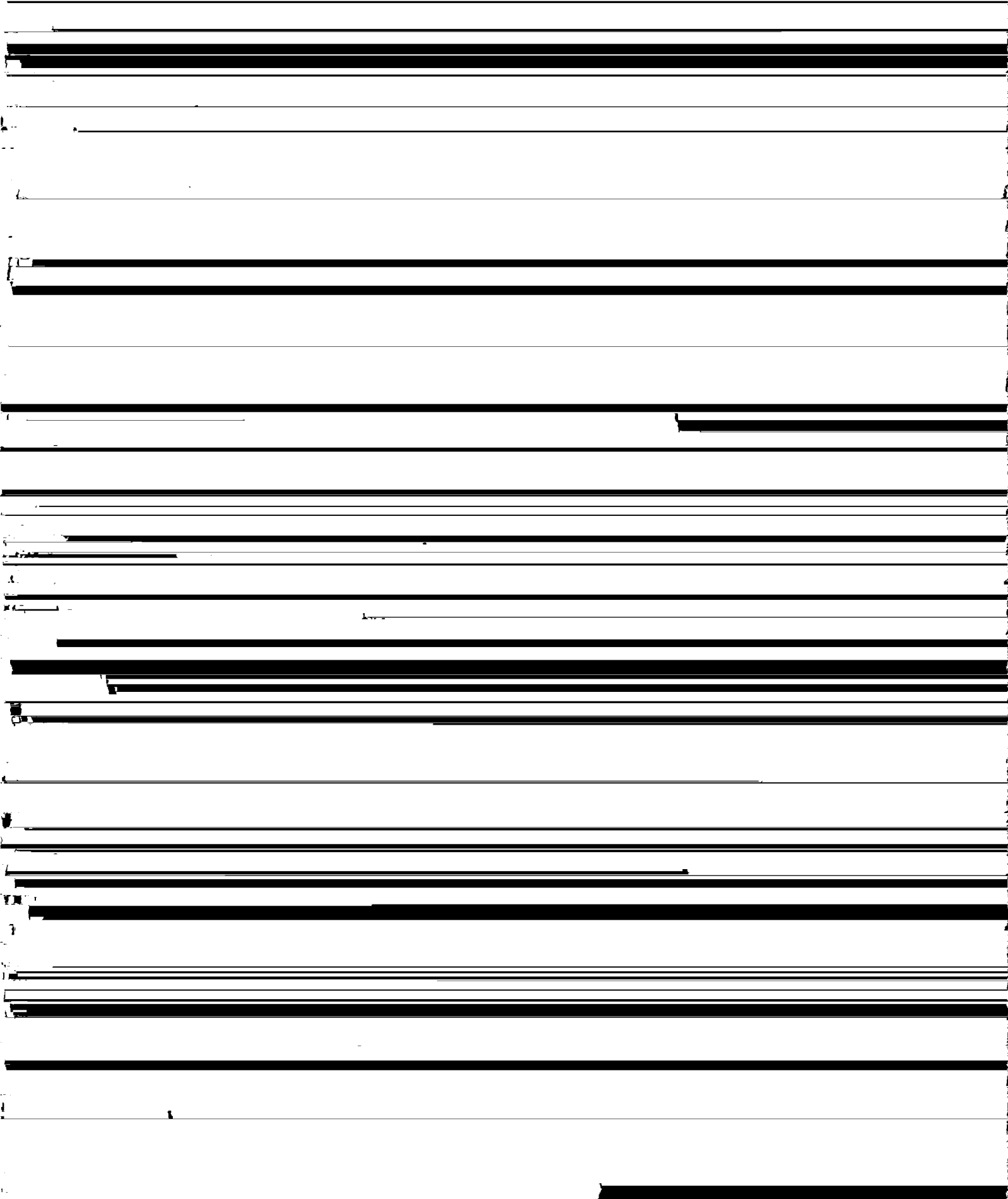
these e-mails between Dr. Cook and Dr. Adams are attached as Exhibit 46 to this Complaint.

107. On September 20, 2006, Dr. Adams sent Dr. Cook another e-mail renewing his request for a written explanation and clarifying that he also wanted to know the results of the vote. A copy of Dr. Adams' e-mail to Dr. Cook on September 20, 2006, is attached as Exhibit 47 to this Complaint.

108. On September 21, 2006, Dr. Cook sent Dr. Adams a letter which began by stating, "I am disappointed that you declined my invitation to discuss personally the decision on your promotion." After outlining the materials used to make the decision, she noted that "[t]he senior faculty on the Department, in an overwhelming consensus, did not support your promotion to professor at this time." However, she also observed that the chair has the final decision on the matter saying, "In my view your record does not merit promotion to professor at this time." A copy of Dr. Cook's letter of September 21, 2006, is attached as Exhibit 48 to this Complaint.

109. On September 27, 2006, Dr. Adams sent an e-mail to Dr. Cook demanding a written justification for this decision. In particular, he requested that she explain the reason for the senior faculty's "overwhelming consensus" and the basis for her conclusion that "[his] record does not merit promotion to professor at this time." A copy of Dr. Adams' e-mail of September 27, 2006, is attached as Exhibit 49 to this Complaint.

this time. The teaching criterion for promotion to professor requires one to have documented "distinguished accomplishment" in that professional area. While your teaching record is the strongest aspect of your application,



114. On December 28, 2006, the most senior member of the Criminal Justice faculty e-mailed Dr. Adams to inform him that the search committee had selected [REDACTED]

[REDACTED]

and more liberal colleagues, to the denial of promotion to full professor were based in whole or in part upon his identity as a Christian of conservative theological and political beliefs.

From CIVIL RIGHTS

First Amendment Retaliation
(42 U.S.C. § 1983)

119. Plaintiff repeats and realleges each of the foregoing allegations in this Complaint.

120. By subjecting Dr. Adams to numerous, intrusive, and harassing investigations, asking him to terminate his First Amendment activities, and refusing to promote him to full professor because of his outspoken Christian and conservative beliefs, Defendants by policy and practice have retaliated against Plaintiff because of his free expression and deprived him of his ability to freely express his ideas on issues of public concern at UNCW.

121. Defendants, acting under color of state law, and by policy and practice have

131. Defendants, acting under color of state law, and by policy and practice, have explicitly and implicitly discriminated on the basis of race, color, and national origin.

[REDACTED]

138. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiff is entitled to an award of monetary damages in an amount to be determined by the evidence and this Court and the reasonable

costs of this lawsuit, including their reasonable attorneys' fees.

WHEREFORE, Plaintiff Michael S. Adams respectfully requests that the Court enter judgment against Defendants M. Terry Coffey, Jeff D. Etheridge, Jr., Charles D. Evans, Lee Brewer Garrett, John A. McNeill, Jr., Wendy F. Murphy, Linda A. Pearce, R. Allen Rippey, Sr., George M. Teague, Krista S. Tillman, Dennis T. Worley, Katherine L. Gurgainus, members of the Board of Trustees of the University of North Carolina-Wilmington; Rosemary DePaolo, Chancellor of the University of North Carolina-Wilmington; David P. Cordle, Dean of the College of Arts and Sciences at the University of North Carolina-Wilmington; [REDACTED]

in this action pursuant to 42 U.S.C. §§ 1988 and 2000e-5(k) and

(G) All other further relief to which Dr. Adams may be entitled.

Respectfully submitted this 9th day of April, 2007.

s/Robert M. Schmidt

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David J. H. [REDACTED]

VERIFICATION OF COMPLAINT

[REDACTED]