

SPRING CONFERENCE OF IL AAUP at Elmhurst College

Theme: Improving relationships in higher education among faculty, administration and trustees

April 6, 2013



The Illinois Conference of the AAUP will hold its spring meeting and conference at Elmhurst College in Elmhurst, Illinois on Saturday April 6, 2013 from 9:30 am until 4:15 pm. The Conference will be held in Circle Hall in rooms 011, 012 and 013. Parking is available at no charge in the lot between Alexander and Walter Streets. The College cafeteria is a short walk from Circle Hall and is located in the Frick Center.

The program is being hosted by the Elmhurst College Chapter of the AAUP. For additional information please contact Jane Jegerski, Chapter Chair at 630-617-3585. The program outline is as follows:

9:00 - 9:30	Coffee and rolls
9:30 - 10:45	Board meeting
10:45 - 11:00	Break
11:00 - 12:00	"Faculty-Board Relations in Higher Education: A View from a Board Member" Presenter - Leo Welch, Vice Chairman, Board of Trustees, Eastern Illinois University, Professor Emeritus Biology, Southwestern Illinois College and Illinois Conference AAUP Board member
12:00 - 1:00	Lunch on your own- Elmhurst College Cafeteria
1:00 - 1:45	"Enhancing Faculty Participation in College and University Governance." Presenter-Ernie Benjamin, AAUP Senior Consultant and former Executive Director, General Secretary and Director of Research for the AAUP
1:45 - 2:00	Break
2:00 - 2:45	"The Value of Dialogue: Keeping Communication Channels Open" presented by Ken Andersen, Professor Emeritus of Communication, University of Illinois, Department of Communications, College of Liberal Arts and Sciences and Illinois Conference AAUP officer
2:50 - 3:30	"Shared Governance at the University of Illinois" presented by Dr. Michael Grossman, past chair of the University of Illinois Senates Conference



3:30 - 3:45	Break
3:45 - 4:15	General membership meeting and election of board members

President's Message

Michael Harkins
President, Illinois AAUP



Last November, North Park University in Chicago hosted the Fall meeting of the Illinois Conference. Our chapters were well represented. During our morning business meeting the Board reviewed the positive responses from the faculty members who we sponsored at the 2012 summer institute. The Conference provided support for ten faculty members to attend. This summer the institute will be held at the University of Washington in Seattle from July 25-28, 2013. At our upcoming April meeting we will again discuss supporting faculty from our chapters to attend these important workshops and seminars.

This June, the AAUP will host the annual conference on the state of higher education in Washington, D.C. from June 12-16. Members and chapter leaders interested in attending and serving as a delegate or alternate to the meeting can nominate or self nominate through the process outlined in this issue of Illinois Academe. The Assembly of State Conferences (ASC) will also meet during the annual meeting.

Over the past six months Conference officers and Board members have continued to advocate on behalf of our members and faculty throughout the state. Issues of academic freedom, tenure and shared governance continue to surface as major concerns. We have responded with support, guidance and expertise as needed. We also have reached out to the National office for additional support on these vital faculty issues. Our Committee A continues to be active and fully engaged in working with individual faculty. Chapter visits, daily phone conferences and e-mails have increased for our officers and Board. These communications are now common place as we meet the needs of our chapters. The expertise of the Illinois Conference as well as the National office can be drawn upon and consulted at any time in the interests of our membership.

As leaders we are dedicated to helping you and your chapters protect faculty rights and ensure academic freedom and true shared governance. Your involvement in shared governance is vital to the success of our students.

Our Elmhurst College Chapter will host our Spring meeting and conference on Saturday April 6, 2013. The conference will focus on methods, practices and strategies for improving working relationships among faculty, administrators and trustees in higher education. Presenting at the conference will be Leo Welch, Vice Chairman of the Board of Trustees, Eastern Illinois University; Ernie Benjamin, AAUP Chief Consultant and Past General Secretary of the AAUP; Dr. Ken Andersen, Professor of Communications, the University of Illinois; and Dr. Michael Grossman, Past Chair of the University of Illinois Senates Conference. Each presenter will delve into the topic with specific action steps and ideas to help our chapters improve these relationships. Please join us for this significant and important conference.

Since last November, the Illinois Conference has moved forward in efforts to add new members and chapters. To help us in that process we applied for and were awarded grants that will allow us to build membership and help our local chapters grow. Our chapter grant application can be found on our web site. On a regular basis we updated this site with national and state announcements, articles, best practices, documents, opportunities for committee participation and news that you can use.

In closing, I would like to thank the officers and Board of the Conference for the significant time commitment they make each month to provide timely help and guidance to our members and chapters. Together you have made a difference in higher education in Illinois.

Report from the Nominating Committee

Nominated to be re-elected to a two-year term: Joerg Tiede, Illinois Wesleyan University; Lee Maltby, St. Augustine; Dan Tomal, Concordia University; Diana Vallera, Columbia College; Matthew Abraham, DePaul University; Leo Welch, Southwestern Illinois College. To elect for the first time to a two-year term: Linda Brookhart, Illinois Annuitants Group, Springfield; Alan Iliff, North Park University; and Jane Jegerski, Elmhurst College. Nominated to be elected secretary for a two-year term, Lee Maltby, St. Augustine. Nominated to be elected treasurer for a two-year term, Alan Iliff, North Park University. Nominations may also be made by petition signed by at least fifteen (15) members of the Conference, counting no more than five (5) from any one chapter. Nominations by petition must be received by the President, Michael Harkins (mharkbhs@att.net) by April 1, 2013.

American Association of
University Professors of Illinois
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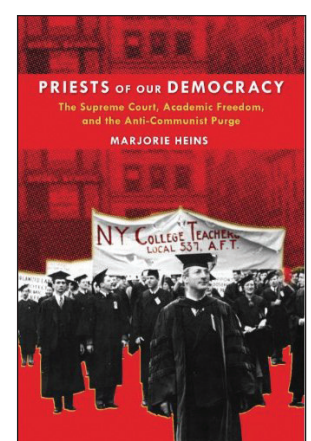
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Legislative Report By Leo Welch

The following are a few of the bills that have been introduced in the 2013 Illinois General Assembly. As one might expect, they are adverse to members of state employees' pension systems, including members of the State University Retirement Systems which covers current employees as well as retirees.

Current status of these bills may be determined by checking The Illinois General Assembly's web site and using the bill number, such as HB73 or SB1.

HB73 STATE HEALTHCARE CONTRIBUTIONS (JAKOBSSON N) Amends the State Employees Group Insurance Act of 1971. Provides that, beginning in State fiscal year 2015, contributions required for the basic program of group health benefits shall be calculated using a sliding scale that takes into account the following variables: (i) length of service, (ii) ability to pay, (iii) pension income, (iv) Medicare eligibility, and (v) whether an individual has made an election under a specific provision of the Illinois Pension Code. Prohibits these contributions from being less than the contributions paid for these benefits in State fiscal year 2014. Also makes technical changes. Effective July 1, 2014.

HB96 PEN CD: CLOSE STATE SYSTEMS (THAPEDI A) Amends the State Employees Group Insurance Act of 1971. Shifts the costs of health insurance coverage for future employees of certain higher education institutions from the State to those institutions. Creates a new health benefit program for those employees, once they become annuitants, and for their dependent beneficiaries. Terminates provisions providing for the ongoing transfer of funds from the General Revenue Fund to the Teacher Health Insurance Security Fund and the Community College Health Insurance Security Fund. Amends the Illinois pension code. Requires certain employers to provide a tax-sheltered annuity retirement plan to eligible employees. Requires current benefits in the State-funded retirement systems. Prohibits the State-funded retirement systems from accepting new members or participants. Changes the amount of the required State contributions to the State-funded retirement systems and, in the State Universities and Downstate Teacher Articles, shifts the liability for making those contributions to employers. Amends the State Pension Funds Continuing Appropriation Act. Terminates continuing appropriations from the General Revenue Fund to the Teacher Health Insurance Security Fund and the Community College Health Insurance Security Fund. Amends the State Mandates Act to require implementation without reimbursement. Effective immediately.

HB1032 UNIV EMPLOYEE EDUC BENEFITS (TRYON M) Amends various Acts relating to the governance of State universities. With respect to any contract or collective bargaining agreement entered into, amended, or renewed on or after the effective date of the amendatory

Act, provides that a university is prohibited from entering into a contract or agreement that offers its employees or contractors tuition waivers, grants, scholarships, or any other higher education benefits for the children, spouses, or other family members of the employees or contractors. Provides that nothing in this prohibition prevents or diminishes the right of a child, spouse, or other family member of an employee or contractor to borrow money for higher education expenses or apply for and be awarded a tuition waiver, grant, scholarship, or other award for higher education expenses, provided that there is no conflict of interest and no preference is given on account of the person being the child, spouse, or other family member of an employee or contractor. Provides that nothing in this prohibition shall diminish the value of contractual rights existing before the effective date of the amendatory Act that are enjoyed by employees and contractors of the university or their children, spouses, and other family members. Repeals provisions that permit the children of employees of a State university who have been employed by any one or by more than one State university for an aggregate period of at least 7 years to receive a 50% tuition waiver. Effective immediately.

HB1296 PEN CD: NO INVESTMENTS IN GUNS (MITCHELL C) Amends the General Provisions Article of the Illinois Pension Code. Requires each pension fund and retirement system established under the Code to make its best efforts to identify all firearm manufacturing companies in which it has direct or indirect holdings and, under certain circumstances, to divest itself of holdings in those companies. Effective immediately.

HC11 CONAMEND: REPEAL PENSION RIGHTS (SOSNOWSKI J) Proposes to amend the General Provisions Article of the Illinois Constitution. Repeals a provision that specifies that membership in any pension or retirement system of the State, and unit of local government or school district, or any agency or instrumentality thereof shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired. Effective upon being declared adopted.

SB1 PEN-CD: REFORM STATE SYSTEMS (CULBERTON J) Amends the General Provisions, General Assembly, Illinois Municipal Retirement Fund (IMRF), State Employee, State Universities, Downstate Teacher, and Judges Articles of the Illinois Pension Code. Contains a Part A, which is intended by the General Assembly as a stand-alone reform of the General Assembly, State Employee, Employee, State Universities, and Downstate Teacher Articles of the Illinois Pension Code and takes effect upon becoming law. Contains a Part B, which is intended to provide alternative provisions that take effect only if an when a corresponding portion of Part A is determined to be unconstitutional or otherwise invalid or unen-

Legislative agenda for the Illinois Conference of the AAUP

AAUP Illinois Conference
2013 Proposed Legislative Program

- Support a two percent increase in pension payments for current employees who are members of the State University Retirement system.
- Oppose legislation that would allow 'conceal and carry' weapons at college and university campuses.
- Oppose any legislation which would undermine or remove faculty tenure.
- Restore state funding of public community colleges and universities to at least the FY 2002 levels.
- Oppose any legislation or resolution to establish an 'Academic Bill of Rights' for Illinois public higher education.
- Participate with and support efforts of the Illinois Higher Education Legislative Coalition.
- Oppose performance based funding appropriations of for state community colleges and universities that exceed the current one percent funding level.

forceable. In Part A, caps pensionable salary, temporarily suspends and reduces the amount of automatic annual increases, requires the systems to be 100% funded by 2043, and increases required employee contributions. In Part B, requires persons to make an election either to accept reductions in the amount of, as well as delays in eligibility for, automatic annual increases or to forgo certain health-care benefits and future increases in pensionable income. Effective upon becoming law, except that specified portions of Part B take effect upon the date following the date upon which certain contingencies occur.

SB1224 PEN CD: SALARY-NO SICK/VACATION (MURPHY M) Amends the Illinois Municipal Retirement Fund (IMRF), Cook County, State Employees, State Universities, Downstate Teachers, and Chicago Teachers Articles of the Illinois Pension Code. For participants who first become participants on or after the effective date of the amendatory Act, prohibits (i) payments for unused sick or vacation time from being used to calculate pensionable earnings and salary and (ii) unused sick or vacation time from being used to establish service credit. Effective immediately.

The bill most likely to move in the General Assembly is Senate Bill 1. Senate President John Cullerton is the chief sponsor and apparently has the support of Speaker of the House, Michael Madigan.

Madigan has refused to meet with the "We Are One" coalition of unions. The coalition requested a meeting to discuss compromises regarding SB1 and other pension bills. One lobbyist stated that Madigan has "declared war on the unions."

If this is the case, Illinois joins Wisconsin, Ohio, Indiana, and Michigan in attacking public employee unions. This battle, to say the least, will be interesting to follow.

The Illinois Conference of the AAUP Delegate Nomination Notice

Qualifications to Nominate: Any AAUP member in Illinois who is current in his or her dues as of February 1, 2013, is a member in good standing and eligible to nominate members.

Qualifications for Delegate: Any AAUP member in Illinois who is current in his or her dues by February 1, 2013, as certified by National to the Illinois Conference is eligible to run as a delegate or alternate.

Self nominations are permitted. No seconds are required.

The Illinois Conference of the AAUP seeks nominations from members in good standing to run as delegates and alternates to the Assembly of State Conferences (ASC) and the Annual Conference of the AAUP. These meetings are very important as they help to determine the priorities and future direction of the AAUP.

The Illinois Conference is entitled to send four (4) delegates to the ASC meeting, one of which is the President by virtue of the office. The election is to determine the remaining three (3) delegates to the ASC meeting scheduled June 14, 2013, and two (2) delegates to the Annual Conference scheduled June 15, 2013. Individuals may run for both delegate positions.

Two (2) alternate delegates for the ASC and one (1) alternate delegate for the Annual Conference will also be elected. Alternates will attend only if elected delegates are unable to participate. The Illinois Conference has some funding to defray the cost of attending. Elected delegates that attend the ASC meetings, the Annual Meeting, and file a written report summarizing the issues discussed at the sessions by July 12, 2013 will be eligible for reimbursement of registration fee, travel expenses, and lodging not to exceed \$600.00. The report must be sent to the Conference President. Receipts must be submitted to the Conference Treasurer no later than 30 days after the meeting.

All nominations must be received by midnight March 31, 2013. Nominations should be sent by mail to the Secretary of the Illinois Conference of the AAUP, care of Lee Maltby at St. Augustine College, 1345 W. Argyle Street, Chicago, Illinois 60640 or e-mailed to lmaltby@staugustine.edu.

The election will take place by mail in April or May 2013. Please provide the nominee's contact information in the nomination. The Illinois Conference will contact those who have been nominated to verify their acceptance of the nomination. Election results will be sent to all members via e-mail by the end of May, 2013.

AAUP Report on the Inclusion of Contingent Faculty in Governance

As most faculty members are now aware, the proportion of faculty appointments that are "contingent"—lacking the benefits and protections of tenure and a planned long-term relationship with an institution—has skyrocketed over the past few decades. By 2009—the latest year for which complete national data are available—75 percent of US faculty appointments were off the tenure track, and 60 percent were part-time.

A report just out (<http://www.aaup.org/report/governance-inclusion>) from the AAUP examines these issues and makes recommendations for the inclusion of faculty holding contingent appointments in campus governance structures. (A draft of this report was issued in June and comments on it were invited; the report was revised in response to comments received and has been formally adopted by the AAUP Council.)

Please see the recommendations summarized below, read the whole report, and start making a plan to advance faculty rights on your campus. At the national level, the AAUP's member-leaders and staff can do the research, consider the issues, and formulate and disseminate recommended policies. But only you can effect change on your own campus, whether through a unionized chapter, a nonunion advocacy chapter, or another faculty organization.

Your questions and comments are welcome and should be sent to gbradley@aaup.org.

Recommendations of The Inclusion in Governance of Faculty Members Holding Contingent Appointments include the following:

Institutional policies should define as "faculty" and include in governance bodies at all levels individuals whose appointments consist primar-

ily of teaching or research activities conducted at a professional level.

Eligibility for voting and holding office in institutional governance bodies should be the same for all faculty, regardless of full- or part-time status.

Ideally there should be no minimum or maximum number of seats reserved for contingent faculty in institutional governance bodies where representation of contingent faculty is appropriate.

All members of the faculty, assuming that they meet any time-in-service requirements, should be eligible to vote in all elections for institutional governance bodies on the basis of one person, one vote.

While faculty on contingent appointments may be restricted from participating in the evaluation of tenured and tenure-track faculty, they should have the opportunity to contribute to the evaluation of other contingent faculty.

All faculty members, regardless of their status or appointment type, should be explicitly protected by institutional policies from retaliation.

All faculty members should be able to vote or abstain freely, without compulsion and without the necessity of defending their decision to vote or to abstain.

Faculty holding contingent appointments should be compensated in a way that takes into consideration the full range of their appointment responsibilities, which should include service.

Where service is explicitly a component of the appointment, participation in service should be included as part of the evaluation of a faculty member on a contingent appointment.

Students Return to WZRD After Six-Month Lockout By NEIU Administration

By John K. Wilson

After more than six months of being locked out of their radio station, WZRD (88.3 FM), students at Northeastern Illinois University (NEIU) were finally allowed back into their station, and returned to the air on January 7. The WZRD students posted on facebook, “we are back in the driver seat once again.”

The administration had demanded changes to the WZRD constitution, including adding “musical preference” to the prohibited nondiscrimination categories, and “a statement of civility and decorum.” However, the students refused to agree, and reportedly were allowed back into the station without submitting to any of the administration’s demands.

On June 29, 2012, the administration at Northeastern Illinois University (NEIU) in Chicago shut down the student-run broadcast radio station, WZRD, and banned the student DJs from the airwaves. It was an act of censorship without due process that ignored NEIU’s policies, violated the First Amendment, and broke a state law protecting freedom of college student media.

The June 29 decision shocked WZRD DJs (who call themselves “wizards”). Administrators complained about several issues, ranging from maintaining proper FCC records to spending outside donations without authorization. Their memo also claimed that students reported “being verbally attacked” to “express disagreement with the type of music the student DJ has played.” According to the administration, this “has created a climate of fear, bullying, and intimidation” and violated the Student Conduct Code.

One student telling another student that their music sucks might be obnoxious, but it is certainly protected speech. To invoke the term “bullying” for musical discussions among adults is disturbing enough. To threaten penalties under the campus speech code is alarming. But to shut down an entire radio station because of such unproven allegations is inexcusable.

Worst of all, NEIU seems to have followed no due process procedures in shutting down WZRD. There was no hearing, no trial, no opportunity for WZRD to defend itself against the charges, for which

NEIU offered no actual evidence.

Normally, shutting down a student organization, especially a radio station such as WZRD, is an extraordinary punishment that requires overwhelming evidence of malfeasance. But NEIU shut down WZRD on the basis of unproven minor allegations and then appointed a committee to investigate whether the charges were true. Adam Goldstein, attorney advocate for the Student Press Law Center, noted: “One way to tell you’re being punished in violation of due process is that they invent the process after they tell you you’re being punished.” According to a report in the *Chicago Reader*, NEIU quickly abandoned many of the charges because they were inaccurate.

NEIU does have some extraordinarily vague (and unconstitutional) rules that give the Student Activities Office the power to declare student groups “inactive” for a variety of reasons without proving any misconduct. And it is true that a student organization’s charter at NEIU can be revoked once it is “inactive” for an entire fiscal year, from July 1 to June 30. Those dates may explain why NEIU suddenly issued this memo declaring WZRD “inactive” one day before that deadline.

However, under NEIU’s rules, the only penalty for an “inactive” organization is that it “shall not have access to Student Activities Fees or expend its budget.” Nothing in NEIU’s own rules allows it ban an “inactive” organization from continuing its activities, such as programming a radio station. So even if it were legitimate for NEIU to take over WZRD’s financial affairs (and it’s not), nothing in NEIU’s policies could justify taking over control of the programming and deciding what DJs are allowed on the air.

And none of these campus rules actually matter because state law supercedes any policies at public colleges. And unfortunately for the NEIU administration, in 2008 the state of Illinois enacted the College Campus Press Act. The law was moti-

vated by the case of *Hosty v. Carter*, where Governors State University demanded prior review of the student newspaper. After the 7th Circuit Court of Appeals ruled that public colleges could censor student media, the Illinois legislature responded with this law prohibiting any administrator control over student-run media.

The College Campus Press Act is absolutely clear in its language and breathtakingly broad in its scope: “All campus media produced primarily by students at a State-sponsored institution of higher learning is a public forum for expression by the student journalists and editors at the particular institution. Campus media, whether campus-sponsored or noncampus-sponsored, is not subject to prior review

by public officials of a State-sponsored institution of higher learning.”

Shutting down student media is the most extreme form of prior review, and the clearest possible violation of the law which says that “Collegiate student editors of campus media are responsible for determining the...content of campus media.”

The Campus Press Act also explicitly covers “broadcast” student media, such as radio stations. Since all broadcast media are FCC-licensed, the fact that WZRD’s FCC license is in the name of the university president has no relevance.

In response to my query about the Act, Frank Ross, Vice President for Student Affairs, wrote: “The University’s review of the Radio Station and the Student Organization has been undertaken without regard to the ‘content of campus media.’ NEIU complies with the College Campus Press Act and unequivocally supports the responsibility of student editors of campus media to determine the news, opinions, feature content and advertising content of student-run campus media.”

But it makes no difference under the law whether the administration is motivated by the content of campus media. They’re not allowed to control student-run media under any circumstance. The notion that NEIU “unequivocally supports” students determining the content of media is completely incompatible with NEIU’s explicit order shutting down WZRD.

In the June 29, 2012 memo which clearly defined WZRD as “student-run,” the NEIU administration declared, “The closure of the radio station is effective immediately. No students or staff not authorized by the Office of Student Leadership Development shall enter the radio station at any time.” There is no clearer statement that students did not run WZRD.

The illegal shutdown of WZRD by the NEIU administration was intolerable even for a day. The fact that this lockout continued for six months shows the NEIU administration’s disregard for both state law and their own students.

On November 6, 2012, acting director of Student Leadership Development Veronica Rodriguez wrote a memo announcing her decision about the fate of WZRD. Rodriguez declared that WZRD could be restored to an active club on December 1, but only if the organization accepted a long list of mandatory changes approved by the administration.

WZRD collective member Peter Ali Enger stated, “we find the conditions laid out by Ms. Rodriguez to be unacceptable, as none of the vague accusations mentioned in various pieces of paper issued by unknown entities at NEIU have been found to have any substance, nor has anyone at WZRD been found guilty of any transgressions of policies or student conduct rules at NEIU. Therefore there is no reason to

demand or request any changes in WZRD student organization bylaws, policies, or application and training procedures.”

Rodriguez’s memo demanded that WZRD expand its non-discrimination statement (which already matches the statement by other student groups), and limit the powers of the Program Director.

Rodriguez also announced that the NEIU administration would hire an “Administrative Station Manager” for Spring 2013, who apparently would exert ultimate control over the station, another violation of the state law giving students control of their own media.

But the most extraordinary part of Rodriguez’s memo was a requirement that WZRD’s bylaws and constitution must include “a statement of civility and decorum on how the actions of DJ’s and other members will be treated within the club to be compatible with the community standards as outlined in the Student Code of Conduct.”

Rodriguez’s letter also included a direct threat to punish any students who might violate these new rules on “civility and decorum”: “Any member of the WZRD student organization, who violates its constitution and/or policies, or the Student Code of Conduct, will be recommended to the Office of Student Rights and Responsibilities.” This is particularly alarming because the Office of Student Rights and Responsibilities (OSRR) is NEIU’s office for punishing students who violate the Code of Conduct. This seemed to indicate that a WZRD student who is uncivil to another DJ could run the risk of being formally punished, and even could be expelled from the university for lack of decorum.

Apparently, NEIU administrators believe that “civility and decorum” are required of all students under the Student Code of Conduct. What makes this so disturbing is that the Student Code of Conduct is a fairly straightforward statement of rules without any mention of “civility and decorum.” NEIU’s administration does have a “Community Standard” statement on its website, but it’s not clear that this is actually a formal policy of NEIU, and even this “Community Standard” says nothing about compulsory civility.

Even though NEIU doesn’t have a Code of Conduct that imposes “civility and decorum,” NEIU administrators were saying that WZRD must compel “civility and decorum” in its bylaws and constitution in order to comply with the NEIU Code of Conduct, and that violators of civility will be punished by the administration. This is one of the strangest ways I’ve ever seen a college administration attempt to impose a blatantly unconstitutional speech code.

This “civility and decorum” rule was being proposed because a WZRD student allegedly (off the air) criticized the musical choices of another student at WZRD (or as NEIU put it, “being verbally attacked” to “express disagreement with the type of music the student DJ has played”), which was one of the main charges leading NEIU to shut down the radio station for “a climate of fear, bullying, and intimidation” in violation of the Student Code of Conduct. There’s a good reason why the NEIU Code of Conduct does not actually prohibit “fear, bullying, and intimidation” and does not compel “civility and decorum,” because such vague words might be used to limit First Amendment rights.

The fact that NEIU allowed the WZRD back on the air without any changes to its rules, and without any kind of disciplinary hearing, only shows how illegitimate the six-month lockout was. Although NEIU administrators reversed their mistake after six months, they still have not admitted it was a mistake, nor have they offered any assurances that future acts of censorship will not happen.



Remarks to the NEIU Board of Trustees

By Peter Kirstein

I am professor of history at St Xavier University and Vice President of the American Association of University Professors in Illinois and chair of Committee A on Academic Freedom and Tenure. AAUP has established guidelines concerning tenure and virtually every post-secondary institution acknowledges AAUP principles.

AAUP Illinois in its report to President Sharon Hahs on July 13, 2012 concluded that Associate Professor of Linguistics John Boyle’s denial of tenure was arbitrary and at odds with broadly recognized AAUP standards. His teaching was evaluated as superior and his scholarship and service met the criteria for tenure. His PhD from the University of Chicago and subsequent performance demonstrates academic excellence as a NEIU faculty member.

Apparently there was a disagreement over advising students and a missed deadline in filing an advising-instruction report. This must not lead to a denial of tenure. President Hahs graciously responded on July 19, 2012 to our report and stated “much of the information...is accurate.” Yet she claimed it was “selective” but declined to reveal the reason behind her opposition to granting tenure. Institutions that support shared governance and academic adhere only to tenure decision paper trail as generated by units. That only constitutes the facts, nothing else.

Professor Boyle is the only professor I know who was unanimously recommended for tenure by a department, department chair, school dean, and University Personnel Committee and was denied tenure. We ask that you consider our report’s comprehensive examination of this case. We urge in the name of justice, due process, academic freedom and respect for shared governance, that this board reconsider the tenure decision in the case of John Boyle. I am confident a reconsideration would be a dramatic step in repairing both the public perception of repression, arbitrariness and lack of respect for academic freedom at NEIU and on-campus divisions that have emerged in recent years.

You have the power, you have the authority to make this right and reconsider this case. Thank you for the honour of appearing here today and speaking to you this afternoon.



John Boyle

Priests of Our Democracy: AN INTERVIEW WITH MARJORIE HEINS

Marjorie Heins, founder of The Free Expression Policy Project, is the author of the new book *Priests of Our Democracy: The Supreme Court, Academic Freedom, and the Anti-Communist Purge* (NYU Press, February 2013). In her book (watch video interviews with her), Heins examines the critical Supreme Court cases of the 1950s and 1960s that first upheld and then later struck down loyalty oaths, and established the legal right of academic freedom. John K. Wilson interviewed her via email for *Academe Blog*.

Academe Blog: You argue that many organizations failed to fight McCarthyism and “The AAUP, champion of academic freedom, did not do much better. Its 1947 position that ‘individual culpability,’ not guilt by association, should be the standard for dismissal had no effect, for the organization never tried to enforce it.” Do you think the AAUP would have been effective in turning the tide on McCarthyism in academia if it had vigorously tried to enforce its principles? Or would the AAUP in the 1950s simply have revealed how little power it had to enforce its policies?

Marjorie Heins: I doubt that the AAUP would have been effective on its own, but as I write in the Conclusion, it’s possible that if a critical mass of university administrators had resisted, instead of caving in to legislative investigators like McCarthy or the House Un-American Activities Committee, the heresy hunt would not have made nearly as much headway in academia, and “much of the damage to individuals, to free inquiry on campus, and to political dissent by intellectual leaders in the wider society could have been avoided.”

Academe Blog: What caused the Supreme Court to change its position on the loyalty cases during the 1950s and 1960s? Was it strictly a matter of conservative justices being replaced by liberal ones, or did changes in American culture (and guilt about what happened during McCarthyism) play a role in these shifts?

Marjorie Heins: Both factors played a role—a change in Supreme Court personnel combined with a gradual relaxation of Cold War anti-communist panic and increasing popular revulsion against the excesses of McCarthyism. But even with these changes, the Supreme Court moved cautiously and incrementally, chipping away at loyalty oaths and legislative inquisitions, and did not straightforwardly in-

validate the entire investigative apparatus of a state loyalty law until the *Keyishian* case in 1967. And it was often difficult, even on the Warren Court, to find a majority of five justices to strike down loyalty laws. The justices were tremendously sensitive to the political repercussions of their decisions, as I document with quotes from their memos to each other.

Academe Blog: The shift in the Supreme Court’s approach to academic freedom was also matched by dramatic changes in how the AAUP understood academic freedom, leading to the 1970 Interpretive Comments. Was the AAUP influenced by the Supreme Court’s decisions to take a more radical and absolutist interpretation of academic freedom, or were both the Court and AAUP influenced by a growing counter-culture including the Free Speech Movement and the anti-Vietnam War protests?

Marjorie Heins: I don’t consider either the Supreme Court’s First Amendment decisions in the 1960s or the AAUP’s 1970 Interpretive Comments to be radical or absolutist. Instead, they are both carefully nuanced appreciations of the importance of free inquiry, balanced against the needs of universities (and other employers) to play their legitimate roles in society. For example, under the Interpretive Comments, even “extramural” statements by a professor can be a basis for discipline if they “clearly demonstrate[] the faculty member’s unfitness for his or her position.” The political upheavals of the sixties, in particular the anti-Vietnam War movement, had a profound effect on the Court and, I am sure, the AAUP as well. But there was almost as much backlash as there was support. For example, one of the great free-speech dissenters of the McCarthy era, Hugo Black, was so outraged by what he considered the excesses of the anti-war movement that he angrily dissented from the landmark *Tinker* decision, which upheld students’ First Amendment right to wear black armbands to school in silent protest of the Vietnam War. Black wrote: “groups of students all over the land are already running loose, conducting break-ins, sit-ins, lie-ins, and smash-ins.”

Academe Blog: Your book explores in depth the 1967 *Keyishian* case, when the Supreme Court established a legal right of academic freedom. In an essay last year for *Academe Blog*, you called “the status of *Keyishian* insecure” in the wake of the

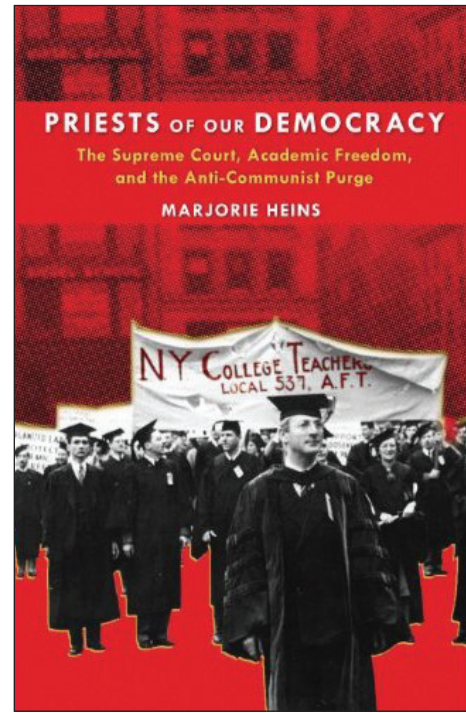
Garcetti ruling and the academic cases in lower courts that have invoked *Garcetti*. In an interview last year with *Academe Blog*, Harry *Keyishian* worried that “the case is being chipped away at by later courts.” Why has that happened? And if today’s Supreme Court was asked to reconsider *Keyishian*, would it still uphold the right of academic freedom?

Marjorie Heins: At the time *Keyishian* was decided, the Supreme Court had not yet recognized a First Amendment right of public employees to speak out on matters of public concern without retaliation from their bosses. Because teachers were the employees involved in *Keyishian*, Justice Brennan’s opinion for the Court focused on academic freedom as “a special concern of the First Amendment.” Some commentators have argued that once the Court began to develop a broader concept of public employee free-speech rights, *Keyishian* was superseded; then, when the Court started cutting back on those rights, teachers were included in the cutback and academic freedom got buried in the dust—or nearly so.

In *Garcetti* (2006), the Roberts Court did its most devastating hatchet job ever on public employee free-speech rights, but it did leave open the possibility that “expression related to academic scholarship or classroom instruction implicates additional constitutional interests that are not fully accounted for by this Court’s customary employee-speech jurisprudence.” So, the question of *Keyishian*’s survival is still open. I hesitate to make predictions about what the Court will do if the question is presented.

Academe Blog: The Supreme Court will be deciding an important case on affirmative action in higher education this summer. The 1978 *Bakke* case helped expand the idea of “institutional academic freedom” which has been used to undermine the *Keyishian* precedent. How do you think the Supreme Court will rule in the *Fisher* case, and will their opinion affect academic freedom?

Marjorie Heins: The Court in *Fisher* will probably be closely divided; one swing justice could make the difference. But whatever happens to affirmative action, I doubt that the Court will reject the language of *Bakke* recognizing that “the freedom of a university to make its own judgments as to education” is part of academic freedom. In fact, Justice Powell’s opinion in *Bakke* relies heavily on the *Keyishian* case. He



saw no conflict between the individual academic freedom of professors and the institutional autonomy of the university.

Academe Blog: If the legal right of academic freedom is in danger of disappearing, what should organizations like the AAUP do in response? Do they need to fight in court and try to educate judges about the importance of academic freedom? Do they need to seek state laws protecting academic freedom? Do they need to unionize more campuses? Do they need to change college policies to make academic freedom a fundamental, enforceable principle? What should be the AAUP’s priorities if *Keyishian* and the legal right of academic freedom fade into oblivion?

Marjorie Heins: One of the many things we can learn from the McCarthy era is that courts, including the Supreme Court, rarely get too far ahead of the election returns; sometimes, they fall behind. Courts play an important role in times of political repression, but we shouldn’t rely on them to preserve and protect academic freedom; that has to come from the higher-education community itself. The big challenges to academic freedom today are the increasing corporatization of universities and the diminishing status of faculty governance—indeed, the diminishing numbers of tenured and tenure-track professors, as universities hire armies of adjuncts and other contingent faculty who have no job security and no role in governance. I like all of your suggestions: don’t give up on the courts, but also seek new state laws, support union organizing campaigns, and make academic freedom, which is already incorporated in most university policies, an enforceable contract right.

An Interview with Harry Keyishian Four Decades After His Supreme Court Case

John K. Wilson interviewed Harry Keyishian via email for *Academe Blog* last year about the 1967 Supreme Court decision that bears his name. Harry Keyishian has taught English at Fairleigh Dickinson University since 1965, and is the director of Fairleigh Dickinson University Press. He is the author of many books, including *Screening Politics: The Politician in American Movies, 1931-2001* (2003) and *The Shapes of Revenge: Victimization, Vengeance, and Vindictiveness in Shakespeare* (1995).

Academe Blog: What was the atmosphere like on campuses in the early 1960s when this litigation began? Was there a lot of fear about speaking out politically and joining groups that might be called “subversive”?

Harry Keyishian: Things had distinctly loosened up since the oppressive days of the early 1950s. There were several activist progressive organizations at work in Buffalo. The Quakers were a presence. I joined the peace group SANE—promoting a “sane” nuclear policy. We organized a parade in 1963, I recall. We certainly felt the presence of the local police and the FBI were clear presences, but we went about our business without much concern. Several faculty members made no secret of having Marxist sympathies, but were hired without incident. The

Cold War was very much on, but the internal atmosphere was much looser. Fortunately, the University of Buffalo (as it was then known) was an institution with respect for free speech.

Academe Blog: Although your name was first on the lawsuit, there was a group of folks who sued along with you. Who were the people involved in this lawsuit, and how did you decide to sue over this?

Harry Keyishian: The true initiator of the suit was poet George Starbuck, who, then working as a librarian, first received the loyalty oath certificate and refused to sign. That alerted the rest of us to the situation. Pretty much everybody opposed the idea of the certificate. “Loyalty oaths” and blacklisting were very much discredited at the time. The only question was how to oppose the process. To make an impact, it had to be opposed by faculty (who potentially could rely on tenure protection) rather than staff. A larger number of us were initially going to refuse to sign (and many signed “under protest”), but eventually it came down to five who are named in the suit. My English Department colleagues George Hochfield and Ralph Maud were two; philosopher Newton Garver, moved by Quaker principles, was another. (The fifth, if I recall, was a member of the Chemistry Department.) We were, I guess,

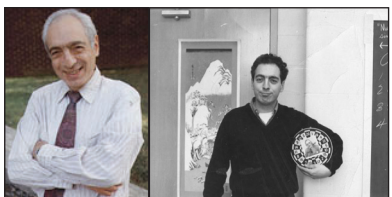
just more stubborn than the rest and decided, for our own reasons, to see the matter through. My name is on the case because the others were on two-year contracts, while I, as a lowly instructor, had only a one-year contract, and therefore was the only one the university could take immediate action against. That suited us fine: we just wanted to initiate a court challenge.

Academe Blog: Did you worry about being blacklisted from colleges because of this litigation, and did anyone’s career suffer any consequences from the lawsuit?

Harry Keyishian: I worried a bit about it, as public universities were likely to have similar oaths, but private colleges were exempt and—hard as it is to imagine today—university teaching jobs were relatively easy to get. Perhaps I was just very naive. However, after taking a year off to finish my dissertation, I had a couple of offers from private colleges. So I can’t claim much anxiety about it. We were very fortunate at the time! My colleagues all did very well, though only Newton Garver stayed at SUNY-Buffalo.

Academe Blog: Did you have any support from the AAUP, the ACLU, or other groups in the lawsuit?

Harry Keyishian: The case would not have gone forward had the AAUP not funded the legal defense. We, the litigants, were certainly in no position to do it. We initially approached the ACLU, but they did not come on board



Harry Keyishian, Now and Then

What Kind of History Should We Teach?

The National Association of Scholars (NAS) issued a report on the teaching of American history at the University of Texas at Austin and Texas A&M. UT-Austin professor Jeremi Suri wrote a response to the NAS report on the blog of *The Alcalde*, the University of Texas alumni magazine.

By Jeremi Suri

About two years ago I moved from Madison to Austin because I was convinced that the flagship university in Texas was building the best group of scholars and students in my field of study: international history, foreign policy, and leadership. The History Department at UT already had a distinguished group of faculty who study all parts of the globe and teach about what I call “the making of our modern world.” The History Department also housed the Normandy Scholars Program, devoted to the study of the Second World War, and an Institute for Historical Studies that brings the best scholars from around the world to campus to deepen our historical knowledge. Beyond the History Department, the Lyndon B. Johnson School of Public Affairs had a Global Policy Studies Program committed to training the next generation of ambassadors, national security advisors, and intelligence analysts. The Strauss Center for International Security and Law on campus sponsored research projects, including undergraduates and graduate students, that explored the making of foreign policy in the past and its lessons for the present.

What we are teaching at UT, in almost all of our history and related courses, is a plural history of how many different people and parts of America relate to one another.

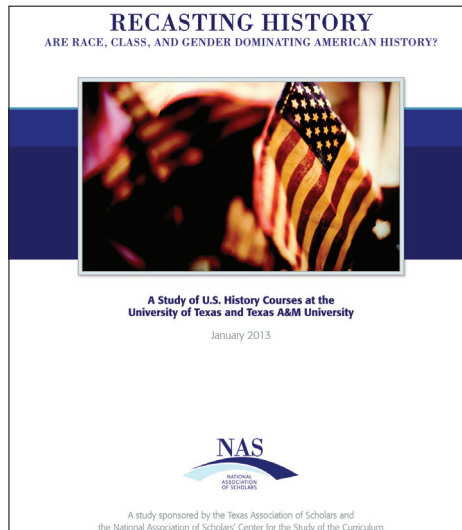
This is a long list. No other campus could compare. That is why I prevailed on my Midwestern wife and my Madison-born children to move from a university that we loved in Wisconsin to the one we believed was doing the very best work in

the field of study I care so passionately about. We made the correct decision because UT’s strengths in international history and foreign policy that I listed above are even greater than I realized before I arrived here. In addition, the leadership of UT and its generous alumni have continued to enhance our preeminence in this field of study. Just this week, President William Powers announced the creation of the William P. Clements Center on History, Strategy, and Statecraft at UT. We now have more distinguished historians teaching topics like the Cold War, the Civil War, American Foreign Policy, Strategy and Decision-Making, and the Nature of the International System than on any other non-military campus that I know in the country. I am very proud of that. From what I can tell, our alumni are very proud of that too.

These facts make the ideological claims of the National Association of Scholars about The University of Texas at Austin misleading, and frankly dumb. The report they will release this Thursday is entitled: “Recasting History: Are Race, Class, and Gender Dominating American History?” At The University of Texas at Austin the answer is a resounding NO. Nothing in the report should convince you otherwise.

What the National Association of Scholars documents is that many of our courses taught by historians, including me, devote extensive time to lectures and readings about slavery, American Indians, labor unions, women’s suffrage, prohibition, civil rights, immigration, poverty, and the rise of suburbs. Some of our courses even discuss Rock n’ Roll music, consumer culture, and the Internet. How scandalous! For some reason, the authors of the report seem to think these topics are “un-American.” It is almost as if a lesson that does not focus on a president or a war is a waste of time to the writers of this report.

No one cares more about teaching politics, foreign policy, and military affairs more than me. It is what I study. It is what I talk about all the time (so my wife and kids complain!). To teach the history of these subjects requires attention to slavery,



American Indians, labor unions, women’s suffrage, and everything else I listed above. Politics do not occur in a vacuum. The outcomes of war are not decided only by a few smart men. Elections, like the one we just experienced, are driven by many factors that include race, class, and gender.

What kind of history should we teach? What kind of history do our students need? They are not well served by simple ideological pronouncements about America as the “greatest nation” or America as the “worst nation,” depending on your point of view. Young people can get extreme assertions on their iPhones without a professor in the room.

What students need is exposure to the complex ways in which various issues relate to one another in the real world. They need to understand how slavery caused a civil war. They need to think about the

relationship between big corporations and local workers. They need to examine how mothers and fathers have reacted when their sons and daughters traveled far from our shores to defend our country. These and so many other issues of democracy, economy, and war are connected with the issues of race, class, and gender.

The National Association of Scholars report seems to demand a simple and one-sided history of just a few people. What we are teaching at UT, in almost all of our history and related courses, is a plural history of how many different people and parts of America relate to one another. What we are teaching is the beauty, the color, the promise, and also the challenge of contemporary America. What we are doing above all is to prepare our students to run a business or raise a family or serve their country in a world where success requires making connections between different ideas, memories, experiences, and peoples.

Nothing could be more American. It was, after all, James Madison who defined the greatness of American democracy as its pluralism. We are teaching pluralism in the history of foreign policy and race, economy and class, and, yes, war and gender. I wish skeptics from the National Association of Scholars and other groups would come and visit some of our courses. They have an open invitation to any of my lectures or seminars.

They have never come. Their report did not include a single campus visit or interview. They did not do their homework. If they did, they would see why I moved to Austin from another great university. This is where serious history is studied and taught so well. If you haven’t been back in a while, come and see for yourself.

Jeremi Suri is the Mack Brown Distinguished Professor for Global Leadership, History, and Public Policy at UT-Austin.

A Response from the NAS

By Richard Fonte

The answer to your question—what kind of history should we teach—according to the NAS study is, comprehensive and inclusive. The NAS believes that all American History courses should involve significant reading assignments covering the topics of slavery, American Indians, labor unions, women’s suffrage, prohibition, civil rights, immigration, 19th century & 20th century, poverty, and yes, even popular culture.

No, we do not think these topics are “un-American.” No, we do not demand a simple and one-sided history of just a few people—an elite view of history. But, we believe that Political History, intellectual history, military history, religious history and diplomatic history must also be reflected in the student reading assignments.

Frankly, we found that this approach to history is more characteristic of Texas A&M for these required undergraduate courses than at UT. Why? Our review of every reading assignment at the University of Texas found that all too often this comprehensive coverage of all themes in American History was not in evidence through the reading assignments despite the fact that the study double and triple classified articles into as many categories as possible. Yes, we recognize that political history

does not occur in a vacuum. A more appropriate mix of themes is clearly evidenced at A&M. Somehow they have found a way to do this. Why not UT?

What the NAS believes was the intention of the 1971 law was that students would be provided a comprehensive survey of American History to fulfill their two course requirement in American History. Frankly, we do not find that the “special topics” courses at the University of Texas meet the comprehensive standard. While many of these topics are interesting in themselves, they are intentionally not comprehensive.

Rather than reject the NAS study out of hand, I would suggest the department follow one of the recommendations of the report and develop a concept of a “core competency” of historical knowledge that would be expected by students in these required courses—one that is both comprehensive and inclusive.

You ask what were the purposes of the study. They are stated in the opening sentences of the report—examine how the 1971 legislative requirement is being fulfilled. Our methodology was to use the tools now provided to any student or member of the public under the “three click rule” to access the syllabi and academic Vitae of sections and the faculty member teaching that course.

Yes, we focused on the reading assignments listed on those syllabi and classified the content of the reading as-

signment into 11 categories or themes of history. The overwhelming majority of reading assignments were classified into more than one category. To complete this classification, in reality, what was needed was good reading comprehension and an ability to discern what themes of history are evident in the reading assignment.

We had no prior knowledge as to the content of these readings and frankly we were somewhat surprised by what we found. We were surprised that the reading assignment coverage was so different at the University of Texas versus Texas A&M. While not ideal, A&M does have broader coverage in its reading assignments.

We were also pleasantly surprised that those faculty even with strong Race, Class and Gender research interests who used broad readers or reader style textbooks had much broader coverage of historical themes than other faculty. Also, we thought intriguing those faculty that used dual and conflicting textbooks, such as Zinn and Paul Johnson.

The biggest disappointment is the partial abandonment of survey courses by the University of Texas to fulfill the 1971 law. We were not aware of this prior to the study and would urge the department to reconsider whether these courses should fulfill the 1971 requirement. We have no objections to the courses themselves, but they are intentionally not comprehensive as intended by the 1971 law.

We All Politicize History

By Robert Jensen

Here’s an interesting question for historians: Why do ideologues never seem to be aware of their own ideology?

Such is the case with the recent report from the Texas Association of Scholars and the National Association of Scholars’ Center for the Study of the Curriculum, “Recasting History: Are Race, Class, and Gender Dominating American History?”

The groups’ answer to the title’s question is “yes,” which is hardly surprising given the NAS’ long-standing critique of scholars who raise questions about the mythology of American greatness.

Based on an examination of the assigned readings for all 85 sections of lower-division American history courses at the University of Texas at Austin (where I’ve been a professor in the School of Journalism for 20 years) and Texas A&M, the report concludes that:

all too often the course readings gave strong emphasis to race, class, or gender (RCG) social history, an emphasis so strong that it diminished the attention given to other subjects in American history (such as military, diplomatic, religious, intellectual history). The result is that these institutions frequently offered students a less-than-comprehensive

picture of U.S. history.

I share the NAS’ concern that research and teaching have become so specialized that insufficient attention is paid to the big picture. But the key question is, what kind of big picture should be painted? Here I part company with the conservative politics of the group—the mythology of American greatness is, in fact, mythology, and good research and teaching should challenge myths. As is the case with all imperial powers, the United States’ record includes not only examples of greatness but also some of the most barbaric crimes in recorded human history.

Scholars can, and should, argue those points, based on “reasoned scholarship and

civil debate,” as the NAS advises. But such debate should begin with the recognition of the obvious: in attempts to understand humans and human societies, everyone has a politics and everyone’s politics matter.

That’s why the final recommendation of the “Recasting History” report—that we “depoliticize history”—is so troubling. Do the report’s authors not recognize their own political position? Apparently they do not get the humor in ideologues decrying the ideology of others.

Political biases are, of course, present throughout any course in the humanities

WE ALL POLITICIZE HISTORY
continued on page 8

Ten Years On: The Kirstein Suspension Case, Shared Governance and Academic Freedom

By Peter N. Kirstein, Professor of History, Saint Xavier University, Vice President IL Conference, Chair IL Committee A on Academic Freedom and Tenure

I think it is judicious to define succinctly what shared governance means. While the AAUP Statement of Government of Colleges and Universities is a well-developed exploration of shared governance, it is comprehensive and not concise. Ironically, a good place to glean a concise definition is from the University of Colorado brief before the Colorado State Supreme Court in *Churchill v University of Colorado*. The case arose from the firing of tenured Ethnic Studies Professor Ward Churchill in 2007. This complex, multi-layered case was a crossroads of academic freedom, the 9/11 attacks, alleged egregious research misconduct, due process and shared governance. The university's brief states:

Institutions of higher education are different from many workplaces, particularly in the relationship between the leadership and faculty. The Board of Regents implemented a system of shared governance based on the "guiding principle that the faculty and administration shall collaborate in major decisions affecting the academic welfare of the University." Accordingly, the...faculty "takes the lead in decisions concerning selection of faculty...academic ethics, and other academic matters." The Regents cannot dismiss a tenured professor unless a panel of faculty members determines that the professor is guilty of professional misconduct.

Many believe shared governance was not sufficiently adhered to when the Colorado Board of Regents fired Churchill despite faculty-recommended sanctions that recommended suspension, forfeiture of salary but absent a consensus for dismissal.

Ten years ago I was suspended, perhaps not coincidentally, on Veterans Day, November 11, 2002. Departmental replacement instructors took over my classes a mere three weeks before final examinations. The suspension resulted from an e-mail response on Thursday, October 31, 2002 to an Air Force Academy cadet's e-mail sent to dozens of professors to recruit a student audience for an assembly event at the academy:

You are a disgrace to this country and I am furious you would even think I would support you and your aggressive baby killing tactics of collateral damage. Help you recruit. Who, top guns to rain death and destruction upon nonwhite peoples throughout the world? Are you serious sir? Resign your commission and serve your country with honour.

No war, no air force cowards who bomb countries without AAA, without possibility of retaliation. You are worse than the snipers. You are imperialists who are turning the whole damn world against us. September 11 can be blamed in part for what you and your cohorts have done to Palestinians, the Viet Cong, the Serbs, a retreating army at Basra.

You are unworthy of my support.

My e-mail denounced war and the cadet in personal terms and I do not deny it was acerbic, impassioned and caustic. It was motivated from a long-exercised radical commitment to peace and a loathing of war and violence. This was during the inexorable run-up to an immoral, unprovoked, preemptive criminal invasion of Iraq that began a few months later on March 19, 2003. My e-mail was intended as private communication. I did not cc or forward it. It was neither a public scolding of the cadet nor a public denunciation of the military and those who train to kill humans at our militaristic service academies.

An enraged cadet wing at the taxpayer-subsidized academy forwarded my e-mail to family and friends. They contacted right-wing media outlets and it went viral among military networks throughout the American empire. Within a few hours, e-mail started arriving at the inbox of President Richard Yanikoski who requested a meeting on Monday, November 4, 2002. I knew this was going to be a tough battle once I started getting e-mail complaints going to the president. The cowards chose to get even for speaking truth to power in denouncing the barbarity of war.

Over the weekend prior to this emerging as a full-blown national academic-freedom case, the Air Force Academy, the cadet and I exchanged apologies. Mine was for that portion of the e-mail that was personal in nature. Their apology was for disseminating the e-mail as a form of retaliation. Ironically, Air Force Captain Jim Borders, who was the faculty coordinator of the assembly event at the academy, defended my academic freedom more than

any administrator at my university. After reading the contrite e-mail exchanges, Yanikoski, an Air Force veteran, e-mailed me on Saturday, November 2 that "It looks like as though you have found a pen pal." Later that day he sent me another e-mail: "I am happy to hear that things are looking up. Your letter to the cadet was the Peter I know." At a brief meeting on Monday, he told me the e-mail incident was resolved, to go to class, and move on. I told the president that this was merely the beginning of a national campaign against me and that he would be pressured to impose sanctions to satisfy the right wing of the culture wars. He stated he would not bow to such pressure and even requested "[to] let me know if anyone tries to damage your reputation."

I was right. The *Wall Street Journal* denounced me in two editorials. Jed Babbin, deputy undersecretary of defense during the George H. W. Bush administration, accused me of libel in *The Weekly Standard* and despite lacking knowledge of my teaching, attempted to orchestrate a parental boycott of my courses: "Whatever your college student may be taught in Kirstein's class, it certainly won't be history."

Laura Ingraham's *Shut Up and Sing: How Elites from Hollywood, Politics, and the UN Are Subverting America* sarcastically referred to me in provocative quotation marks as a "'teacher' of American history, God help us." Roger Kimball, editor and publisher of *The New Criterion*, in an article, "Tenured Adolescents," hailed my suspension as "good news," and the "administrative reprimand that will be placed in his file." Kimball followed up in the *American Legion* magazine with a McCarthy-era charge of "anti-American," and lamented I was not fired: "[H]e presumably will soon be back molding young minds." David Horowitz covered this case extensively in *Frontpagemag.com* and included me in his book: *The Professors: The 101 Most Dangerous Academics in America*. He even came to my university, after my suspension ended, and debated me for two hours on war and academic freedom. The *Chronicle of Higher Education* extensively covered my case with consistently objective reportage.

I received a telephone call on Saturday evening, November 9, 2002, from Vice President for Academic Affairs Christopher Chalokwu informing me that the president had returned early from a fundraising trip to the East and wanted the three of us to meet on Monday. Surprised and concerned about this unexpected phone call, I asked not once but twice, "is this a disciplinary hearing?" Chalokwu repeatedly said: "Oh my no! No, no. No, no. This is merely a conversation." However, despite his repeated denials of a disciplinary hearing, he did not assuage my concerns due to the mounting national campaign to silence me. The *Chicago Tribune* and *Chicago Sun-Times* were on the story which brought the national outcry to the president's door. But that is what I was told and I immediately called AAUP Chapter President-elect Richard Fritz to inform him about the putative Monday "conversation."

After my last class I arrived at the president's office. I knew instantly I had been set up. The president looked exhausted and solemn. The vice president for academic affairs was silent. The greeting was non-verbal and tense. The wave of persecution and intolerance of university professors who challenge the empire engulfed the president. I was subjected to a two-hour unannounced disciplinary hearing that was threatening, demeaning and unprofessional. I was not accompanied by counsel. I had no faculty adviser.

I was given an inaccurate agenda. I was lied to about the purpose of the meeting or if one prefers, I was either given information that was purposefully false or the academic vice president had been misled about the purpose of the meeting. At some point, however, Chalokwu knew the meeting was not merely a "conversation" about the controversy but avoided informing me what was to occur.

The president stated he was removing me from the classroom because the controversy was creating too much stress for effective teaching. I looked at him and argued, "What? How do you know! I have not been accused of ineffective teaching? I am teaching with considerable effectiveness. Of course this is stressful but I have been in these battles since graduate school." I then listened to what seemed an endless list of sanctions for an impassioned e-mail opposing war, genocide and American imperialism. He imposed sanctions ranging from suspension (he described it as "reassignment to other duties"), a reprimand and ominously a threat of more extreme punishment were I to precipitate additional controversy. He did not specify the punishment or what he meant by controversy but I

construed it as a threat to terminate my continuous tenure if there were additional controversies. He also declared there would be contract addenda each year to remind me of my restrictions on conduct. Those never appeared and I would have ignored them anyway and crossed them out when I signed my contract.

I was given until Thursday to submit a letter that no grievance or any challenge to these sanctions would occur. With regard to the reprimand, this violated AAUP Recommended Institutional Regulations on Academic Freedom and Tenure Regulation 7 that requires an administration to allow a challenge prior to the issuance of a reprimand. If a challenge is unsuccessful a grievance can be pursued "pursuant to Regulation 16." I was allowed the former in a subsequent meeting but not the latter. In other words, a university president in the United States of America ordered me not to file a grievance or pursue any remedy after the imposition of sanctions. Two days later, in fear of losing my tenure and before the Foundation for Individual Rights in Education (FIRE) came to the rescue, I wrote the president, "I do not intend to file a grievance or contest this action."

The AAUP chapter sent an e-mail and later a hard-copy letter to Yanikoski and the faculty the following spring and fall. I was on a previously awarded sabbatical the spring term following my suspension. The AAUP chapter letter was leaked to History News Network (HNN), a major website for historians, that criticized the administration for its lack of shared governance:

Due process must precede any sanctions or punishments. Faculty members should be notified in advance of a disciplinary hearing. They should be informed in writing of the nature of the charges and of any sanctions being considered. Faculty members should also be notified in advance of the agenda and format of the hearing. (See Recommended Institutional Regulations on Academic Freedom and Tenure, Section 5, Dismissal Procedures).

President Yanikoski's list of sanctions also included a bizarre, ad hoc three-person "Evidentiary Committee" to investigate my teaching. I had not been accused of any wrongdoing by a Saint Xavier University student, had previously won the university Teaching Excellence Award, and the president told me that his daughter enjoyed her class with me. There was no linkage between my e-mail and the quality of my teaching. Extramural utterances rarely suggest an incapacity to teach effectively. In fact it elevated my teaching for twelve days prior to my suspension: I used it as an example of antiwar protest in my class on Vietnam and America. Yet the thunder on the right was bombarding a feckless university with diatribes that I should not be allowed to teach and that the e-mail proved I was unfit as a professor.

I was able to avoid the three-ring circus in assessing my teaching, and bargained at the two-hour disciplinary hearing for an earlier than normally scheduled post-tenure review. I was responsible for incorporating post-tenure review in Article V of our by-laws. It was a preemptive measure to counter the growing national trend to use post-tenure review to eliminate non-conformist tenured faculty or starve them out through denial of merit pay. Saint Xavier's handbook affirms that post-tenure review is formative, and is intended to enhance the quality of teaching. It cannot serve as a new probationary-period assessment to threaten tenure: "The purpose of the review is to enhance and improve the tenured faculty member's overall performance. The review process shall be formative and shall preserve academic freedom and tenure."

Actually, post-tenure review is rarely conducted on my campus despite a five-year review requirement. The AAUP chapter condemned the post-tenure review that was scheduled initially during my sabbatical:

Post tenure review must not be used as a punitive process...The procedures specified in the Faculty Policies Section of the Faculty Handbook regarding post-tenure review must be respected at all times. It is not the prerogative of either the faculty member or the administration to alter, amend, or revise these procedures.

A suspension or reassignment to other duties that results in removal from the classroom is a major sanction. A university president feeling the wrath of prowar veterans groups and right-wing media must not impose sanctions to satisfy the cries of retribution. Yanikoski stated that my



e-mail went beyond AAUP academic-freedom protection. Yet the university violated many AAUP recommended procedures and policies. The AAUP Redbook in numerous documents reiterates the specific circumstance under which a suspension may be imposed: the ninth “1970 Interpretive Comment” of the 1940 Statement of Principles on Academic Freedom and Tenure, the 1958 Statement on Procedural Standards in Faculty Dismissal Proceedings and the revised, 2009 Recommended Institutional Regulations on Academic Freedom and Tenure.

The imposition of a suspension is permissible “if immediate harm to the faculty member or others is threatened.” The administration did not rely on this rationale but instead used press releases and interviews to justify suspension for the content of the e-mail to Cadet Robert Kurpiel. While I was paid during the suspension, the AAUP affirms that financial compensation alone does not justify this major sanction. In the St. John’s University case, AAUP addressed the issue of suspension with compensation. The following is from the AAUP Bulletin that Associate Secretary Robert Kreiser quoted in a letter to DePaul University during the ideological persecution of the Norman Finkelstein tenure travesty:

The profession’s entire case for academic freedom and its attendant standards is predicated upon the basic right to employ one’s professional skills in practice, a right, in the case of the teaching profession, which is exercised not in private practice but through institutions. To deny a faculty member this opportunity without adequate cause, regardless of monetary compensation, is to deny him his basic professional rights. . . . In the case of teachers at St. John’s, denial of their classroom was, in itself, a serious injury. To inflict such injury without due process and, therefore, without demonstrated reason, destroys the academic character of the University. (AAUP Bulletin, Spring 1966, pp. 18, 19)

AAUP intervention was narrowly applied in resisting at the margins Yanikoski’s demand that I accept the reprimand in writing. Yet it was FIRE that urged me to negotiate a sunset and the reprimand was removed in three years. Associate Secretary Jonathan Knight, the ultimate gatekeeper for Committee A on Academic Freedom and Tenure, wielded absolute power in determining when AAUP intervenes in such matters. I did speak to him several times on the phone and for about ten minutes in his office as I pursued greater intervention. He wrote the AAUP chapter endorsing their call for future pre-sanction due process and shared governance but declined to support the chapter in its opposition to the sanctions. AAUP never challenged my suspension, never investigated the university for the denial of my academic freedom and never contacted Yanikoski.

I received over 10,000 generally critical e-mails. A recent one from July 27, 2012 expressed an ironic common theme that the military that I criticized protected Americans so they “can express their opinions freely and without fear of retribution.” Yet a suspension and reprimand would challenge that theme. In any event, I was deleting scores of e-mail quickly to preserve my sanity but I noticed one kept reappearing with a supportive subject: “We want to help.” I opened it. Alan Charles Kors, the founder of the conservative FIRE, was the sender. He is Henry Charles Lea Professor of European History at the Univer-

sity of Pennsylvania and a President George H.W. Bush appointee to the National Endowment for the Humanities.

He gave me a number to call. He courageously defended my academic freedom as my world was falling apart. FIRE skillfully deployed talk radio on WGN’s “Extension 720 with Milt Rosenberg,” websites, letters and e-mail to Yanikoski that threatened legal action if additional sanctions were imposed. In addition, Stephen Balch, founding president of the conservative National Association of Scholars, offered words of encouragement by phone and published a letter in the *Wall Street Journal* that challenged the paper’s demands for sanctions and asserted academic freedom protected the harsh, antiwar e-mail that he personally found objectionable. President George W. Bush awarded him the National Humanities Medal in 2009.

Yanikoski received some pushback for his unilaterally imposed sanctions. While the faculty was divided between those who supported and opposed my sanctions, which argues for more not less institutionalized due process, I had the strong support of my department chair, Raymond Taylor and the AAUP chapter. I was still president during this controversy until January 2003 but Dr. Fritz ran the chapter during this lame-duck period. Dr. Yanikoski sent me while still under suspension a “personal and confidential” e-mail on December 2, 2002 anticipating national AAUP intervention in my behalf:

[T]o offer some comment on this matter...For the record, I have been doing a lot of waiting. Not a single faculty member at this University, nor any faculty body (department, school, Senate, FAC, AAUP, Rank & Tenure Committee, etc.), has offered any formal advice to me since this event first began... This abdication of faculty responsibility is an unfortunate footnote to recent events.

The president was defensive about the lack of shared governance and blamed the faculty for not engaging this issue. Perhaps his criticism was justified but the point is Saint Xavier had no shared-governance procedures in place to guide a sanctioning process. No faculty ad hoc committee was constituted; no pre-sanction process other than dissembling late-night phone calls on a weekend existed; no effort to adhere to much less take cognizance of AAUP guidelines existed. Unfortunately, the president had no reason to fear AAUP intervention because Knight refused to contact directly the administration.

The Faculty Affairs Committee (FAC), the union of full-time faculty, belatedly criticized in August 2003 the lack of shared governance and due process in the levying of sanctions:

Sanctions should be determined with appropriate consultation with faculty leaders and/or groups that exist for the support of faculty, such as the Faculty Senate, Faculty Affairs, or AAUP, among others. It was not possible for faculty to provide such consultation without first being informed that specific sanctions are to be imposed. Asking for faculty input would not only be beneficial for the faculty member, it could be helpful to the administration in avoiding subsequent appeals of decisions.

Jacqueline Battalora, professor of sociology, followed Fritz as AAUP chapter president and, with great skill, resolutely engineered major by-laws revisions that include

shared-governance procedures prior to sanctioning a faculty member. The faculty approved them in 2008 and the Board of Trustees in 2009. The bylaws specifically cite the AAUP Recommended Institutional Regulations on Academic Freedom and Tenure as a primary source for its provisions. Battalora also developed some novel structures unique to the institution. Here are some of the highlights of this creative and comprehensive pre-sanction due process that are part of the bylaws:

1) A Faculty Committee for Pre-Sanction Review (FCPR) is established that acts as a pre-sanction hearing body. It is to consist of five members including a representative from the AAUP chapter.

2) The administration prior to implementing “severe” sanctions ranging from assignment to other duties, dismissal, or suspension from service for a period, must first consult the FCPR whose opinion on the levying of sanctions is not binding upon the president.

Administrative imposition of severe sanctions is preceded by:

1.) Discussions between the faculty member and appropriate administrative officers looking toward a mutual settlement;

2.) Informal inquiry by the FCPR which may, failing to effect an adjustment, determine whether in its opinion severe sanctions should be undertaken, without its opinion being binding upon the president;

It defined what could precipitate a severe sanction:

The committee will consider that adequate cause for an administrative-imposed sanction will be related, directly and substantially, to the fitness of faculty members in their professional capacities as teachers or researchers. Sanctions will not be used to restrain faculty members in their exercise of academic freedom or other rights of American citizens.

I am particularly gratified with the incorporation of AAUP policies on suspension that was examined earlier:

1.) Status. Pending a final decision by the FCPR, the faculty member will be suspended, or assigned to other duties in lieu of suspension, only if immediate harm to the faculty member or others is threatened by continuing current duties. Before suspending a faculty member, pending an ultimate determination of the faculty member’s status through the institution’s hearing procedures, the administration will consult with the FCPR concerning the propriety, the length, and the other conditions of the suspension. A suspension that is intended to be final is a dismissal, and will be treated as such. Salary will continue during the period of the suspension.

For the past decade I have published and spoken widely on this case. I have done so with an emphasis on institutional process and how this case can induce reform to protect faculty in the future who may experience sanctions arising from extramural utterances or other precipitating matters.

This paper was originally presented at the AAUP Shared Governance Conference and Workshops, Washington, D.C. on October 27, 2012. I appreciate the helpful comments of panel respondent Joe Berry.



The Role of the Faculty in Conditions of Financial Exigency

In recent years, American institutions of higher education have begun closing programs that should be part of any serious educational institution’s curricular portfolio.

Program closures on the scale we have recently witnessed represent a massive transfer of power from the faculty to the administration over curricular matters that affect the educational missions of institutions, for which the faculty should always bear the primary responsibility.

These developments are addressed in a new draft report issued by the AAUP, *The Role of the Faculty in Conditions of Financial Exigency* (<http://www.aaup.org/report/role-faculty-conditions-financial-exigency>).

Increasingly, administrators and governing boards are making budgetary decisions that profoundly affect the curricula and the educational missions of their institutions; rarely are those decisions recognized as decisions about the curriculum, even though the elimination of entire programs of study (ostensibly for financial

reasons) has obvious implications for the curricular range and the academic integrity of any university.

This report responds to this state of affairs in two ways: one, by making recommendations intended to ensure the faculty’s primary role with regard to program closures and, two, by proposing revisions to the AAUP’s Recommended Institutional Regulations on Academic Freedom and Tenure (<http://www.aaup.org/report/recommended-institutional-regulations-academic-freedom-and-tenure>).

First, as to governance and consultation, we insist that faculty members must be involved in consultation and deliberation at every stage of the process, beginning with a determination that a state of financial exigency exists. Specifically:

Before proposals for program discontinuance on financial grounds are made, the faculty should have the opportunity to render a written assessment on the institution’s financial condition.

Faculty bodies participating in the pro-

cess should be drawn from the elected faculty senate or elected by the faculty at large; they should not be appointed by the administration.

The faculty should have access to detailed, comprehensive financial information.

The faculty should determine whether feasible alternatives to termination of faculty appointments have been pursued.

Faculty members in a program being considered for discontinuance because of financial exigency should be informed in writing that it is being so considered and given at least thirty days in which to respond. Nontenured as well as tenured faculty members should be involved.

Second, this report proposes a more detailed and specific definition of “financial exigency” that will extend the standard of exigency to situations not covered by our previous definition.

The new definition names a condition that is less draconian than that in which the very existence of the institution is immedi-

ately in jeopardy but is significantly more serious and threatening to the educational mission and academic integrity of the institution than ordinary attrition in operating budgets.

Financial exigency can legitimately be declared only when substantial injury to the institution’s academic mission will result from prolonged and drastic reductions in funds available to the institution and only when the determination of the institution’s financial health is guided by generally accepted accounting principles.

Financial exigency is not a plausible complaint from a campus that has shifted resources from its primary missions of teaching and research toward the employment of increasing numbers of nonacademic administrators or toward nonacademic capital expenditures.

The report is published for comment; revisions may be made after comments are considered. Please send your feedback to Jordan Kurland (jkurland@aaup.org).

WE ALL POLITICIZE HISTORY continued from page 5

and social sciences, no matter whether a professor acknowledges them or not. From decisions about what topics to cover, to the list of readings, to the framing of lectures and discussions—teaching is always political, if by that one means that judgments about the nature of power in a society affect what, and how, one teaches. To recognize that all research and teaching have a politics is not to claim that the work of professors is nothing but politics, in the sense of proselytizing. Quality research and reasoned argument are important, but the value of our work is heightened, not diminished, when the political nature of that work is understood and acknowledged.

That's as true of those who accept the status quo as those who challenge it. The issue is not whether teaching reflects political judgments, but whether one can defend those judgments on intellectual grounds. There may be no final consensus among faculty members on how a course should be structured or taught, but we faculty members can collectively sharpen our understanding and improve our practice by discussing these matters.

In that discussion, it is absurd for one side to claim it speaks from a neutral position, outside or above politics. In its final “depoliticize history” recommendation, the

NAS report argues:

The root of the problem is that colleges and universities have drifted from their main mission. They and particular programs within them, increasingly think of themselves as responsible for reforming American society and curing it of prejudice and bigotry. When universities and university programs consider it necessary to atone for, and help erase, oppressions of the past; one way in which they do so is by depicting history as primarily a struggle of the downtrodden against rooted injustice. This pedagogical conception may be well-intended, but it is also a limited and partisan one, and history teaching should not allow itself to become imprisoned within a narrow interpretation. A depoliticized history would provide a comprehensive interpretation of American history that does not shortchange students by denying them exposure to intellectual, political, religious, diplomatic, military, and economic historical themes.

And what of the politics of this “depoliticized history”? Apparently, the political goal of the NAS to escape the prison of the narrow interpretation is not political. Or maybe it's a political judgment in the service of transcending politics. Or maybe it just doesn't make any sense to take a partisan position and claim that one isn't partisan.

The report continues:

The dominance of race, class, and gender themes in history curricula came about through disciplinary mission creep. Historians and professors of United States history should return to their primary task: handing down the American story, as a whole, to future generations.

It would be interesting to find how the report's authors came to understand the “disciplinary mission” of history (maybe it was revealed to them in a vision), but—sorry to have to repeat myself—any description of the mission of history has an underlying politics.

I don't know if NAS scholars actually believe there is an “American story” that can be told from a neutral point of view, or whether this is merely a cynical debating tactic. But if we are going to address the very real problems facing the contemporary university, attempts at imposing ideology by claiming to be beyond ideology aren't likely to help clarify problems or help generate solutions.

Robert Jensen is a professor in the School of Journalism at the University of Texas at Austin. He is the author of *Arguing for Our Lives: A User's Guide to Constructive Dialogue* (City Lights, 2013).

KEYISHIAN INTERVIEW continued from page 4

until after the AAUP had sent a check. We also had considerable financial support from our faculty colleagues who had signed, but were in support of our position.

Academe Blog: You were suing the Board of Regents, but the real problem here was the legislature passing a law requiring the Board to keep out subversives. Did you think any administrators and regents supported your efforts to make the politicians stay out of campus decision-making, or did you regard them as supporting these laws?

Harry Keyishian: We had a good deal of covert support from administrators. To give one crucial example, the letter in which I was told that I would not be rehired gave as the only reason my refusal to sign the loyalty oath certificate. That made the legal issue perfectly clear and gave the attorneys a basis for action—to argue that the certificate was improper. It would have been very easy for that dean to have given another reason for not rehiring me—insufficient progress on the dissertation, inadequate publication, poor teaching—anything, really, which would have rendered things moot. Nobody really believed that the oaths were a good thing. It was just a question of what they were

prepared to do about it.

Academe Blog: The Supreme Court supported you in a 5-4 ruling. Did you expect to win in the Supreme Court, and were you surprised that it was so close? What do you think would have been the consequences if you had lost?

Harry Keyishian: Despite a report from the UB law school that we would lose—the Feinberg Law, on which the loyalty oath was based, had been upheld only a few years before—we were pretty cocky about winning. It was the Warren Court, after all. And, though we did not know it, we had a brilliant advocate on it in the person of Justice William Brennan, who wrote the decision.

Academe Blog: What do you think has been the impact of the Keyishian ruling in the past 45 years, and do you believe courts today are still upholding it?

Harry Keyishian: This is a question I'll leave to legal experts, but I understand that the case is being chipped away at by later courts. Still, I think it is well grounded and has worked its way into legal culture pretty deeply. But if things start going bad, I count on five other stubborn people to pop up and do something about it.



Introducing the New, Restructured AAUP

As of January 1, 2013, the AAUP has reorganized into three interlocked entities under one umbrella. This change will better align our legal status with our evolving activities, our changing membership, and our ambitious aims for future programs and services. We expect that it will allow the more vigorous pursuit of fundraising, legislative lobbying at federal and state levels, program development, and union-related activities.

The three entities are the AAUP Foundation, the AAUP Collective Bargaining Congress, and the AAUP.

The foundation, a 501(c)(3) charitable organization, will seek to raise funds to support programs and education, advancing the traditional AAUP principles of academic freedom and shared governance, defining fundamental professional values and standards for higher education, and ensuring higher education's contribution to the common good.

The AAUP-CBC, previously an arm of the AAUP, is now its own organization, a labor union. As has been the case in the past, all AAUP chapters that engage in collective bargaining will be eligible to be members of the AAUP-CBC. The AAUP-CBC's mission is to support unionization as the most effective means for academic employees to protect shared governance and academic freedom, uphold professional standards and values, and promote higher education as an investment in our common future.

The AAUP itself, to which all individual members belong, has become a 501(c)(6) professional organization. The AAUP will continue to organize and support non-collective-bargaining “advocacy” chapters and carry out work to defend academic freedom and shared governance, including policy development, investigations, and amicus briefs. State AAUP conferences will remain, and their operations will not be changed by restructuring.

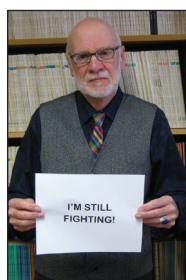
Join the AAUP!

The Greater Our Numbers, the Stronger Our Voice

If you care enough about the future of higher education to be an AAUP member, we hope you'll now take the next step and encourage your colleagues to join at www.aaup.org.

The AAUP is introducing a new simplified dues structure based on income:

- \$30,000 and less: \$47**
- \$30,001-\$40,000: \$63**
- \$40,001-\$50,000: \$84**
- \$50,001-\$60,000: \$105**
- \$60,001-\$70,000: \$147**
- \$70,001-\$80,000: \$173**
- \$80,001-\$100,000: \$195**
- \$100,001-\$120,000: \$215**
- More than \$120,000: \$237**



Join Senior Associate General Secretary Martin Snyder, head of the national AAUP staff, in the “I'm Still Fighting” campaign.

The most effective way to get new members is to go door to door to your colleagues' offices, because people are more likely to join if asked directly and offered the chance to talk with you in person about the work of the AAUP on behalf of the profession, at the local, state, and national level. Give them the new dues schedule, ask them what their key concerns about higher education are, and try to show them what AAUP is doing to help. See if they will join while you are there.

To Join the AAUP, Visit www.AAUP.org

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