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JULY-AUGUST 2014

BULLETIN

of the American Association of University Professors

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BULLETIN

OF THE AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS

Academe

JULY–AUGUST 2014 | (VOLUME 100)

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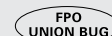
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From the Editor

This issue of the *Bulletin of the American Association of University Professors*, the Association's journal of record, contains several annual reports, lists of officers of the three entities that constitute the restructured "AAUP enterprise" (the AAUP, the AAUP Foundation, and the AAUP-CBC), a list of the AAUP's standing committees, and other business documents. In addition, the 2014 *Bulletin* reprints a case report of an investigation into violations of academic freedom and tenure that led to censure as well as four policy documents and reports approved by Association standing committees.

Academic Freedom and Tenure: Northeastern Illinois University, an ad hoc investigating committee report first published in December 2013 on the AAUP's website, recounts how an assistant professor of linguistics, the only untenured member of an anti-administration faculty group, was denied tenure by the university's president, despite having received favorable recommendations from his colleagues, his chair, his dean, and the university-wide faculty personnel committee. Of sixteen tenure candidates reviewed that year by the president, the linguistics professor was the only one the president declined to recommend to the governing board for tenure. The investigating committee found that the president had failed to provide a credible reason for her decision, leaving un rebutted the widely held opinion that her action in denying him tenure was retaliatory. The committee's conclusion that the NEIU administration's actions against the assistant professor violated principles of academic freedom and due process formed the basis of a recommendation by Committee A on Academic Freedom and Tenure that the AAUP's 2014 annual meeting add Northeastern Illinois University to the Association's list of censured administrations, a recommendation that the annual meeting approved by unanimous vote.

In 2012, a subcommittee of Committee A was charged with revising and expanding *Academic Freedom and Electronic Communications*, a report first issued in 2004. In making its revisions, the subcommittee adhered to the original's "overriding principle": "Academic freedom, free inquiry, and freedom of expression within the academic community may be

limited to no greater extent in electronic format than they are in print, save for the most unusual situation where the very nature of the medium itself might warrant unusual restrictions." But the subcommittee applied that principle to realities in electronic communications that did not exist a decade ago. The report, published online in its final form in April 2014, also offers a number of specific policy recommendations for protecting academic freedom and promoting faculty governance in matters of electronic communication.

The *Statement on Intellectual Property* and *Defending the Freedom to Innovate: Faculty Intellectual Property Rights after Stanford v. Roche*, both produced by a subcommittee of Committee A and both published online in final form in June 2014, address the increasing tendency of university administrations unjustifiably to claim ownership of the products of faculty research and teaching. The second document is a lengthy report on the issue, with particular focus on faculty patent rights, as reasserted in the US Supreme Court's 2011 decision in *Stanford v. Roche*. In its final section, it sets forth recommended principles on intellectual property designed for incorporation into institutional regulations and collective bargaining agreements. The much briefer *Statement on Intellectual Property* distills the key points of *Defending the Freedom to Innovate* and will be included in the centennial edition of the AAUP's *Policy Documents and Reports* (the "Redbook").

In *Faculty Communication with Governing Boards: Best Practices* (February 2014), a subcommittee of the Association's Committee on College and University Governance outlines the current deplorable state of faculty-board communication, surveys the AAUP's previous recommendations on the subject, and sets forth a series of conclusions and guidelines, foremost among them that "every standing committee of the governing board, including the executive committee, should include a faculty representative" and that "direct communication between the faculty and the governing board should occur through a liaison or conference committee consisting only of faculty members and trustees and meeting regularly to discuss topics of mutual interest."

—Gregory F. Scholtz

Academic Freedom and Tenure: Northeastern Illinois University¹

(DECEMBER 2013)

I. Introduction

The subject of this report is the June 2012 decision of Dr. Sharon K. Hahs, president of Northeastern Illinois University, to deny tenure to Dr. John P. Boyle, assistant professor of linguistics, despite uniformly favorable recommendations by all previous reviewers and against the background of a faculty vote of no confidence.

Northeastern Illinois University is a public, four-year institution in Chicago, founded in 1867 as a teachers' college. Since 1961 the university has been accredited by what is now the Higher Learning Commission of the North Central Association of Colleges and Schools. It currently enrolls a diverse student population of over eleven thousand students. The institution offers more than eighty undergraduate and graduate programs in the arts, sciences, business, and education. Representing the faculty in collective bargaining is the University Professionals of Illinois (UPI), a statewide local of the American Federation of Teachers (AFT), with Ms. Elinor "Ellie" Sullivan as its current president. Dr. Hahs became president of NEIU in February 2007, having previously served as provost

and vice chancellor for academic affairs at Southern Illinois University Edwardsville. Professor Boyle joined the Northeastern Illinois faculty in 2006 as an instructor of linguistics and, after receiving his PhD in linguistics in 2007 from the University of Chicago, continued at the rank of assistant professor in an appointment probationary for tenure.

II. Disputes between Faculty Members in Linguistics and Teaching English as a Second Language (TESL)

At the time of Professor Boyle's initial appointment in 2006, there were ongoing professional disagreements among the linguistics faculty, disagreements that became increasingly acrimonious during Professor Boyle's probationary period. Faculty members reported to the undersigned investigating committee that the appointment of Professor Boyle into a position requiring traditional linguistics credentials was a point of contention, with some members of the linguistics faculty having favored a candidate with credentials more appropriate to TESL instruction.

In 2006, the linguistics program was organized as a single unit of nine faculty members within the Department of Anthropology, Philosophy, and Linguistics and offered an MA in linguistics, an MA in linguistics with a TESL concentration, and an undergraduate linguistics minor. Upon the request of five linguistics faculty members who contended that they could no longer work with the other linguistics faculty and who wished to develop an independent TESL master's degree, Provost Lawrence Frank called in 2007 for a vote on separating linguistics into two distinct programs. Professors Judith Kaplan-Weinger, Shahrzad Mahootian, Richard Hallett, and Boyle,

1. The text of this report was written in the first instance by the members of the investigating committee. In accordance with Association practice, the text was then edited by the Association's staff and, as revised with the concurrence of the investigating committee, was submitted to Committee A on Academic Freedom and Tenure. With the approval of Committee A, the report was subsequently sent to the administration of Northeastern Illinois University; to the officers of the AAUP chapter, of the faculty union, and of the faculty senate; and to other persons directly concerned. This final report has been prepared for publication in light of the responses received and with the editorial assistance of the staff.

whose appointments would remain with linguistics in the event of a split, stated their preference to work out professional differences and remain a single unit, but a five-to-four vote to separate the disciplines resulted in TESL professor Lawrence Berlin's being appointed chair of the new Department of Anthropology, Linguistics, Philosophy, and TESL and in Professor Kaplan-Weinger's being named coordinator of linguistics within that department.

The agreed-upon reorganization included the development of a new master's degree in TESL. Members of the linguistics faculty stated, however, that Professor Berlin initiated and Provost Frank approved curricular actions in 2008 to create a new undergraduate TESL minor by dropping certain undergraduate offerings as linguistics courses and designating them instead as TESL courses, without the linguistics faculty's knowledge and without the levels of review required under a shared governance process. Of the nine signatures ordinarily required, a December 2, 2008, curricular action form deleting the linguistics courses carried only two signatures, those of Professor Berlin and Provost Frank. It fell to Professor Boyle to represent the linguistics faculty's governance concerns in open meetings of the College of Arts and Sciences Academic Affairs Committee (CAAC).

In a March 9, 2009, letter to curriculum committees, academic deans, and the president, Professor Berlin asserted that the courses in question had previously been approved as linguistics courses and therefore required no formal action when they were deleted from the linguistics curriculum and added to the TESL curriculum. The letter also offered his explanation of the TESL faculty's vote to separate the two programs, accusing the linguistics faculty of waging "an ongoing smear campaign" against TESL faculty by discrediting TESL faculty with students and other colleagues while portraying themselves as "the only legitimate members of an elite club." He characterized the actions of the linguistics faculty, whom he repeatedly referred to as "the four," as a "malicious underground campaign" to discredit the TESL program in order to advance the linguistics program.

The reorganization of the curriculum and the development of an undergraduate minor in TESL resulted in ongoing disputes between the two faculties that would directly involve Professor Boyle in his role as undergraduate adviser for linguistics. New course designations in the now-competing minors in linguistics and TESL created confusion for students and an apparent turf war between the programs to attract

undergraduate minors. Charges and countercharges of providing students misinformation about the requirements of the minor programs and their relationship to state of Illinois ESL endorsement were not uncommon. Over the course of the next three years, individual TESL faculty members would accuse Professor Boyle of attempting to attract linguistics minors and of undermining the TESL minor by unfairly advising students of the benefits of a linguistics minor.

The relationship between the linguistics and TESL faculties continued to deteriorate until, in fall 2011, as Professor Boyle's tenure application was in process, the linguistics faculty requested that Provost Frank and President Hahs approve the program's removal from the Department of Anthropology, Linguistics, Philosophy, and TESL. Approval was granted, and, as a temporary measure, the program was to report directly to Dr. David Rutschman, the associate dean of arts and sciences, who also assumed the position of interim chair of linguistics. During Professor Boyle's terminal academic year, 2012–13, the linguistics program was housed in the Department of English.

III. Issues of Shared Governance and Votes of No Confidence

In fall 2009, Professor Boyle's linguistics colleague, Professor Kaplan-Weinger, began a two-year term as chair of the elected NEIU faculty senate. Having experienced what Professor Kaplan-Weinger and her linguistics colleagues perceived as violations of governance policies regarding curricular matters in their department, she proposed a campuswide survey by the faculty senate during the 2009–10 academic year to identify the extent of faculty concern about shared governance and academic freedom at NEIU. After interviewing faculty members across campus, the senate identified issues of concern and presented those in a bill of particulars to President Hahs, Provost Frank, and the faculty.

Based on that bill of particulars, the faculty senate took a vote of no confidence in President Hahs and Provost Frank on November 23, 2010. In addition to Professor Kaplan-Weinger, Professors Mahootian and Hallett—the other two tenured members of the linguistics faculty—were serving on the senate at the time and voted with the majority to express no confidence. With President Hahs and Provost Frank present, twelve of nineteen senators cast votes orally and individually for no confidence in President Hahs, and eleven of nineteen cast votes orally and individually for no confidence in Provost Frank. Professor Boyle

and other non-senate members attended the session, but Professor Boyle did not speak at that meeting. During the period preceding the senate's no-confidence vote, however, Professor Boyle, in his capacity as the linguistics representative to his college's Academic Affairs Committee, had represented the complaints of the linguistics faculty to the CAAC about a lack of shared governance in curricular actions taken by Professor Berlin and Provost Frank, and those concerns became part of the bill of particulars that served as the basis for the votes of no confidence. Following the senate vote, Professor Kaplan-Weinger, in her capacity as chair of the faculty senate, organized and led open meetings with campus faculty for discussion of the bill of particulars. She stated that President Hahs and Provost Frank attended the meetings and spoke to the faculty present.

President Hahs, addressing the issues of no confidence at a senate meeting on November 9, 2010, and again in a letter to the university community on December 2, expressed her commitment to shared governance and denied accusations of retaliatory actions against faculty members who had criticized the administration's policies or actions. Despite her assurances, in February 2011 the NEIU faculty at large held another vote in which approximately two-thirds of those who cast ballots voted no confidence in President Hahs and Provost Frank. The NEIU board of trustees, meeting that month, did not take public action in response to the no-confidence vote. With regard to collective bargaining negotiations then in process, however, the board stated publicly that it "continue[d] to support the President's vision and her ability to lead the University." A month later, President Hahs and the chair of the faculty senate jointly approached the national AAUP for assistance in obtaining a consultant to evaluate the state of shared governance on the campus. The Association's staff recommended and NEIU engaged Professor Kenneth Anderson (University of Illinois at Urbana-Champaign), a longtime active AAUP member. After two days of interviewing NEIU faculty members and administrators, Professor Anderson submitted a detailed report in May 2011. His report noted long-standing patterns of compromised shared governance, emphasized the AAUP's view of the primary role of faculty in matters of curriculum and faculty status, and offered a number of suggestions to enhance shared governance at NEIU. In the investigating committee's interview with President Hahs, she indicated that while not endorsing the Anderson report

in its entirety, she had undertaken initiatives to address his concerns.

Members of the linguistics faculty claimed that their role in the 2010–11 no-confidence votes resulted in the administration's retaliating against them by denying them grants, awards, and internal advancements and, finally, by rejecting tenure for Professor Boyle.

IV. The Tenure Candidacy of Professor Boyle

Under NEIU procedures, the initial major evaluation for tenure occurs before the fifth probationary academic year, 2011–12 in Professor Boyle's case. Notifying him in May 2010 of his reappointment for 2010–11, President Hahs stated that his 2009–10 performance review "raised some concern" regarding his research activity and suggested that he develop his research projects into scholarly publications. The investigating committee must assume that he adequately addressed her stated concern, because she did not raise it again in her evaluation of his 2011–12 performance or in her final evaluation of him for tenure in 2012.

In her June 2011 letter of reappointment to Professor Boyle for his final probationary year, however, President Hahs raised a new concern about his "performance in the area of teaching/performance of primary duties," particularly in relation to his "assignment as the undergraduate advisor for the Linguistics program." She drew attention to his program's stated criteria for a satisfactory or highly effective evaluation in the area of teaching/performance of primary duties, "which include, in part, mastery of content as reflected in peer and student evaluations; demonstrated dedication, academic integrity, [and] professionalism; and cooperation with colleagues and students." In setting her expectation for improvement in this area of evaluation, she focused exclusively on the criterion of his "cooperation with colleagues and students." To address her concern, she made the following request: "Consult with your acting chair and dean to develop an approved plan to improve how you cooperate with colleagues and students. This plan should detail the steps you will be taking during the 2011-2012 academic year to improve your performance. A copy of this plan should be filed with the Office of Academic Affairs by September 15, 2011."

According to documents provided to the investigating committee, the president's new concern, one that she would cite again in her June 2012 letter to Professor Boyle notifying him of her decision to deny

him tenure, grew out of a set of e-mail exchanges between Professor Boyle in his capacity as undergraduate linguistics adviser and his counterpart in the College of Education. In those exchanges, the education adviser sought clarification about Professor Boyle's advocacy of the linguistics minor and about course requirements for state ESL endorsement. In response, Professor Boyle provided a detailed explanation, which was subsequently verified as correct and sent at the direction of the tenured linguistics faculty. What appears to have been at issue in the exchange and the source of the president's concern about his "cooperation with colleagues" was Professor Boyle's attributing confusion about the programs, in part, to the absence of appropriate shared governance in the approval of courses for the TESL minor. Although the e-mail correspondence was dated December 2010, Professor Boyle was directed to submit that correspondence to Provost Frank in May 2011, one month before the president's June 2011 evaluation. Professor Boyle was informed, without explanation at the time, that these e-mail messages would be included in his performance portfolio.

In July, following the president's directive in her June 2011 letter of reappointment, Professor Boyle formulated a plan to improve his advising in a meeting with Dr. Wamucii Njogu, dean of arts and sciences; Dr. Rutschman, acting linguistics chair and associate dean; and Professor Hallett, coordinator of the linguistics program. The agreed-upon plan called for Professor Boyle to complete additional training in the Banner and Advisor Trac programs. Professor Boyle reported that those involved in formulating the plan reassured him that it would be a sufficient response to President Hahs's directive and needed no further approval.

In order to meet the president's September 15 deadline for filing the plan, Professor Boyle mailed the required notice, which was dated and cosigned by Professor Hallett, on August 22. Official notice of Professor Boyle's completion of the approved plan was reported by the Banner specialist on October 25, 2011, and by the Advisor Trac specialist on November 7.

On October 26, the linguistics department's Personnel Committee, citing what it characterized as an exemplary record, rated Professor Boyle's "teaching/performance of primary duties" as "superior," rated his "research/creative activity" and "service" each as "significant," and unanimously recommended him for promotion to associate professor with tenure. The applicable NEIU standards for tenure call for a successful candidate to receive a rating of "superior"

in "teaching/performance of primary duties" and ratings of "significant" in the other two areas of evaluation.

Two days later, on October 28, Professor Boyle received notice from Dr. Victoria Roman-Lagunas, the associate provost, of a meeting to be held on October 31 with Provost Frank, Dean Njogu, and her. The purpose, she wrote, was "to have a conversation with you and to hear what you have to say about some possible issues that have come to our attention." She noted that the meeting was not one of "sanction/pre-sanction" but informed him of his right to request representation from UPI officials.

At the October 31 meeting, Professor Boyle was presented with copies of two e-mail messages to be placed in his personnel file that made serious allegations about his conduct as an undergraduate adviser. In an October 20 e-mail message to the provost, dean, and associate dean, Professor Berlin accused Professor Boyle of inappropriately advising students in his classes to change their minors from TESL to linguistics, thereby significantly reducing the number of TESL minors. In an October 24 message to the dean, with copies to the president, the provost, and others, TESL professor William Stone reported a number of student complaints about Professor Boyle's having provided students with inaccurate information and accused him of "unethical" and "underhanded" behavior in advising students to change their minors from TESL to linguistics. The Stone message indicated that he was writing also for TESL professors Teddy Bofman, Jeanine Ntahirigeza, and Marit Vamarasi.

Professor Boyle denied all charges of inappropriate advising. Furthermore, in a November 30 response to be placed in his personnel file, he offered statistical evidence from the Office of Institutional Research to challenge Professor Berlin's claim about a decrease in the number of TESL minors, and he provided materials to refute Professor Stone's accusation that he had given students inaccurate information. On December 8, Professor Boyle submitted a more detailed defense against the accusations made in the Berlin and Stone e-mail messages in a petition to Allen Shub, the university's contract administrator, to remove these messages from his personnel file. Responding on January 3, 2012, Dr. Shub agreed to redact the statistic claimed by Professor Berlin regarding the number of TESL minors, but he denied Professor Boyle's request to remove the message from the file. Dr. Shub's response did not mention Professor Stone's e-mail message.

In addition to being presented for the first time with the accusatory e-mail messages in the October 31 meeting with academic administrators, Professor Boyle learned that the Office of Academic Affairs had not received his August 22 letter detailing the plan to improve his advising skills. Realizing his error in having sent the letter to the Office of Academic Advising, Boyle promptly submitted a copy of the cosigned letter of August 22, together with an explanation, on November 1, the very next day.

On November 21, 2011, Dr. Rutschman, in his capacity as acting department chair, concurred in the department's evaluation of Professor Boyle's teaching/performance of primary duties as "superior" and his research/creative activity and service both as "significant." He recommended Professor Boyle for promotion and tenure. In his evaluation of teaching/performance of primary duties, Dr. Rutschman noted that Professor Boyle had completed the plan requested by the president to improve his advising skills.

On January 10, 2012, Dr. Njugo, the arts and sciences dean, likewise rated Professor Boyle's teaching/performance of primary duties as "superior" and his research/creative activity and service each as "significant." The dean described Professor Boyle as a dedicated instructor whose teaching evaluations, which included the criterion of "fair and respectful to all students," were 10 percent higher than the standard required for a "superior" rating. In her otherwise positive evaluation, the dean stated two concerns regarding Professor Boyle's performance. Her first concern centered on Professor Boyle's error in sending a copy of his required improvement plan to the wrong administrative office, an error that resulted in his not having met the president's September 15 deadline. The dean's second concern was the TESL faculty's allegations that Professor Boyle had misadvised students. The allegations were important, the dean contended, because they spoke to the tenure criterion of "professionalism and cooperation with colleagues." She concluded her evaluation by noting that "[a]lthough there is no corroborating evidence from students who were directly impacted by Dr. Boyle's alleged actions, these types of allegations were raised in President Hahs's fifth-year retention letter. My concerns notwithstanding, I find that on balance, Dr. Boyle meets the superior criterion in teaching required for tenure and promotion."

On February 20, the University Personnel Committee (UPC), an eight-member committee elected by the faculty, submitted its evaluation of Professor

Boyle to Dr. Roman-Lagunas, who had become acting provost after Provost Frank's retirement. In its recommendation, the committee unanimously assigned Professor Boyle a rating of "superior" in teaching/performance of primary duties and, also unanimously, assigned him ratings of "significant" in research/creative activity and service. In addition to praising Professor Boyle's classroom teaching, the UPC cited his exemplary record of engaging students in research and his "high level of commitment to the academic progress and welfare of students." The committee noted that Professor Boyle had fulfilled the action plan required by the president and that "the charges of alleged misadvising remain unsubstantiated." UPC members interviewed by the Association's investigating committee reported that the tally of positive and negative votes for recommending a candidate for tenure was not ordinarily included in the committee's recommendation. In the case of Professor Boyle's evaluation, however, the committee elected to record that the positive recommendation for tenure was *unanimous*. According to one UPC member, the committee perceived that a positive evaluation for tenure by the president might be "an uphill battle" and that her decision would likely be based on "something beyond" the criteria set by the linguistics program's Department Application of Criteria.

On February 17—three days before the UPC's recommendation reached the acting provost—Dr. Shub, the contract administrator, notified Professor Boyle that a student complaint had been placed in his personnel file. On February 21, Professor Boyle received a copy of the complaint, dated February 9 and received by TESL professor Vamarasi, the student's clinical placement supervisor. In the complaint, filed some four months after the alleged incident, the student contended that Professor Boyle had recommended that she change her minor from TESL to linguistics. She reported that after doing so, she was told (presumably by someone associated with the TESL program) that she would be required to take three additional linguistics courses to fulfill the minor but only one to fulfill the TESL minor. The student wrote that she then "grew nervous and anxious," that she changed her minor back to TESL, and that the incident had made her feel "unhappy" and "deceived." She concluded her complaint by saying that she felt "on track once again."

Professor Boyle responded to the student complaint on March 9. He denied that he had told the student to change from a TESL to a linguistics minor, stated that

the information the student had received elsewhere about a linguistics minor requiring more courses was incorrect, and reported that the student was present in his class when Professors Mahootian and Kaplan-Weinger explained the requirements for a linguistics minor. Professor Boyle also expressed concern that the complaint did not follow the posted NEIU procedure governing student complaints. Had the procedures been followed, the student would have met with the dean, the assistant dean, or the coordinator to review the matter, and an assigned staff member would have investigated the nature of the complaint and contacted all necessary parties.

In early April, Professor Boyle learned from UPI grievance officer Cynthia Moran that President Hahs intended to deny him tenure, based on his failure to meet her September 15, 2011, deadline for filing a plan to improve his advising and on his having insufficiently addressed her concern regarding his ability to “cooperate with colleagues and students.” Professor Moran further informed him that the administration was prepared to defer his tenure consideration for one year if he agreed to terms specified in an “Agreement to Delay Tenure Application.” Should Professor Boyle be denied tenure in the following academic year, provisions in the agreement required him to waive all rights to grievance procedures or legal action and to acknowledge that his services at NEIU would then terminate. Professor Boyle found the terms of the agreement unacceptable, and after learning that the president had denied his requests for revision of the objectionable provisions, he declined to accept the administration’s offer to defer his tenure decision.

Whether or not the UPI supported his decision is a matter of disagreement. In a June 10, 2012, statement opposing a claim filed by Professor Boyle with the Illinois Education Labor Relations Board (IELRB)—to be discussed in this report’s next section—the NEIU administration contended that “[t]he Union has no concerns about the proposed Agreement and is comfortable with Dr. Boyle signing it.” In his January 2013 report on the case, the IELRB executive director stated that “[t]he Union was amenable to the Hahs plan, but Boyle proved somewhat resistant, refusing to accept the terms of the agreement.” A July 4, 2012, e-mail message to Professor Boyle from Professor Moran, however, directly contradicted those statements. Professor Moran wrote, “The UPI did not and could not recommend you accept the settlement the administration offered as written.”

At its meeting on June 14, 2012, the NEIU board of trustees discussed the Boyle tenure candidacy in executive session and then, by a seven-to-one vote, acted publicly to uphold President Hahs’s decision to deny him tenure. Following the vote, a number of colleagues and students addressed the board in support of Professor Boyle, to no avail.

V. Union Grievance and Filings with the Illinois Education Labor Relations Board

Professor Boyle learned on December 3, 2011, that the e-mail messages from TESL professors Berlin and Stone would remain in his personnel file. He then officially petitioned for removal of the damaging material, citing the provision in the UPI collective bargaining agreement with NEIU that “[i]f the Employee is able to show to the satisfaction of the University Contract Administrator that the materials are false or unsubstantiated, then those materials, including any recent evaluations, will be removed from the Employee’s personnel file.” Union officers participated in discussions with contract administrator Shub and Associate Provost Roman-Lagunas, but they could not reach an agreement on removing the messages. On January 30, 2012, Professor Boyle submitted the initial paperwork for a union grievance, calling for the removal of the two e-mails containing “demonstrably false or unverifiable material” from his personnel file.

During March and April, negotiations continued between Dr. Shub and union officers concerning Professor Boyle’s personnel file, which by that time included the student complaint. As part of the union’s investigation of that complaint, Professor Moran, the grievance officer, interviewed TESL professor Vamarasi by telephone on March 8 and TESL professor Stone in person on March 11. (According to Professor Boyle, the administration did not allow the student to be questioned, and Professor Berlin did not respond to Professor Moran’s request for an interview.) In the March 8 interview, Professor Vamarasi, who had provided the complaint form to the student, acknowledged that she had known the student in question for about a year. University enrollment records provided to the investigating committee confirm that the student was enrolled in Professor Vamarasi’s clinical placement course at the time the complaint was filed. When asked in the interview “if the student had given any reason why she had come forward at that time or if she had been prompted by anyone,” Professor Vamarasi indicated that she “had given all of the relevant information regarding the

origin of the complaint” and did not want to discuss “how it arose or the exact content of what she and [the student] talked about during any of their meetings,” but she emphasized that she would “consider it reprehensible” in a faculty member to suggest that “students needed to switch programs of study.”

Professor Vamarasi reported that she had met the requirement on the complaint form that the matter be “referred to dean and chair” not by telling the student to speak with the dean and chair but instead by sending both of them copies of the student’s complaint. According to Professor Boyle, neither he nor the linguistics coordinator was provided with an opportunity to discuss the concerns with the student, nor was either of them provided a copy of the complaint at the time it was filed.

Professor Moran’s notes of her March 11 interview with Professor Stone reveal that Dr. Shub had approached Professor Stone on February 3 to inquire whether “there was any substantiation of the (then undocumented) student complaint.” Professor Stone confirmed that, after his conversation with Dr. Shub, he spoke to Professor Vamarasi and believed that “she may have contacted [the student] regarding the matter.” He reported to Professor Moran that the student had not wanted to file the complaint while she was enrolled in Professor Boyle’s class but that he did not recall whether the student had intended to file a complaint after the term ended. Professor Stone further reported that he had not seen the student’s complaint as an isolated one and that he had written his October e-mail about Professor Boyle because he wanted “to put an end to the undermining of the TESL program” and thought faculty “should not mess with students.” As noted earlier in this report, the student’s decision to change the minor back from linguistics to TESL was apparently based on her distress at having received conflicting information about requirements of the two minors. Professor Stone confirmed in the interview that he did not refer the student back to Professor Boyle for clarification of the linguistics requirements.

The grievance was heard on June 19, the week following President Hahs’s denial of tenure to Professor Boyle. The grievance panel, consisting of two members chosen by the union and two members chosen by the administration, was charged with making a recommendation to President Hahs, and the president would then have one month to respond to that recommendation.

Among the issues raised at the hearing, according to Professor Boyle’s transcript of the proceedings, were

the incorrect and unsubstantiated nature of the Stone and Berlin accusations, the irregular process by which the student complaint was received and processed, and Dr. Shub’s decision to retain the materials in Professor Boyle’s file. When Professor Moran asked Dr. Shub why he was not convinced that the e-mail messages and the student complaint contained unverified information, the hearing transcript shows that he replied “I just wasn’t” and that the standard for determination required by the collective bargaining provision relied completely on his assessment. During the panel’s discussion of Professor Stone’s allegations of improper advising on Professor Boyle’s part, a panel member asked whether Professor Stone, acting as the TESL undergraduate adviser, might have misadvised students during the period of confusion over requirements of the minor programs. Dr. Roman-Lagunas, the acting provost, responded that while that was possible, “it was much more serious for a junior faculty member than for a senior tenured faculty member to misadvise a student.”

The grievance panel failed to come to a consensus, and panelists individually reported their recommendations. Because Professor Boyle had filed his grievance on January 30, before the administration had added the student complaint to his personnel file, not all of the recommendations specifically addressed removal of that complaint.

In supporting the removal of the Stone and Berlin e-mail messages from Professor Boyle’s file, one of the union appointees stated that there “are no data to support Dr. Berlin’s claims” and “[t]he Contract Administrator acknowledged that at the hearing.” The recommendation expressed concern that the student complaint was not handled according to established procedures and that it “was intentionally obtained to support the two e-mails so that the administration would have a defense against this grievance.” In the final paragraph of the recommendation, the panel member stated, “It was clear to me during the hearing that the administration is intent on building a case against Dr. Boyle.” The second union appointee likewise recommended that the Berlin and Stone e-mail messages be removed from the file, but, without explanation, recommended that the student complaint be retained. The recommendation characterized Professor Berlin’s claims as unsubstantiated and the Stone e-mail message as a “placeholder document” filed until supporting evidence for it could be found.

Both administrative appointees supported Dr. Shub’s decision to retain the materials in Professor

Boyle's file. One of the administrative appointees based the recommendation to retain the e-mail messages solely on the contract administrator's authority to do so. Other than observing that the grievance was "set in the context of conflictual departmental politics" that often involve "messy charges and countercharges," the recommendation offered no independent judgment about the accuracy of the materials in question. The second administrative appointee suggested that additional information might be redacted from the Berlin e-mail message and stated that the student complaint substantiated the Stone e-mail message. The recommendation closed by stating as follows: "Dr. Shub acted within the contractual rights of his job as Contract Administrator to make a determination about the documents that are kept in the personnel file. Therefore, I do not find that the University Contract Administrator violated the Collective Bargaining Agreement." According to faculty members interviewed by the investigating committee, the administrative appointee offering this opinion, Dr. Elliott Lessen, was to become acting university contract administrator two weeks following Professor Boyle's hearing.

Responding after the UPI contract deadline for her decision, President Hahs asserted that there were no violations of the collective bargaining agreement and that the remedies sought by Professor Boyle "are not under consideration." While conceding that the contract administrator was unable to verify the quantitative information in Professor Berlin's e-mail message, the president asserted, "That does not, however, mitigate the tenor of behavior of the Grievant as indicated in either e-mail."

In February 2012, soon after the union grievance process was under way, Professor Boyle submitted a complaint of unfair labor practice to the Illinois Education Labor Relations Board; the four linguistics faculty members filed a similar joint claim. Both claims charged the NEIU administration with retaliating against the linguistics faculty for their role in the no-confidence votes against President Hahs and Provost Frank. Professor Boyle amplified his individual charges in an affidavit filed on February 23, and the four linguistics professors amplified their joint charges in an affidavit filed on April 4. In both claims, the professors contended that their actions in challenging the administration's violations of shared governance policies and their participation in the votes of no confidence constituted "protected concerted activity." On June 10, the NEIU administration filed its response, denying the

professors' claims and contending that their participation in the no-confidence votes was not protected activity. The administration further contended that Professor Boyle failed to establish a prima facie case by not showing a causal relationship between his alleged protected concerted activity and the challenged actions.

In his July 5 response, Professor Boyle contended that, as the untenured member of the linguistics faculty, he was uniquely exposed to retaliation by the administration. He further asserted that the materials that provided the basis for President Hahs's denial of tenure contained factually incorrect and unsubstantiated accusations that should have been removed from his personnel file. In their July 12 response, the linguistics professors reasserted their claims that they had engaged in protected concerted activity for which the NEIU administration had retaliated against them. The NEIU administration's reply of August 3 denied the claims and sought dismissal of the charges.

On January 29, 2013, IELRB executive director Victor E. Blackwell issued his "Recommended Decision and Order" dismissing Professor Boyle's charge on the grounds that it "fail[ed] to raise an issue of law or fact sufficient to warrant a hearing." On February 18, Professor Boyle exercised his right to file exceptions to the recommended decision, and Professor Boyle's attorney filed a brief in support of those exceptions. On April 25, 2013, the IELRB notified Professor Boyle that it was sustaining its executive director's decision.

VI. Involvement of the Association

As noted earlier in this report, President Hahs and faculty leaders invited an Association leader in Illinois, Professor Kenneth Anderson, to review and offer recommendations about the state of shared governance on the campus. He submitted his report to President Hahs and faculty leaders in May 2011.

The first formal AAUP response to the denial of tenure to Professor Boyle was a July 13, 2012, letter to President Hahs from Professor Peter N. Kirstein, chair of the Illinois Committee A on Academic Freedom and Tenure and vice president of the Illinois AAUP conference. In his letter, Professor Kirstein detailed concerns about incidents and inaccuracies that appeared to have played a role in the president's decision and may have resulted in a violation of Professor Boyle's academic freedom. The president's reply, coming on July 19, stated that while much of Professor Kirstein's information was accurate, "significant information" was "missing." Professor Kirstein was also among those

who appeared before the NEIU board of trustees on February 21, 2013, to advocate again for reversal of President Hahs's decision to deny tenure to Professor Boyle, which Professor Kirstein characterized as "arbitrary and at odds with broadly recognized AAUP standards."

The national AAUP staff initially wrote to President Hahs on February 26, 2013, expressing the Association's interest in Professor Boyle's case and requesting the missing information to which she had referred in her reply to Professor Kirstein. President Hahs's reply, dated March 13, enclosed a copy of the IELRB executive director's January 29 recommended decision for dismissal of Professor Boyle's claim of unfair labor practice. The staff responded on March 4, noting that the AAUP's concerns did not focus on whether a charge of unfair labor practice was valid and again requesting the information regarding her decision to deny tenure.

Having received no response from the president, the staff wrote again on March 22. Noting that Professor Boyle was the only candidate of sixteen to have been denied tenure that year and observing that there was "nothing remotely compelling in the record that would explain [her] rejection of the entire series of highly positive recommendations," the staff suggested to the president several alternatives for resolving the matter.

With no response from President Hahs to that letter or to a reminder sent to her on April 22, the Association's acting general secretary authorized a formal investigation on April 26. President Hahs was so notified by letter of May 2. Crossing this notification was an April 30 Hahs response to the staff's March 22 and April 22 letters, stating that the concerns raised in them "are not new and warrant no substantive response beyond what NEIU has already provided."

A May 13 letter notified the president of the names of the investigating committee members and the dates of the committee's site visit. Writing again on June 10, the staff expressed regret at not hearing from her with regard to a meeting with the committee. President Hahs notified the staff by letter of June 17 that she would meet with the investigating committee, and on August 9 she submitted the names of five administrators who would also attend the meeting.

The investigating committee conducted its interviews with NEIU faculty members and administrators on August 12 and 13. Joining President Hahs in meeting with the committee were Provost Richard Helldobler; Dr. Roman-Lagunas, now vice provost;

Dr. Rutschman, associate dean of arts and sciences; Dr. Lessen, the UPI contract officer; and Melissa Reardon Henry, general counsel. Dr. Njogu, the dean of arts and sciences, was out of the country at the time of the site visit. Among the faculty members meeting with the committee were members of the linguistics program, members of the University Personnel Committee, officers of the local AAUP chapter, and other interested faculty. Faculty members in the TESL program declined to meet with the committee, as did NEIU's UPI officers, who stated that they were instead directed to refer all questions to statewide UPI president Sullivan.

VII. Issues of Concern

The investigating committee identified the following issues of primary interest.

A. President Hahs's Stated Reasons

In support of her decision to reject Professor Boyle's tenure candidacy, the president cited only two reasons: (1) Professor Boyle's failure to file a plan to improve his advising by her September 15, 2011, deadline and (2) his failure to improve to her satisfaction his "cooperation with colleagues and students."

Were the consequences of President Hahs's decision not so dire for Professor Boyle, the investigating committee might be inclined to dismiss out of hand her citing a missed deadline as a basis for denying him tenure. As the record shows, Professor Boyle followed the president's directive to formulate a plan in consultation with the dean and chair; submitted the plan, cosigned by the linguistics coordinator and dated August 22, three weeks before the deadline; and successfully completed the requirements of the plan by early November. He inadvertently erred by routing a copy of his plan to the academic advising office rather than to the academic affairs office, an error he corrected on November 1. In her letter of denial, the president chose to cite October 31 as the date by which Professor Boyle had not yet filed the plan.

President Hahs apparently based her judgment that Professor Boyle was insufficiently cooperative with colleagues and students on several e-mail messages and a single student complaint. The use of collegiality as a criterion for denying tenure is, in itself, troubling. In its 1999 statement *On Collegiality as a Criterion for Faculty Evaluation*, the Association recommends against adding a separate category of collegiality to the traditional categories of teaching, scholarship, and service in evaluations of faculty performance: "Certainly,

an absence of collegiality ought never, by itself, to constitute a basis for . . . denial of tenure.” Moreover, the investigating committee can find no evidence to support the president’s assertion that Professor Boyle was uncooperative in the performance of his duties. Professor Boyle’s e-mail messages in the exchange with an adviser in the College of Education in December 2010, which became President Hahs’s basis for citing a lack of cooperation in her letter of reappointment for 2011–12 and which she invoked as a basis for denying tenure in 2012, are, by any objective standard, informative and cordial. The complaints by Professors Berlin and Stone, faculty members embroiled in a turf war with linguistics faculty over competing minors, contain information that is either unsubstantiated or refuted by data from NEIU’s Office of Institutional Research. In the matter of the sole student complaint, the investigating committee is troubled both by its timing and by the circumstances of its filing. Although the alleged misadvising by Professor Boyle occurred in the fall term of 2011, the student did not file her complaint until some four months later, the administration handled the matter outside of the university’s ordinary process, and the student apparently wrote the complaint at the suggestion of a TESL faculty member, just as Professor Boyle’s tenure application was reaching the president’s level of review. In student evaluations of Professor Boyle’s course in which the student filing the complaint was enrolled, 100 percent of the students evaluated him as excellent in the category of “fair and respectful treatment of all students.”

In only the most perfunctory way do President Hahs’s stated reasons for denial of tenure meet Association guidelines for providing a candidate with reasons for nonreappointment as set forth in the *Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments* and in Regulation 2 of the *Recommended Institutional Regulations on Academic Freedom and Tenure*. Professor Boyle corrected the missed deadline at least seven months before the president evaluated him, and her judgment of Professor Boyle’s “lack of cooperation with colleagues and students” is neither specific nor substantiated. Every level of review of Professor Boyle’s tenure application—that of his linguistics colleagues, his chair, his dean, and the faculty’s University Personnel Committee—uniformly found him well qualified for the award of tenure. Not only did the president reverse the positive recommendations at all levels of review, but in her evaluation of Professor Boyle’s teaching/performance of primary duties, she

also stated, without elaboration, that she found him only minimally qualified for a rating two levels below that accorded him by every other reviewing body. When measured against the Association’s standard in its *Statement on Government of Colleges and Universities* that an administrative reversal of faculty judgment on faculty status should occur only “in rare instances and for compelling reasons which should be stated in detail,” the president’s justification for denying Professor Boyle tenure was glaringly insufficient.

B. President Hahs’s Unstated Reasons

In her July 2012 response to Professor Kirstein, the Illinois Committee A chair, President Hahs stated that there was “significant information” missing in Professor Kirstein’s discussion of concerns regarding her decision to deny tenure to Professor Boyle. Since the president had not responded to the AAUP national staff’s request for the “missing” information, the investigating committee asked her directly what that information might be. Her first response was that there was no unrevealed additional information. Later in the meeting, however, she suggested that there was additional information but that she was not inclined to provide it. She stated that she was comfortable with her decision and that she did not intend to discuss it further. According to the member of the University Personnel Committee who had examined Professor Boyle’s personnel file during the tenure process, the file contained no additional documents or materials upon which the president might have based her decision.

That serious disagreements had arisen between the linguistics and TESL faculties regarding curriculum and shared governance matters is abundantly clear. What is not convincingly documented by any materials made available to the investigating committee, however, is that Professor Boyle’s advocacy for his program’s minor was inappropriate, that the information he provided to students about the minor programs was inaccurate, or that his manner in carrying out his duties as undergraduate adviser was disrespectful.

C. President Hahs’s Motive

The disturbing absence of any reasonable justification for the president’s denial of tenure to Professor Boyle, the only one of the sixteen candidates she evaluated in 2012 whom she denied tenure, calls into question for the investigating committee the president’s motive for her decision. NEIU faculty interviewed by the committee saw Professor Boyle, the only untenured member of the linguistics faculty, as a convenient target for

retaliation by the president for the linguistics faculty's active opposition to the administration. There is no indication that he played a significant or public role in supporting the votes of no confidence in President Hahs and Provost Frank. By all accounts, however, his tenured linguistics colleagues did play a major role. Importantly, the linguistics faculty's assertions that shared governance policies had been violated in curricular matters served as the impetus for the faculty senate's survey regarding shared governance and academic freedom; and, under the faculty senate leadership of linguistics professor Kaplan-Weinger, that survey would lead to the votes of no confidence by both the senate and the NEIU faculty as a whole.

D. Academic Freedom

The investigating committee finds, on the basis of the information made available to it, that President Hahs's stated reasons lack credibility as grounds for denying tenure to Professor Boyle. What stands un rebutted is the opinion, broadly held by NEIU faculty members, that the president denied tenure to Professor Boyle in retaliation for the linguistics professors' expressed opposition to the administration and for their central role in the votes of no confidence in her and her provost.

The Association's guiding principles of academic freedom are widely accepted as protecting a faculty member's participation in challenges to administrative policies and actions. In the absence of a rebuttal to the allegations of retaliation against the untenured Professor Boyle for the actions of his tenured colleagues, the investigating committee finds that the president's decision to deny him tenure was in violation of principles of academic freedom. The votes of no confidence by the NEIU faculty, the extent to which the tenured linguistics professors may also have suffered retaliation, and the expressed concerns of other faculty members interviewed by the investigating committee suggest to the committee an unfavorable climate for academic freedom at NEIU.

VIII. Conclusions

1. The Northeastern Illinois University administration, in denying tenure to Assistant Professor John P. Boyle, violated principles of academic freedom as enunciated in the joint 1940 *Statement of Principles on Academic Freedom and Tenure* and derivative Association documents.
2. The administration, in failing to state credible reasons for denying tenure, did not afford

academic due process to Professor Boyle, acting in disregard of the Association's *Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments* and in blatant disregard of the requirement in the *Statement on Government of Colleges and Universities* that the reasons for rejecting an affirmative faculty recommendation be "compelling" and "stated in detail."

3. The administration, by questioning Professor Boyle's collegiality in denying him tenure, disregarded the admonitions in the statement *On Collegiality as a Criterion for Faculty Evaluation*.² ■

2. Melissa Reardon Henry, NEIU's general counsel, responded in behalf of the administration to Committee A's invitation for corrections and comments on a prepublication draft of this report. The response addressed alleged inaccuracies and misinterpretations of particular points in the text, calling these a selection out of a large multitude, and the particular comments she provided have been taken into account in preparing the final document. The response also provided general objections to the report, and samples of these objections are quoted in the paragraphs that follow. Finally, the chair of Committee A offers a few comments on the disparity between these objections and the report's findings and conclusions.

The investigating committee, the NEIU administration's response states,

proved all too ready to interpret the University's commitment to preserving the confidentiality of its personnel decisions as an admission of retaliatory or bad motives on the part of the University President or even the Board of Trustees. The University takes the strongest possible exception to the committee's highly personalized, misguided attacks against University President Sharon Hahs. The fact the President and senior administration declined to discuss specific personnel actions during the AAUP committee's visit was misconstrued and then condemned by the committee as evidence of retaliatory motive on the part of the President and Board. This accusation is wholly unwarranted; the AAUP is not a part of the University's governance structure and the University's unwillingness to reveal confidential details of a personnel matter to an AAUP committee is not tantamount to admitting misconduct. This aspect of the committee's approach, perhaps more than any other, undermines the legitimacy and validity of the draft report.

Moreover, with respect to issues of shared governance and the decision to deny tenure to Professor Boyle, the administration's response states as follows:

The Draft Report challenges President Hahs's recommendation against tenure in the particular case under consideration and the Board's acceptance of that recommendation, opining that this was inappropriate because all prior levels of review recommended the granting of tenure. But, as established in the collective bargaining agreement, the tenure-review process created with Northeastern

faculty authorization provides that decision-making responsibility for tenure decisions rests with the President and the Board. This is entirely consistent with AAUP's *Statement on Government of Colleges and Universities* that implicitly contemplates that, even if prior levels of review favor awarding tenure, tenure may still be denied by "the governing board and president." Thus, contrary to the premise advanced in the Draft Report, there is nothing inherently impermissible about the Board's and President's having rendered a decision contrary to recommendations made during prior stages of the process. It is also significant that Northeastern's process also calls for more than simple "yes/no" recommendations from each layer of review; on the contrary, each step in the process yields a written discussion of the factors weighing in favor and against a recommendation. Thus, even when a committee, chair, or dean recommends in favor of granting tenure, the written evaluation conveying an opinion may include observations or expressions of concern that run contrary to the final recommendation.

Northeastern followed this jointly-crafted shared governance process in the case under consideration in which tenure was denied. The detailed reasons for a tenure decision involve confidential personnel information, which the University does not share outside of the tenure-review process, and related labor/management processes.

With respect to the "AAUP's retaliation theory" and academic freedom, the response is as follows:

The Draft Report concludes, based in part upon the University's refusal to invite AAUP into its governance system, that the decision to deny tenure in the present case must have constituted "retaliation" in violation of academic freedom principles. There is absolutely no support for this conclusion other than the AAUP's apparent assumption that any refusal to share confidential personnel information with an AAUP committee must necessarily reflect bad motives.

And finally,

AAUP may disagree with the result that [NEIU's] shared governance system yields in a particular case, but this does not mean that the process or the result was flawed. AAUP does not perform a governance function at Northeastern. In the matter at issue, multiple levels of process and review were utilized appropriately and consistently with AAUP's published principles. As such, the University disagrees with the Draft Report and requests that the Association decline to endorse or adopt it.

* * *

Committee A chair Henry Reichman has provided the following comments on the foregoing objections:

The objections emphasize NEIU's commitment to major AAUP policy documents and its resentment about being faulted for declining to provide "confidential personnel information" to an external professional organization standing outside the NEIU governance system. The basic problem for Committee A, however, is not NEIU's refusal to provide the information to AAUP. The AAUP investigating committee's concern is instead that Professor Boyle was not afforded credible reasons, stated in detail, for the decision to deny him tenure and, as called for in the AAUP's procedural standards, opportunity

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REBECCA J. WILLIAMS (English)
University of Central Arkansas, *chair*

BETTY A. DEBERG (Philosophy and World Religions)
University of Northern Iowa

JOSEPH J. PERSKY (Economics)
University of Illinois at Chicago

Investigating Committee

Committee A on Academic Freedom and Tenure has by vote authorized publication of this report on the AAUP website and in the *Bulletin of the American Association of University Professors*.

Chair: **HENRY REICHMAN** (History), California State University, East Bay

Members: **MICHAEL BÉRUBÉ** (English), Pennsylvania State University; **DON M. ERON** (Writing and Rhetoric), University of Colorado; **MARJORIE HEINS** (Communications), New York University; **RISA L. LIEBERWITZ** (Law), Cornell University; **WALTER BENN MICHAELS** (English), University of Illinois at Chicago; **DEBRA NAILS** (Philosophy), Michigan State University; **CARY R. NELSON** (English), University of Illinois at Urbana-Champaign; **JOAN WALLACH SCOTT** (History), Institute for Advanced Study; **HANS-JOERG TIEDE** (Computer Science), Illinois Wesleyan University; **THERESA CHMARA** (Law), Arlington, VA, *ex officio*; **RUDY H. FICHTENBAUM** (Economics), Wright State University, *ex officio*; **JOAN E. BERTIN** (Public Health), Columbia University, *consultant*; **BARBARA M. JONES**, (Legal History), American Library Association, *consultant*; **IRENE T. MULVEY** (Mathematics), Fairfield University, *liaison from the Assembly of State Conferences*.

for him and his supporters to contest what they alleged to be an unstated reason that violated principles of academic freedom. Professor Boyle was not alone in failing to receive credible reasons for being denied tenure. His candidacy had commanded support from his department's colleagues and its chair, from the dean of his college, and, unanimously, from the faculty's elected University Personnel Committee without sufficient information to explain, to the investigating Committee's knowledge, why their recommendations had been rejected. The AAUP report found that the administration's not having stated credible reasons for acting against this stream of favorable recommendations was "in blatant disregard" of the requirement in the *Statement on Government*—to which the administration's response claimed full NEIU compliance—that its rejection of a positive faculty recommendation be only for "compelling" reasons that are "stated in detail."

Executive Summary

Academic Freedom and Electronic Communications

(APRIL 2014)

This report brings up to date and expands on the Association's earlier report *Academic Freedom and Electronic Communications*, adopted in 2004. It reaffirms that report's "overriding principle": "Academic freedom, free inquiry, and freedom of expression within the academic community may be limited to no greater extent in electronic format than they are in print, save for the most unusual situation where the very nature of the medium itself might warrant unusual restrictions."

The present report seeks to apply this principle to an environment in which new social media have emerged as important vehicles for electronic communication in the academy and which has been significantly altered by outsourcing, cloud computing, expanded security concerns, and new communications devices.

With respect to research, this report reaffirms the 2004 report's conclusion that "full freedom in research and in the publication of the results applies with no less force to the use of electronic media for the conduct of research and the dissemination of findings and results than it applies to the use of more traditional media." The current report develops this principle more fully in an expanded discussion of access to research materials, including a discussion of the open-access movement and of the role of college and university libraries and librarians. It affirms that "the commitment of libraries and librarians to maximizing access to information and protecting user privacy and confidentiality should not change in the face of new technologies." The report also considers the implications of efforts to protect network security for the freedom of research and the role of social media in communications about still-unpublished research.

The 2004 report noted that "the concept of 'classroom' must be broadened" to reflect how instruction increasingly occurs through a "medium that clearly has no physical boundaries" and that "the 'classroom' must indeed encompass all sites where learning occurs." This report observes that "the boundaries of the 'classroom' have only expanded in the ensuing period" and concludes that "a classroom is not simply a physical space, but any location, real or virtual, in which instruction occurs, and that in classrooms of all types the protections of academic freedom and of the faculty's rights to intellectual property in lectures, syllabi, exams, and similar materials are as applicable as they have been in the physical classroom."

The current report includes a thorough discussion of access to electronic-communications technologies, arguing forcefully that "in general no conditions or restrictions should be imposed on access to and use of electronic-communications technologies more stringent than limits that have been found acceptable for the use of traditional campus channels of communication." While recognizing that in some rare cases a college or university, for reasons of security perhaps, may need to deny faculty members access to such technologies, this report argues that "any restrictions that an institution may need to impose on access and usage must be narrowly defined and clearly and precisely stated in writing."

This report also includes an extensive discussion of outsourcing of noninstructional information technology resources, which "can provide advantages to institutions, such as lower cost and potentially better security, and help an institution focus on its core mission of education instead of on the provision of

services.” However, the report emphasizes that “outsourcing presents several identifiable risks,” and it offers eight specific recommendations for strengthening an institution’s posture on academic freedom in outsourced situations.

The 2004 report essentially assumed that electronic communications were either personal, as with e-mail messages, or public, as with websites, blogs, or faculty home pages. The growth of social media calls such a distinction into question, because social-media sites blur the distinction between private and public communications in new ways. The current report therefore includes an extensive discussion, with reference to several specific recent cases, of the implications of social media for academic freedom. It “recommends that each institution work with its faculty to develop policies governing the use of social media. Any such policy must recognize that social media can be used to make extramural utterance and thus their use is subject to Association-supported principles of academic freedom, which encompass extramural utterances.” The report also argues that in electronic media “faculty members cannot be held responsible for always indicating that they are speaking as individuals and not in the name of their institution, especially if doing so will place an undue burden on the faculty member’s ability to express views in electronic media.”

This report also includes discussions of requests made under the Freedom of Information Act (FOIA) for electronic records and of threats to academic freedom associated with defamation claims involving statements made through electronic media, such as in blogs. A section of the report is devoted to a discussion of privacy concerns, affirming that “privacy in electronic communications is an important instrument for ensuring professional autonomy and breathing space for freedom in the classroom and for the freedom to inquire.” The report develops five specific criteria for electronic-communications policies responsive to privacy concerns.

The report concludes with a declaration that “electronic communications are too important for the maintenance and protection of academic freedom to be left entirely to” institutional technology offices. “Faculty members must participate, preferably through representative institutions of shared governance, in the formulation and implementation of policies governing electronic-communications technologies.” The report offers six specific recommendations for facilitating such participation. ■

Academic Freedom and Electronic Communications

(APRIL 2014)

This report was prepared by a subcommittee of the Association's Committee A on Academic Freedom and Tenure and initially published in 1997. A revised text was approved by Committee A and adopted by the Association's Council in November 2004. A further revised and expanded text was approved by Committee A and adopted by the Council in November 2013.

In November 2004, the Association's Council adopted *Academic Freedom and Electronic Communications*, a report prepared by a subcommittee of Committee A on Academic Freedom and Tenure and approved by Committee A. That report affirmed one "overriding principle":

Academic freedom, free inquiry, and freedom of expression within the academic community may be limited to no greater extent in electronic format than they are in print, save for the most unusual situation where the very nature of the medium itself might warrant unusual restrictions—and even then only to the extent that such differences demand exceptions or variations. Such obvious differences between old and new media as the vastly greater speed of digital communication, and the far wider audiences that electronic messages may reach, would not, for example, warrant any relaxation of the rigorous precepts of academic freedom.

This fundamental principle still applies, but developments since publication of the 2004 report suggest that a fresh review of issues raised by the continuing growth and transformation of electronic-communications technologies and the evolution of law in this area is appropriate. For instance, the 2004 report focused largely on issues associated with e-mail communications and the posting of materials on web-sites, online bulletin boards, learning-management systems, blogs, and listservs. Since then, new social

media, such as Facebook, LinkedIn, Reddit, Tumblr, and Twitter, have emerged as important vehicles for electronic communication in the academy.

Already in 2004 it was clear that electronic communications could easily be forwarded to others at vastly greater speeds, with potentially profound implications for both privacy and free expression. As Robert M. O'Neil has written, "An electronic message may instantly reach readers across the country and indeed around the globe, in sharp contrast to any form of print communication. Although a digital message, once posted, can be infinitely altered over time—another significant difference—the initial message may never be retracted once it has been sent or posted. Indeed, the first posting may remain accessible on 'mirror' sites despite all efforts to suppress, remove, and expunge it."¹ Electronic communications can be altered, or presented selectively, such that they are decontextualized and take on implicit meanings different from their author's original intent. With the advent of social media such concerns about the widespread circulation and compromised integrity of communications that in print might have been essentially private have only multiplied further.

Moreover, while the 2004 report assumed that electronic communications produced by faculty members in the course of their teaching and research were

1. Robert M. O'Neil, *Academic Freedom in the Wired World* (Cambridge, MA: Harvard University Press, 2008), 179–80.

physically located on servers and computers owned and operated by their colleges and universities, today institutions increasingly employ technologies associated with cloud computing and other outsourcing strategies. These may involve relinquishing control to third-party services, storing data at multiple sites administered by several organizations, and relying on multiple services across the network—a shift that poses potentially profound challenges to academic freedom.

These changes have been magnified by the growing proliferation of new electronic-communications devices, such as smartphones and tablets. At Oakland University in Michigan, for example, the university's roughly 7,500 students now bring an average of 2.5 devices each to campus, while faculty members bring about two.² The desire of growing numbers of faculty members, staff members, and students to have access to communications and information on multiple devices, especially mobile devices, has increasingly driven institutions to create "BYOD" (bring-your-own-device) policies. By embracing individual consumer devices, an institution may better address the personal preferences of its faculty, staff, and students, offering not only increased mobility but also increased integration of their personal, work, and study lives. However, the increasing number of devices and the increasing demand for bandwidth from new applications may strain institutional resources in ways that might lead institutions to establish access restrictions that could adversely affect academic freedom.

More important, such practices can further blur boundaries between communications activities that are primarily extramural or personal and those that are related more directly to teaching and scholarship. Digital devices such as smartphones have also promoted increased interactivity between users and their devices, permitting users to create their own content but also to leave personal "footprints," which might be subject to surveillance.

As in 2004, "college and university policies that were developed for print and telephonic communications"—and policies developed for earlier modes of electronic communications—"may simply not fit (or may fit imperfectly) the new environment." *Faculty members need to understand more completely the implications for academic freedom of electronic-*

communications technologies, and they should be directly involved in the formulation and implementation of policies governing such technology usage.

I. Freedom of Research and Publication

The 2004 report affirmed: "The basic precept in the 1940 *Statement of Principles on Academic Freedom and Tenure* that 'teachers are entitled to full freedom in research and in the publication of the results' applies with no less force to the use of electronic media for the conduct of research and the dissemination of findings and results than it applies to the use of more traditional media." As that report noted, however, access to materials in digital format may be subject to greater restrictions than would be the case with print-format materials.

A. Access to Information in Digital Format

Academic freedom is dependent on a researcher's ability not only to gain access to information but also to explore ideas and knowledge without fear of surveillance or interference. Historically, scholars have gained access to published and often to unpublished research materials through college and university libraries. Electronic-communications technologies have permitted many libraries to offer access to a far broader array of materials than in the past through a wide variety of online databases. Some online catalogs, designed to replicate social media, now allow users to leave notations and reviews of cataloged materials that can be viewed around the world.

To be sure, as O'Neil has noted, "[a]lthough a university does to some degree control a scholar's recourse to print materials by its management of library collections, . . . the potential for limitation or denial of access is vastly greater when the institution maintains and therefore controls the gateway to the Internet."³ Colleges and universities certainly are entitled to restrict access to their library resources, including electronic resources, to faculty members, staff members, students, and other authorized users, such as alumni and recognized scholars from other institutions, in accordance with policies adopted by the institution with the participation of the faculty. But the extent to which access to electronic materials may be limited is not always under the control of the library or even of the institution. Third-party vendors may seek to impose restrictions on access that go beyond those claimed by the institution itself, and such restrictions

2. Carl Straumsheim, "Device Explosion," *Inside Higher Ed*, September 5, 2013, <http://www.insidehighered.com/news/2013/09/05/wireless-devices-weigh-down-campus-networks>.

3. O'Neil, *Academic Freedom in the Wired World*, 181.

are rarely defined by faculty governance structures. Those vendors may also impose auditing requirements that are in tension with librarians' obligations to respect the confidentiality of patrons.

Concerns about access were heightened in early 2013 following the tragic suicide of open-access advocate Aaron Swartz. In 2011, a federal grand jury had indicted Swartz for the theft of millions of journal articles through the JSTOR account of the Massachusetts Institute of Technology. It was thought that Swartz had wanted to make all of those articles freely available. Authorities charged him with having used an MIT guest account, even though he did not have a legal right to do so. At the time of his death, Swartz faced millions of dollars in fines and legal costs and decades in prison if convicted. He reportedly had suffered from depression, but there was speculation that his legal troubles led to his suicide.

Although JSTOR declined to pursue action against Swartz, some charged that "MIT refused to stand up for Aaron and its own community's most cherished principles."⁴ Ironically, however, it was MIT's relatively open policy of access to its network that enabled Swartz to obtain the downloaded materials. In its own subsequent investigation of the matter, MIT acknowledged that it had missed an opportunity to emerge as a leader in the national discussion on law and the Internet. But the university denied having had any active role in his prosecution.⁵

Scholars have also debated whether Swartz's action was actually a kind of theft. "The 'property' Aaron had 'stolen,' we were told, was worth 'millions of dollars,'" wrote Harvard law professor Lawrence Lessig, "with the hint, and then the suggestion, that his aim must have been to profit from his crime. But anyone who says that there is money to be made in a stash of academic articles is either an idiot or a liar."⁶

The complicated copyright and other issues raised by the open-access movement are beyond the scope of this report. While the digital world has offered great promise to make information accessible to a global community, commercial forces have locked up most research behind paywalls and ever-more-restrictive

licensing agreements. Faculty members who produce research in digital form frequently do not control how that research may be accessed and by whom. The AAUP's 1999 *Statement on Copyright* affirmed that "it has been the prevailing academic practice to treat the faculty member as the copyright owner of works that are created independently and at the faculty member's own initiative for traditional academic purposes."⁷ Any consideration of open access must start from this principle.⁸

Often college and university libraries are themselves compelled to accede to the demands of outside vendors. Libraries and librarians can, however, promote open access to information by supporting institutional repositories, hosting open-access journals, and working with faculty members to promote the value of more open modes of scholarly communication. Libraries may also collaborate with others or work independently to develop a role as publisher both for new content and through digitization of material that is in the public domain or otherwise lawfully available for digitization.⁹

When resources are provided by third-party vendors, the library may also lose control over privacy and confidentiality. When a faculty member visits the library to read a book or a journal article, this activity takes place without triggering any recordkeeping or permissions issues. In the electronic journal and e-book environment, however, records of access and permissions may be critical to resolving issues

7. AAUP, *Policy Documents and Reports*, 10th ed. (Washington, DC: AAUP, 2006), 214–16.

8. As of August 2013, more than 175 universities had endorsed open access. That month, for instance, the University of California Academic Senate adopted an open-access policy that will make research articles freely available to the public through eScholarship, California's open digital repository. The policy applies to all ten of the system's campuses with more than eight thousand tenured and tenure-track faculty members and will affect as many as forty thousand research papers a year. Faculty members can opt out or ask that their work be embargoed for a period of time, as many journal publishers require. In a departure from many other institutions' open-access policies, UC researchers will also be able to make their work available under commercial as well as noncommercial Creative Commons licenses. UC researchers get an estimated 8 percent of all US research money and produce 2 to 3 percent of peer-reviewed scholarly articles published worldwide every year. See "Open Access Gains Major Support in U. of California's Systemwide Move," *Chronicle of Higher Education*, August 5, 2013.

9. One example of such a collaboration may be found at <http://www.philosophersimprint.org/>, an open-access online resource for philosophy scholarship, the mission of which is "to overcome [the] obstacles to the free electronic dissemination of scholarship."

4. Scott Jaschik, "Reacting to Aaron Swartz's Suicide," *Inside Higher Ed*, January 14, 2013, <http://www.insidehighered.com/news/2013/01/14/academe-reacts-aaron-swartzs-suicide>.

5. Colleen Flaherty, "Could Have Done More," *Inside Higher Ed*, July 31, 2013, <http://www.insidehighered.com/news/2013/07/31/mit-releases-report-its-role-case-against-internet-activist-aaron-swartz>.

6. Lawrence Lessig, "Prosecutor As Bully," *Lessig Blog*, January 12, 2013, <http://lessig.tumblr.com/post/40347463044/prosecutor-as-bully>.

concerning licensing and copyright infringement, and the existence of such records may compromise user confidentiality. Sometimes the identity of a person reading a resource is even embedded—both electronically and in text—in the journal article. Such features may violate state laws protecting the confidentiality of library circulation records.

The commitment of libraries and librarians to maximizing access to information and protecting user privacy and confidentiality should not change in the face of new technologies. The maintenance of usage logs for licensing reasons, for diagnosing technical problems, or for monitoring computer performance may be necessary, but libraries must strive to minimize such monitoring and to compile information as much as possible only in the aggregate. So, for example, when the library identifies a user as authorized to gain access to a journal held by another entity, it should indicate that the user is affiliated with the institution without sharing that user's identity.

Nevertheless, third-party vendors may gain access to user information, especially when these vendors offer research tools such as customized portals, saved searches, or e-mail alerts on research topics. How these vendors employ such information and who can gain access to it may be beyond the library's control. Librarians thus have a responsibility to educate users about the potential risks of using third-party tools.

Faculty members can also play a role in shaping the policies of publishers and online vendors regarding access to published research and monitoring of individual users through their roles as members of editorial boards and holders of managerial positions in academic societies and with private publishers. Faculty members in these positions can work with academic libraries to collaborate on cost-effective business models that encourage broad and confidential access to publications.

College and university libraries need to review existing policies on privacy and confidentiality to ensure that they have kept pace with practices and technologies in the library.¹⁰ In addition, when negotiating contracts with vendors, librarians should require those vendors to protect user information to the same degree as if it were in the custody of a library. And, building on the success of laws in forty-eight states that protect the confidentiality of library users, as well as provisions of the Family Educational Rights and Privacy Act that

protect the privacy of educational records, colleges and universities should advocate additional legislation that would provide the same level of protection to information held by third parties on behalf of libraries and their users, whether it is library-controlled information hosted on a server in another state, cloud-hosted information, or user-supplied information in a vendor's customizable portal.

The 2004 report noted that “in many disciplines, scholars may quite legitimately share material that would be deemed ‘sexually explicit’—art, anatomy, psychology, etc. Such sharing is at least as likely to occur electronically as it has traditionally occurred in print. The difference in medium should no more affect the validity of such exchanges than it should justify a double standard elsewhere.” AAUP policy elsewhere recognizes that academic freedom includes freedom of artistic expression “in visual and performing arts.” Increasingly, artistic expression that challenges conventional tastes and norms involves digital images, even more than images on canvas and film, or dance. It is thus vital to affirm that academic freedom applies to such novel modes of artistic expression as well as to traditional media. Nonetheless, the 2004 report on electronic communications noted that there may “be legitimate institutional interests in restricting the range of persons eligible to receive and gain access to such material—especially to ensure that minors are not targeted.”

Although in 1968 the US Supreme Court recognized that material that is not legally obscene but is “harmful to minors” may be regulated, subsequent rulings have severely limited the application of this principle when it might affect access to such material by adults.¹¹ In this light, *institutional policy should make clear that faculty members in the course of their research have the right to gain access to and circulate electronically all legal materials, no matter how controversial, even if these might be considered “harmful to minors.”*

In particular, colleges and universities should refrain from employment of so-called “filtering” software that limits access to allegedly “harmful” or even “controversial” materials. It is questionable whether such filters are appropriate or effective in school and

10. For more on library privacy and confidentiality policies, see <http://www.ala.org/offices/oif/statementspols/otherpolicies/rfidguidelines>.

11. *Ginsberg v. New York*, 390 US 629 (1968). In 1997, the Court struck down the Communications Decency Act, and in 2009, it declined to review a decision by the US Court of Appeals for the Third Circuit striking down the Children's Online Protection Act. *Reno v. American Civil Liberties Union*, 521 US 844 (1997) and *ACLU v. Mukasey*, 534 F.3d 181 (3rd Cir. 2008), cert. denied, 555 US 1137 (2009).

public libraries, but they surely have no place in higher education facilities. Filters are especially insidious because users often cannot know whether they have been denied access to a site or resource.

B. Security versus Access

In recent years many university information-technology (IT) systems have come under sustained cyberattack, often from overseas. While these attacks have sometimes resulted in the theft of personal information, such as employee social security numbers, they also target faculty research materials, including patentable research, some with vast potential value, in areas as disparate as prescription drugs, computer chips, fuel cells, aircraft, and medical devices. Institutions' infrastructure more generally has also been under threat. Some universities have experienced as many as one hundred thousand hacking attempts each day.¹²

The increased threat of hacking has forced many universities to rethink the basic structure of their computer networks. "A university environment is very different from a corporation or a government agency, because of the kind of openness and free flow of information you're trying to promote," said David J. Shaw, the chief information security officer at Purdue University. "The researchers want to collaborate with others, inside and outside the university, and to share their discoveries."¹³

While many corporate sites restrict resources to employees, university systems tend to be more open, and properly so. The most sensitive data can be housed in the equivalent of small vaults that are less accessible and harder to navigate, use sophisticated data encryption, and sometimes are not even connected to the larger campus network, particularly when the work involves dangerous pathogens or research that could turn into weapons systems.

Some universities no longer allow their professors to take laptops owned or leased by the university to certain countries. In some countries the minute one connects to a network, all data will be copied, or a program or virus will be planted on the computer in hopes that it will be transferred to a home network. Many institutions have become stricter about urging faculty members to follow federal rules that prohibit

taking some kinds of sensitive data out of the country or have imposed their own tighter restrictions. Still others require that employees returning from abroad have their computers scrubbed by professionals before they may regain access to university servers.

These are genuine concerns, and universities are well advised to devote resources to protecting their electronic-communications networks. However, every effort should also be made to balance the need for security with the fundamental principles of open scholarly communication.

C. Scholarly Communication and Social Media

The advent of social media has raised some new questions about how scholars communicate about their research. For example, professors who present papers at scholarly conferences often use those occasions to try out new ideas and stimulate discussion. While they may be willing, even eager, to share unpolished or preliminary ideas with a closed group of peers, they may be less happy to have those in attendance broadcast these ideas through social media. Conference papers are often clearly labeled as "not for circulation." At some meetings, however, attendees at sessions have communicated to others electronically—and often instantaneously—through social media, e-mail, or blogs, reports and comments on papers and statements made by other conference presenters and attendees.¹⁴

Many academic conferences and some individual sessions have associated Twitter hash tags—at times suggested by the conference organizers. As a result, ideas and information that previously would have been controlled by the presenter and limited to a relatively small audience may quickly become accessible globally. Some have worried that reports on social media of conference proceedings might increase the likelihood that others could appropriate a presenter's new and original ideas before that individual has had an opportunity to develop them. While the concern may be speculative and the risk exaggerated, it is clear that new forms of social media and electronic-communications technologies can make research in progress both more accessible and more vulnerable to intellectual property theft. In effect, anyone with an Internet connection can function as a reporter publishing accounts of others' work.

12. Richard Pérez-Peña, "Universities Face a Rising Barrage of Cyberattacks," *New York Times*, July 16, 2013, <http://www.nytimes.com/2013/07/17/education/barrage-of-cyberattacks-challenges-campus-culture.html>.

13. *Ibid.*

14. Steve Kolowich, "The Academic Twitterazzi," *Inside Higher Ed*, October 2, 2012, <http://www.insidehighered.com/news/2012/10/02/scholars-debate-etiquette-live-tweeting-academic-conferences>.

“The debate over live tweeting at conferences is, in many ways, about control and access: who controls conference space, presentation content, or access to knowledge?” wrote one doctoral student. A professor responded with objections to sharing “other people’s work without asking.” For some the debate is generational. “I see this as a divide between older and newer forms of academic culture,” wrote one younger scholar. “On the traditional model, you don’t put an idea out there until it’s fully formed and perfect.”¹⁵

Of course, scholars have always debated each other’s ideas and will continue to do so. However, *faculty members who use social media to discuss research should keep in mind the intellectual property rights of their colleagues as well as their own academic freedom to comment on and debate new ideas.*

II. Freedom of Teaching

According to the 1940 *Statement of Principles*, “teachers are entitled to freedom in the classroom in discussing their subject.” But what constitutes a classroom? The 2004 report noted that “the concept of ‘classroom’ must be broadened” to reflect how instruction increasingly occurs through a “medium that clearly has no physical boundaries” and that “the ‘classroom’ must indeed encompass all sites where learning occurs.”

If anything, the boundaries of the “classroom” have only expanded in the ensuing period. It is now more common than not for even the most traditional face-to-face classes to include material offered through online learning-management systems. And the rapid development and perhaps overhyped promise of totally online education, including the explosive growth of Massive Open Online Courses (MOOCs) frequently offered by for-profit private corporations, suggest that academic freedom in the online classroom is no less critical than it is in the traditional classroom.

This report is not the place to discuss all the myriad issues of academic freedom, shared governance, intellectual property, and institutional finances raised by the spread of online education. It is critical, however, to reiterate that *a classroom is not simply a physical space, but any location, real or virtual, in which instruction occurs and that in classrooms of all types the protections of academic freedom and of the faculty’s rights to intellectual property in lectures, syllabi, exams, and similar materials are as applicable as they have been in the physical classroom.*

In August 2013, the administration reassigned the teaching duties of a tenured professor in Michigan after a student anonymously videotaped part of a ninety-minute lecture, a heavily edited two-minute version of which—described by some as an “anti-Republican rant”—was then aired on a conservative Internet site, on Fox News, and on YouTube, where it was viewed more than 150,000 times. In October 2013, a Wisconsin geography professor sent her students an e-mail message explaining that they could not gain access to census data to complete a required assignment because the “Republican/Tea Party-controlled House of Representatives” had shut down the government, thus closing the Census Bureau’s website. After a student posted the message on Twitter, it appeared in a local newspaper and in national conservative media, resulting in numerous complaints to the university, which sent an e-mail message to the campus distancing the institution from the comment.¹⁶

These and similar incidents demonstrate that electronic media can expand the boundaries of the classroom in new and dramatic ways. And while classroom lectures, syllabi, and even an instructor’s e-mail messages to students should be considered the intellectual property of the instructor, much of what teachers distribute to students in the classroom or write in e-mail messages may legally be redistributed by students for noncommercial uses under the “fair-use” principle. Moreover, copyright does not cover expression that is not reduced to “tangible” form, including extemporaneous utterances such as those of the Michigan professor, as it might a formal lecture, a PowerPoint presentation, or written material like a syllabus.

Surreptitious recording of classroom speech and activity may exert a chilling effect on the academic freedom of both professors and students.¹⁷ Faculty

16. Colleen Flaherty, “Not-So-Great Expectations,” *Inside Higher Ed*, October 18, 2013, <http://www.insidehighered.com/news/2013/10/18/professors-afforded-few-guarantees-privacy-internet-age>.

17. The AAUP has been concerned with this issue since its 1915 *Declaration of Principles on Academic Freedom and Academic Tenure*, which stated: “Discussions in the classroom ought not to be supposed to be utterances for the public at large. They are often designed to provoke opposition or arouse debate.” In the 1980s, a group called Accuracy in Academia encouraged students to record professors’ classroom statements and send them to the organization to be tested for “accuracy.” According to a 1985 statement the AAUP issued jointly with twelve other higher education associations, “The classroom is a place of learning where the professor serves as intellectual guide, and all are

15. *Ibid.*

members also should be aware that electronic communications with students can easily be recirculated without the permission of either party.

It should be further noted that new teaching technologies and learning-management systems also allow faculty members and students to be monitored in new ways. Online teaching platforms and learning-management systems may permit faculty members to learn whether students in a class did their work and how long they spent on certain assignments. Conversely, however, a college or university administration could use these systems to determine whether faculty members were logging into the service “enough,” spending “adequate” time on certain activities, and the like. Such monitoring should not be permitted without the explicit and voluntary permission of the instructor involved.

Some thorny issues also surround the proliferating use of plagiarism-detection software, such as Turnitin. The benefits (and limitations) of such services are often obvious, but many faculty members are unaware that these services keep databases of student papers, and although these papers apparently are not sold individually, the entire database can be and has been sold to third parties. This practice may raise copyright concerns beyond the scope of this report, but as one 2011 study concluded, it also raises “ethical issues because it denies students notice, access, and choice about the treatment of their personal information.” That study proposed a “code of ethics” concerning the use of such services that faculty members may find helpful.¹⁸

While learning-management systems make it possible for faculty members to keep electronic teaching materials separate from scholarly, political, or personal materials often found on faculty websites, many instructors still frequently post course materials on websites alongside other content, some of which may be controversial. Students who encounter material they find disturbing while they are browsing through a faculty member’s website in search of course materials

may complain to the administration or even to the courts. While all legal material on faculty websites should enjoy the protections of academic freedom, instructors should exercise care when posting material for courses on sites that also include potentially controversial noninstructional materials.

III. Access to Electronic-Communications Technologies

Colleges and universities commonly adopt formal electronic-communications policies, which define access to the institution’s electronic-communications network and, through that network, to the Internet. Such policies generally try to balance the need, on the one hand, to protect the university’s electronic resources from outside hacking and to safeguard confidential personal and research information and, on the other hand, to provide free access to authorized users. *Although security and liability concerns may result in legitimate constraints being placed on usage, in general no conditions or restrictions should be imposed on access to and use of electronic-communications technologies more stringent than limits that have been found acceptable for the use of traditional campus channels of communication.*

An institution may, for example, acceptably require each faculty user to obtain and enter a password or to change that password periodically. The university also has an interest in protecting its faculty, staff, and students from spam and in limiting how much bandwidth an individual may use to ensure that computing resources are not overburdened or squandered. However, wholesale bans on streaming video may constitute a violation of academic freedom. Some institutions have imposed limitations on access to streaming video and audio in student dormitories, both to prevent illegal downloading of copyrighted material and to avoid overburdening the network. But such efforts should not be extended to faculty members, who may need access to such sites and materials for their teaching or research. Moreover, restrictions that deny use for “personal matters” or limit usage to “official university business” can reduce productivity and are both unnecessary and problematic, as many private businesses have learned.

In an often well-intentioned effort to reduce spam and prevent the monopolization of bandwidth, some university IT offices have proposed policies under which users of institutional electronic-communications resources must seek advance permission to send messages to large groups of recipients. But even if such

encouraged to seek and express the truth as they see it. The presence in the classroom of monitors for an outside organization will have a chilling effect on the academic freedom of both students and faculty members. Students may be discouraged from testing their ideas, and professors may hesitate before presenting new or possibly controversial theories that would stimulate robust intellectual discussion.”

18. Bastiaan Vanacker, “Returning Students’ Right to Access, Choice, and Notice: A Proposed Code of Ethics for Instructors Using Turnitin,” *Ethics and Information Technology* 13 (2011): 327–38.

measures address the problems of spam and limited bandwidth—and it is questionable whether they do—they only create a much larger and more ominous academic freedom problem because they amount to de facto prior censorship. Similarly, provisions that have been proposed in some instances to bar communications that purportedly “interfere with the mission of the university” or that violate university policies amount to unwarranted censorship of free expression.

Some states have also barred public employees, including faculty members at public colleges and universities, from employing university electronic-communications resources—for example, a university e-mail account—for political campaigning. In such states, public colleges and universities must clearly define what constitutes such activity. While a public employee may reasonably be barred, for instance, from using a university website to run for public office or raise funds for a campaign, policies that discourage or prohibit, either explicitly or through imprecise or ill-defined language, faculty members, staff members, and students from expressing political preferences clearly violate fundamental principles of academic freedom and free expression.

Electronic resources should also be made available equally to all employees, including faculty members, for the purposes of union or other organizing activity. While the National Labor Relations Board has ruled that private employers may bar employees from using employer-owned e-mail accounts for non-work-related communications, if they do permit such activity they may not discriminate against union-related e-mail use nor can they bar the use of social media for discussion of working conditions.¹⁹ Similarly, senate officers and other faculty representatives engaged in institutional governance activities should have free and unfettered access to university-controlled lists of faculty members they represent, and all faculty members should be able to comment electronically on governance issues without restriction or fear of disciplinary action.

In one 2014 incident, a faculty member in Colorado sent an e-mail message protesting proposed layoffs of faculty at his institution that offered a comparison with the 1914 Ludlow Massacre of striking Colorado miners. The university swiftly terminated the professor’s access to the institution’s e-mail system, charging that the message in question amounted to

a violent threat. Although the administration later restored access, the faculty member’s ability to distribute messages on listservs remained severely restricted. While institutions clearly have an obligation to protect members of the community from genuine threats of violence, overbroad interpretations of messages as constituting such threats, as was surely the case in this instance, can violate academic freedom, especially if the accused is denied the protections of academic due process before any adverse action has been taken.²⁰

The AAUP has upheld the right of faculty members to speak freely about internal college or university affairs as a fundamental principle of academic freedom that applies as much to electronic communications as it does to written and oral ones. This includes the right of faculty members to communicate with one another about their conditions of employment and to organize on their own behalf.

Frequently university policies attempt to delineate user “rights” and “responsibilities,” but too often the emphasis of those policies is mainly on the latter. Administrations at some institutions appear to view computer and Internet access as a lower-order faculty perquisite that may be summarily terminated. Such views need to be rejected unequivocally. Access to campus computing facilities, and through them to the Internet, represents a vital component of faculty status for most scholars and teachers, especially as cost-cutting measures have caused libraries to rely more heavily on electronic instead of print journals. While it would be naive to suggest that circumstances might never warrant withdrawal or suspension of digital access, such access may be denied or limited only for the most serious of reasons (for example, creating and unleashing a destructive virus) and only after the filing of formal charges and compliance with rigorous disciplinary procedures that guarantee the protections of academic due process to the accused individual, even where the transgression may not be so grave as to warrant dismissal or suspension.

A university’s policies must specify the infractions that might warrant such a sanction, recognizing only conduct that jeopardizes the system and the access of others. The policy should also prescribe the procedures to be followed in such a case. In exigent circumstances, a faculty member’s computer access

19. The Guard Publishing Company, *d/b/a The Register Guard*, 351 NLRB 1110 (2007), supplemental decision, 357 NLRB No. 27 (2011); *Hispanics United of Buffalo, Inc.*, 359 NLRB No. 37 (2012).

20. See <http://aaupcolorado.org/2014/01/20/colorado-conference-responds-to-csu-pueblo-president-lesley-di-mare-regarding-the-censure-of-professor-tim-mcgettigan/> for more information about the Colorado incident.

might be summarily and briefly suspended during an investigation of serious charges of abuse or misuse. Any such suspension should, however, be no longer than necessary to conduct the investigation and should be subject to prior internal faculty review.²¹

Indeed, *any restrictions that an institution may need to impose on access and usage must be narrowly defined and clearly and precisely stated in writing.* In addition, institutions should include in their electronic-communications policy a statement similar to that found in the University of California policy: “In general, the University cannot and does not wish to be the arbiter of the contents of electronic communications. Neither can the University always protect users from receiving electronic messages they might find offensive.”²²

IV. Outsourcing of Information Technology Resources

Many campuses have considered outsourcing the provision of noninstructional IT resources, such as e-mail servers and document storage. Outsourcing to a technology company can provide advantages to institutions, including lower cost and potentially better security, and help an institution focus on its core mission of education instead of on the provision of services.²³ Prior to the cloud outsourcing model, institutions operated in-house technical resources, and the information generated by their use remained within the confines of the institution. In many cloud models, however, it is assumed, sometimes without explicitly stating so, that the outside service provider can analyze how these resources are used for the provider’s own benefit. Thus cloud services proceed from a fundamentally different set of assumptions from those that govern the same services that are provided in-house at institutions.

Electronic communications are vulnerable to a variety of threats. They may contain private or confidential information concerning the development of new drugs, classified research, export-controlled research, and advice to clients visiting institutionally operated legal

clinics. They may be targets of government surveillance. Institutions also have special duties, including legal and ethical obligations, among others, to protect information about students.

Outsourcing presents several identifiable risks. Outsource providers may be motivated to offer services that they can develop and serve “at scale” and that do not require special protocols. These services may have been designed for businesses, and thus employees and the services themselves may not be tailored to the special context of higher education. In effect, outsourcing may undermine governance, as the provider may effectively set and change policy without consulting campus IT leadership or the faculty.²⁴

Several approaches can strengthen an institution’s posture on and commitment to academic freedom even in outsourced situations:

1. Institutions should formally involve the faculty in decisions to outsource core electronic-communications technologies.
2. The selection of an outsource provider must take into consideration other factors besides price, including institutional needs, legal and ethical obligations, and the norms and mission of the institution.
3. IT leadership should carefully evaluate the outsource provider’s ability to gain access to content and traffic data. It is important to note that even if a provider promises not to circulate usage data to advertisers, that promise does not foreclose the analysis of electronic-communications data for other purposes, including commercial ones.
4. Faculty members should encourage campus IT leadership to collaborate with other institutions in jointly identifying problems and mitigating risks.
5. IT leadership should carefully evaluate the outside provider’s uses, processing, and analysis of user content and transactional data. All uses of data should be reviewed by the institution and specifically authorized.
6. IT leadership should follow policy decisions and changes of outsource providers and notify faculty members when these decisions implicate governance issues.

21. AAUP-recommended procedures for the imposition of sanctions, whether minor or severe, may be found in Regulation 7 of the *Recommended Institutional Regulations on Academic Freedom and Tenure*. See <http://aaup.org/report/recommended-institutional-regulations-academic-freedom-and-tenure>.

22. University of California Electronic Communications Policy, <http://policy.ucop.edu/doc/7000470/ElectronicCommunications>.

23. Outsourcing of instruction through online education offered by outside providers, however, is a quite different matter.

24. The abbreviation IT is used here and subsequently in reference to those university offices and functions variously called “information technology,” “instructional technology,” or “institutional technology.”

7. IT leadership should consider technical approaches to reduce “vendor lock-in” and, where possible, to mask content and traffic data from these providers.
8. Contracts with outside vendors of electronic-communications services should explicitly reflect and be consistent with both internal institutional policies regarding such communications and applicable federal and state laws.

V. Unwarranted Inference of Speaking For or Representing the Institution

The 1940 *Statement of Principles* cautions that faculty members “should make every effort to indicate that they are not speaking for the institution” when in fact they are not doing so. The meaning of that constraint is clear enough in the print world. One may refer to one’s faculty position and institution “for identification purposes only” in ways that create no tenable inference of institutional attribution. In the digital world, however, avoiding an inappropriate or unwarranted inference may be more difficult.

The very nature of the Internet causes attribution to be decontextualized. A statement made by a faculty member on a website or through e-mail or social media may be recirculated broadly, and any disclaimer that the institution bears no responsibility for the statement may be lost. What about statements made on Twitter, which limits communications to a mere 140 characters? It is hardly reasonable to expect a faculty member to indicate on every tweet that she or he is not speaking for the institution. And Facebook pages are part of a fixed template that does not allow for a banner disclaimer in a readily visible spot on an individual’s main page.

In late 2012, a Florida professor posted on his blog a controversial statement expressing skepticism about official accounts concerning the murder of students at Sandy Hook Elementary School in Connecticut that year. The blog included this statement: “All items published herein represent the views of [the professor] and are not representative of or condoned by [the university].” Yet the administration claimed that even by mentioning his affiliation the professor had failed to distinguish adequately his personal views from those of the university and thereby damaged the institution. As a result, he was issued a formal reprimand.²⁵

25. Scott Jaschik, “Reprimand for a Blog,” *Inside Higher Ed*, April 12, 2013, <http://www.insidehighered.com/news/2013/04/12/florida-atlantic-reprimands-professor-over-his-blog>.

In a letter to the university president, the AAUP staff wrote that the professor “may indeed have posted highly controversial statements on his website; but it is such speech, in particular, that requires the protection of academic freedom. . . . In our time, when the Internet has become an increasingly important vehicle for free intellectual and political discourse around the world, the [university] administration’s action, if allowed to stand, sets a precedent that potentially chills the spirited exchange of ideas—however unpopular, offensive, or controversial—that the academic community has a special responsibility to protect.”

Institutions may reasonably take steps to avoid inferences of institutional attribution or agreement in ways that print communications might not warrant. Disclaimers may be useful, though their value is often exaggerated. However, the nature of electronic communication itself tends to decontextualize meaning and attribution, and *faculty members cannot be held responsible for always indicating that they are speaking as individuals and not in the name of their institution, especially if doing so will place an undue burden on the faculty member’s ability to express views in electronic media.*

VI. Social Media

The 2004 report essentially assumed that electronic communications were either personal (if not wholly private), as with e-mail messages, or public (or open access), as with websites, blogs, or faculty home pages. The growth of social media calls such a distinction into question.

Faculty use of social media is increasing. In one survey of eight thousand faculty members, 70 percent of all those responding reported having visited a social-media site within the previous month for personal use, a rate that rose to 84 percent when those who use social-media sites less frequently than monthly are added. Of greater relevance to the concerns of this report, more than 55 percent said they had made professional use of social media outside the classes they teach on at least a monthly basis, and 41 percent reported having used social media in their teaching.²⁶

Social-media sites blur the distinction between private and public communications in new ways. Unlike

26. The survey was conducted by the Babson Survey Research Group on behalf of Pearson Learning Solutions. See Jeff Seaman and Hester Tinti-Kane, *Social Media for Teaching and Learning* (Boston: Pearson Learning Solutions, 2013), <http://www.pearsonlearningsolutions.com/higher-education/social-media-survey.php>.

blogs or websites, which are generally accessible to anyone with Internet access who goes in search of the site, social-media sites offer the appearance of a space that is simultaneously private and public, one that is on a public medium (the Internet) and yet defined by the user through invitation-only entry points, such as Facebook “friend” requests, and a range of user-controlled privacy settings.

The extent of the privacy of such sites, however, is at the least uncertain and limited, because it is dependent not only on the individual’s privacy-setting choices and those of the members in the individual’s network but also on the service provider’s practices of analyzing data posted on the network. Moreover, social-media providers often modify their policies on privacy and access in ways that their users do not always fully comprehend. Faculty members may believe that their Facebook pages are more secure or private than a personal web page, but that is not necessarily true. The seemingly private nature of sites like Facebook, Flickr, or Pinterest can lead individuals to let their guard down more readily, because they may think they are communicating only to handpicked friends and family members, when in fact those friends and family members may be sharing their utterances with other unintended recipients without the individual’s knowledge.²⁷ These sites are not closed portals, despite what their account controls may suggest. Likewise, an acquaintance may post private information about a faculty member’s personal life without that faculty member’s knowledge (or vice versa), and the viral nature of social-media sites may then make that comment more public than the original poster intended.

There is evidence that such concerns are not unwarranted. One prominent example was the 2010 case of a Pennsylvania professor who was suspended from her faculty position and escorted off campus by police after a student reported to the administration one of her Facebook status updates (“Had a good day today. Didn’t want to kill even one student.”). The professor alleged that she did not know that anyone other than her personal Facebook network could gain access to her status updates.

In another example, also from 2010, the administration at a Catholic theological seminary summarily dismissed an assistant professor of church history and languages who was also the library director, reportedly because of a comment he had posted on a former

student’s Facebook page a month earlier, predicting that “one day the Catholic Church will . . . approve of openly gay priests.” In June 2013, an evolutionary psychology professor sparked an uproar after he told his Twitter followers that overweight students are not cut out for PhD programs. The professor quickly deleted the tweet, but he faced considerable criticism, especially after he tried to justify his comment by claiming it was part of a research project. The administration disciplined him for what he had written.²⁸

In September 2013, the administration of Johns Hopkins University asked a professor, a prominent authority on Internet security and privacy issues, to remove a blog post, claiming that the post contained a link to classified information and used the logo of the National Security Agency (NSA) without authorization. The post was about NSA privacy debates and encryption engineering. The university has a number of ties with the NSA. The administration withdrew the request after the professor discussed it on Twitter and in the media.²⁹

At the University of Kansas, also in September 2013, a journalism professor, responding to a shooting incident at the Washington Navy Yard in Washington, DC, tweeted a comment about gun control that many gun advocates found offensive. He was barraged with hate messages and death threats, and several legislators called for his dismissal. Although the university publicly reaffirmed its commitment to his freedom of speech, he was suspended to “avoid disruption.” However, a suspension designed to protect a faculty member from potentially violent responses to a controversial statement can quite easily become a punishment for the content of the statement, which in this instance was clearly protected by both the First Amendment and principles of academic freedom.³⁰

Many faculty members have decided that they will simply not join Facebook or similar sites. Others have decided that it would be improper ever to connect

27. Social-media communications may also be used by the social-media site itself for data-mining purposes.

28. Lauren Ingeno, “#Penalty,” *Inside Higher Ed*, August 7, 2013, <http://www.insidehighered.com/news/2013/08/07/fat-shaming-professor-faces-censure-university>.

29. “Hopkins (Briefly) Asks Professor to Remove Blog Post,” *Inside Higher Ed*, September 10, 2013, <http://www.insidehighered.com/quicktakes/2013/09/10/hopkins-briefly-asks-professor-remove-blog-post>.

30. Scott Rothschild and Ben Unglesbee, “Professor Getting Death Threats over NRA Tweet, Colleagues Support His Free-Speech Rights,” *Lawrence Journal-World*, September 23, 2013, <http://www2.ljworld.com/news/2013/sep/23/firestorm-over-guths-comment-continues-university/>.

with a student on a social network. Most colleges and universities have yet to formulate policies regarding social-media usage by faculty members. At institutions where such policies exist, the focus is frequently on the university's reputation and not on the faculty's academic freedom. So, for instance, the University of South Carolina Upstate's "Social Media Policy and Procedure Guidelines" includes the following: "The purpose of the Social Media Policy is to ensure accuracy, consistency, integrity, and protection of the identity and image of the University of South Carolina Upstate by providing a set of required standards for social-media content from any department, school, facility, organization, entity, or affiliate."³¹ It is unclear whether or to what extent this policy applies to individual faculty members.

The incident cited above at Kansas prompted the Kansas Board of Regents in December 2013 to adopt new rules under which faculty members and other employees may be suspended or dismissed for "improper use of social media." The new policy defined social media as "any facility for online publication and commentary" and covered but was "not limited to blogs, wikis, and social networking sites such as Facebook, LinkedIn, Twitter, Flickr, and YouTube." This definition could arguably include any message that appears electronically, including e-mail messages and online periodicals and books. The policy defined "improper use of social media" in extremely broad terms, including communications made "pursuant to . . . official duties" that are "contrary to the best interest of the university," as well as communication that "impairs discipline by superiors or harmony among co-workers, has a detrimental impact on close working relationships for which personal loyalty and confidence are necessary, impedes the performance of the speaker's official duties, interferes with the regular operation of the university, or otherwise adversely affects the university's ability to efficiently provide services."³²

The AAUP quickly condemned the policy as "a gross violation of the fundamental principles of academic freedom that have been a cornerstone of American higher education for nearly a century. Not

only faculty members, but students and members of the general public benefit from the free exchange of information and ideas that are at the heart of the academic enterprise, whether conducted orally, in print, or electronically."³³ In the face of widespread criticism, the board of regents agreed to work with campus leaders to revise the policy, but it was not withdrawn.

*This report recommends that each institution work with its faculty to develop policies governing the use of social media. Any such policy must recognize that social media can be used to make extramural utterances and thus their use is subject to Association-supported principles of academic freedom, which encompass extramural utterances. As Committee A previously noted regarding extramural utterances, "Professors should also have the freedom to address the larger community with regard to any matter of social, political, economic, or other interest, without institutional discipline or restraint, save in response to fundamental violations of professional ethics or statements that suggest disciplinary incompetence."*³⁴

Obviously, the literal distinction between "extramural" and "intramural" speech—speech outside or inside the university's walls—has little meaning in the world of cyberspace. But the fundamental meaning of extramural speech, as a shorthand for speech in the public sphere and not in one's area of academic expertise, fully applies in the realm of electronic communications, including social media.

VII. FOIA and Electronic Communications

In several recent instances, outside groups or governmental agencies have sought to obtain records of faculty members' electronic communications. In 2011, Virginia's attorney general Kenneth Cuccinelli demanded that the University of Virginia turn over all e-mail messages and other communications related to and produced by former professor Michael Mann, a prominent scientist of climate change, on the grounds that these were public records. The university successfully resisted the request, characterizing the investigation as "an unprecedented and improper governmental intrusion into ongoing scientific research," and charged Cuccinelli with targeting Mann because the attorney general "disagrees with his academic research regarding

31. University of South Carolina Upstate, "Social Media Policy and Procedure Guidelines," <https://www.uscupstate.edu/uploadedFiles/Offices/Communications/social/Social%20Media%20Policy%20Approved.pdf>.

32. Kansas Board of Regents, "Policy Chapter II C Suspensions," http://www.kansasregents.org/policy_chapter_ii_c_suspensions.

33. AAUP, "AAUP Statement on the Kansas Board of Regents Social Media Policy," <http://www.aaup.org/file/KansasStatement.pdf>.

34. "Protecting an Independent Faculty Voice: Academic Freedom after *Garcetti v. Ceballos*," *Academe*, November–December 2009, 88.

climate change.”³⁵ But no sooner had this effort been thwarted, than a private group, the American Tradition Institute (ATI), filed a FOIA request that mirrored the attorney general’s subpoena.

The AAUP and the Union of Concerned Scientists (UCS) filed a joint amicus brief in support of UVA and Professor Mann, urging that “in evaluating disclosure under FOIA, the public’s right to know must be balanced against the significant risk of chilling academic freedom that FOIA requests may pose.” ATI’s request, the brief stated, “strikes at the heart of academic freedom and debate.” ATI justified its broad intrusion by claiming that its purpose in seeking the records was to “open to public inspection the workings of a government employee, including the methods and means used to prepare scientific papers and reports that have been strongly criticized for technical errors.” The AAUP-UCS brief argued, however, that “in the FOIA context, the public’s right to information is not absolute and courts can and do employ a balancing test to weigh the interest of the public’s right to know against the equally important interests of academic freedom.”³⁶

Freedom of information laws are generally beneficial: they enhance public knowledge and debate on the workings of government agencies, including public universities. But as the AAUP-UCS amicus brief pointed out, in some situations a balance must be struck between competing interests. Likewise, the Supreme Court recognized as early as 1957 that politically motivated investigations of universities and scholars can have a chilling effect on academic freedom.³⁷ Allowing fleeting, often casual e-mail exchanges among scholars to be opened to inspection by groups bent on political attack implicates both privacy and academic freedom concerns. As Committee A previously noted in its report *Access to University Records*, “The presumption of confidentiality is strongest with respect to individual privacy rights; the personal notes and files of teachers and scholars; and proposed and ongoing research, where the dangers of external pressures and publicity can be fatal to the necessary climate of academic freedom.”³⁸

35. For a summary of key events in the Mann case, see <http://www.aaup.org/our-programs/legal-program/legal-roundup-2012#iii>.

36. *Ibid.*

37. *Sweezy v. New Hampshire*, 354 US 234, 250 (1957). (“The essentiality of freedom in the community of American universities is almost self-evident. . . . Scholarship cannot flourish in an atmosphere of suspicion and distrust.”)

38. *Academe*, January–February 1997, 47.

For example, in 2011, the Republican Party of Wisconsin filed a FOIA request with the University of Wisconsin, demanding that the university release e-mail messages from Professor William Cronon, then president of the American Historical Association, who had criticized the Republican governor’s “assault on collective bargaining rights.” The administration agreed to release some of Professor Cronon’s e-mail messages, excluding “private e-mail exchanges among scholars that fall within the orbit of academic freedom and all that is entailed by it.” The administration also excluded messages that contained student information and those “that could be considered personal pursuant to Wisconsin Supreme Court case law.”

The University of Wisconsin’s then-chancellor Carolyn Martin wrote:

When faculty members use e-mail or any other medium to develop and share their thoughts with one another, they must be able to assume a right to the privacy of those exchanges, barring violations of state law or university policy. Having every exchange of ideas subject to public exposure puts academic freedom in peril and threatens the processes by which knowledge is created. The consequence for our state will be the loss of the most talented and creative faculty who will choose to leave for universities where collegial exchange and the development of ideas can be undertaken without fear of premature exposure or reprisal for unpopular positions.

Unfortunately, this position has not always been endorsed by other authorities. In June 2012, *The American Independent News Network* sought documents relating to a study by Professor Mark Regnerus of the University of Texas at Austin. The university asserted that the documents were exempt from disclosure under a section of the Texas Education Code, which covers “technological and scientific information” developed by an institution that can be sold, traded, or licensed for a fee. Moreover, it asserted that the records contained information about third parties. The state attorney general’s office rejected these claims, however, and in February 2013 the university released the requested records. By April 2013, *The American Independent* was reporting on material that Regnerus had received. A Florida court then ruled that the University of Central Florida also must share the e-mail messages of Professor James Wright, editor of the journal that published Regnerus’s study. The

court rejected the university's claims that the e-mail communications are not university records.³⁹

It is apparent, then, that faculty members at public universities in Texas, Florida, and other states without scholarly exemption from public-records laws should be aware that titles of books they request from the library, peer-review comments they offer and solicit, and tentative ideas they share with colleagues may be matters for public scrutiny under state FOIA laws.⁴⁰

In this light, faculty members should be advised to segregate, as much as possible, personal from professional correspondence and also segregate correspondence that concerns university business from other professional correspondence, such as work for scholarly publications and organizations. Moreover, given the uncertainty surrounding state FOIA laws, faculty members at public colleges and universities should consider the possibility that every e-mail message they send and receive might become public. Lastly, when such requests are made, faculty members should immediately seek the advice and support of their union (if one exists at their institution) or of legal counsel.

VIII. Defamation

Faculty blog posts, although public and open to all, may be targets of libel actions. In 2013, in separate incidents, two university librarians were sued by the Edwin Mellen Press and its founder, who claimed that negative comments about the press the librarians had posted on the Internet constituted libel. In the first case, Mellen sued an associate librarian at McMaster University in Ontario over a post he had written in 2010, when he was a member of the library faculty at Kansas State University, that described Mellen as a "vanity press" with "few, if any, noted scholars serving as series editors," benefiting largely from librarians not returning books sent for approval at "egregiously high prices." The librarian stated, "As a qualified

and experienced librarian, I was sharing a professional opinion for consumption by peers."⁴¹ Although Mellen dropped that suit, another suit by its founder continued. Mellen threatened legal action against the interim library dean at the University of Utah, after he criticized Mellen, in part for its action against the McMaster librarian. Mellen's threats prompted the Society for Scholarly Publishing to remove the Utah dean's posts from its blog, *The Scholarly Kitchen*. The Mellen Press's litigious behavior is clearly incompatible with principles of academic freedom.⁴²

Because electronic communications are accessible almost instantaneously around the globe, scholars need to be aware that statements they post on blogs or websites or that they communicate by other electronic means may be subject to the laws of other countries. This fact was highlighted in 2013, when a publisher in India announced its intent to sue for libel a librarian at the University of Colorado at Denver, whose popular blog contains a running list of open-access journals and publishers he deems questionable or predatory. On the blog, the librarian accused the Indian publisher of spamming scholars with invitations to publish, quickly accepting their papers, then charging them a publishing fee of nearly \$3,000 after a paper was accepted. A letter from the publisher's attorney sought \$1 billion in damages and warned that the librarian could be imprisoned for up to three years under India's Information Technology Act.⁴³

Such a suit would likely have little chance of success in US courts, but some other countries' libel laws are less stringent, although in India allegations of misuse of the Information Technology Act have led the Indian government to modify its rules to make them stricter. The all-too-common practice of pursuing libel judgments in other countries, most often England or Wales, where there is a presumption that derogatory statements are false, has been dubbed "libel tourism." In response, the US Congress in 2010 unanimously passed the SPEECH Act, which made foreign libel judgments unenforceable in US courts, unless those

39. Zachary M. Schrag, "Happy Goldfish Bowl to You, Professor," *Zachary M. Schrag* (blog), November 28, 2013, <http://zacharyschrag.com/2013/11/28/happy-goldfish-bowl-to-you-professor/>.

40. A recent survey of how state FOIA laws govern requests for material from public universities found that only twenty-five states offer various degrees of exception for academic materials, with the best statutes in Alaska, Pennsylvania, and Georgia. See Ryan C. Fairchild, "Giving Away the Playbook: How North Carolina's Public Records Law Can Be Used to Harass, Intimidate, and Spy," *North Carolina Law Review* 91 (2013): 2117–78. See also the memorandum about state FOIA laws available at http://www.law.gwu.edu/News/2013-2014events/Documents/ATivUVA/State_FOI_List.pdf.

41. Colleen Flaherty, "Price of a Bad Review," *Inside Higher Ed*, February 8, 2013, <http://www.insidehighered.com/news/2013/02/08/academic-press-sues-librarian-raising-issues-academic-freedom>.

42. Ry Rivard, "Call In the Lawyers," *Inside Higher Ed*, April 1, 2013, <http://www.insidehighered.com/news/2013/04/01/mellen-press-continues-its-legal-maneuvers-against-critics>.

43. Jake New, "Publisher Threatens to Sue Blogger for \$1-Billion," *Chronicle of Higher Education*, May 15, 2013, <https://chronicle.com/article/Publisher-Threatens-to-Sue/139243/>.

judgments are consistent with the First Amendment.⁴⁴ However, a judgment unenforceable in the United States might still be enforceable in the country where it was filed and which a scholar may need to visit. Those who not only communicate and publish in other countries but also travel there for research or teaching should be aware of the legal environment governing their expression in those countries.

IX. Privacy of Electronic Communications

Electronic communications have greatly enhanced the ability to teach, to learn, and to inquire. Such technologies have made collaboration over great distances much more efficient and enabled people to work effectively at any hour and in almost any place. At the same time, the structure of electronic-communications technologies can constrain inquiry. Such technologies are designed to document communications and thus amass records of intellectual activities. These records can distort interactions because electronic communications often lack the subtlety of in-person exchanges. They can also be used to investigate individuals in ways that were impossible just a decade ago. *Efforts to protect privacy in electronic communications are an important instrument for ensuring professional autonomy and breathing space for freedom in the classroom and for the freedom to inquire. Although privacy is framed as an individual right, group or associational privacy is also important to academic freedom and to ensuring a culture of trust at an institution.*

When Congress passed legislation to govern the privacy of e-mail and other electronic-communications technologies, these technologies were used primarily by businesses. As a result, some drew the conclusion that the degree of privacy appropriate to digital communications is substantially lower than that expected for traditional media. In the intervening years, however, the use of these technologies has blossomed among businesses and individuals alike.

The nature of a communications medium may take some toll on privacy. An institutional computing network legitimately “backs up” some portion of each day’s e-mail traffic. IT staff members in the normal course of events have a technical degree of access to electronic messages that would be unthinkable for personnel in the university mailroom or the campus telephone network. By its very nature, electronic communication incurs certain risks that have no print

counterpart—for example, the potential invasion of the system by hackers, despite the institution’s best efforts to discourage and even prevent such intrusions. Some of these risks are simply part of the reality of the digital age and a result of our extensive reliance on computer networks for the conduct of academic discourse. At the same time, some privacy risks are the product of business imperatives rather than technical necessities.

Privacy risks are likely to increase as institutions are called on to address more aggressively the security of college and university networks, as researchers increasingly use digital instead of printed resources, and as distance education and electronic communications technologies are more generally relied on to execute institutional missions.

Faculty members also bear responsibility for protecting privacy in electronic communications. With the proliferation of BYOD policies, sensitive institutional data are sometimes stored on consumer-level devices. Thought must be given to the storage of student and research data on personal and portable devices in case these devices are compromised, lost, or stolen.

The sensitivity of academic communications and the wide range of scholarly purposes for which digital channels are used warrant a markedly higher level of protection. A fully responsive policy would reflect at least these criteria:

1. The policy should recognize the value of privacy as a condition for academic freedom and the benefits that privacy and autonomy bring to the individual, to groups, and to the culture of an institution. The institution should recognize that faculty members have a reasonable expectation of privacy in their electronic communications and traffic data.
2. The policy should clearly state that the university does not examine or disclose the contents of electronic communications and traffic data without the consent of the individual participating in the communication except in rare and clearly defined cases. Calls to examine electronic communications or transactional information should consider the special nature of the academy, weigh whether the examination would have disproportionately chilling effects on other individuals or the institution generally, and contemplate alternative or less invasive approaches to preserve privacy in communications.
3. Employees who operate and support electronic-communications resources regularly monitor

44. 124 Stat. 2480–84. SPEECH is the acronym for “Securing the Protection of our Enduring and Established Constitutional Heritage.”

transmissions for the purpose of ensuring reliability and security of those resources and services and, in that process, may observe certain transactional information or the contents of electronic communications. Except in specifically defined instances or where required by law, they should not be permitted to seek out transactional information or contents when those are not germane to system operations and support or to disclose or otherwise use what they have observed.

4. Faculty members should be involved in the setting of institutional policies surrounding the monitoring of and access to content and traffic data in electronic communications. Policies on electronic communications should enumerate narrow circumstances where institutions can gain access to traffic logs and content unrelated to the technical operation of these services. If a need arises to get access to electronic-communications data, a designated university official should document and handle the request, and all parties to the communication should be notified in ample time for them to pursue protective measures—save in the rare case where any such delay would create imminent risk to human safety or university property. Accessed data may not be used or disseminated more widely than the basis for such exceptional action may warrant.
5. As reliance on electronic-communications technologies grows, more faculty online activities will be subject to being logged. Institutions are encouraged to use several strategies encapsulated by the idea of “privacy by design” to reduce the risk to free inquiry and association from this logging. These strategies include creating logs at the aggregate level, where individuals are not identifiable, when possible; carefully controlling access to these logs; removing identifying information from them; and deleting them according to some reasonable retention policy. These strategies must, of course, be balanced to accommodate legitimate security obligations.

Such principles as these, designed as they are to ensure the privacy of electronic communications, will require careful and extensive study by each institution and the tailoring of specific responses consistent not only with institutional needs and values but also

with state and local law. At the same time, it must be acknowledged that whatever legal and policy protections may be available, all faculty members should recognize that in practice the privacy of electronic communications cannot always be protected. In addition to the issues raised previously about FOIA laws, faculty members need to recognize that even encrypted messages can be hacked and even the “safest” firewalls can be breached. Moreover, even the most sensitive and private e-mail messages, social-media postings, and texts can be forwarded to countless people instantaneously.

X. The Role of Faculty and Shared Governance

Some faculty members mistakenly believe that institutional IT policies are strictly under the purview of technology offices, which are thought to possess the requisite expertise to address network security, provision of bandwidth, outsourcing, and similar issues. But the interests of faculty members are not always consonant with those of IT offices. The latter may be charged, for example, with conserving resources, while faculty members need broad access to information and ideas.

Some technology offices may be tempted to employ software features “just because they can,” without full consideration of their implications for academic freedom and learning. For example, recent learning-management software allows an institution to disable features that invade privacy. But some technology offices may have a cavalier attitude toward privacy or simply desire to offer all the “bells and whistles” available. Electronic communications are too important for the maintenance and protection of academic freedom to be left entirely to such offices. Faculty members must participate, preferably through representative institutions of shared governance, in the formulation and implementation of policies governing electronic-communications technologies.

However, in order for the faculty to play an active and constructive role in the development and execution of such policies, those faculty members who participate in such work need to become more informed about both the technical issues involved and the broader academic-freedom implications of their decisions. This report is designed to facilitate that process.

Specifically, we recommend the following:

1. Policies and practices regarding information technology should be within the purview of

a representative faculty committee. Any new policy or major revision of an existing policy should be subject to approval by a broader faculty body such as a faculty senate.

2. The faculty committee may be drawn from the faculty senate or elected as an ad hoc committee by the faculty; its members should not be appointed by the administration.
3. Faculty members participating in the committee should be familiar with and informed about relevant developments in communications technology so that they are able to recognize potential conflicts with principles of academic freedom.
4. The members of the faculty committee should be provided with all relevant contracts and technical materials necessary to make informed decisions about policies governing electronic communications.
5. Whenever policies are proposed or administrative actions taken with respect to information technology that may directly or indirectly implicate academic freedom, faculty members must be consulted.
6. In those institutions with collective bargaining, faculty unions should seek to include in their collective bargaining agreements protections for academic freedom in electronic communications as described in this report. ■



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The Subcommittee

Statement on Intellectual Property

(JUNE 2014)

The statement that follows, prepared by a subcommittee of the Association's Committee A on Academic Freedom and Tenure, was approved by Committee A and adopted by the Association's Council in November 2013.

The management of inventions, patents, and other forms of intellectual property in a university setting warrants special guidance because it bears on so many aspects of the university's core missions, values, and functions, including academic freedom, scholarship, research, shared governance, and the transmission and use of academic knowledge by the broader society. Intellectual property refers broadly to patents, copyrights, trademarks, and (according to some definitions) trade secrets, in addition to the underlying subject matter that is controlled by the owner of these property rights established by statute (namely, inventions, works of authorship, and identifiers that distinguish goods and services in the marketplace). Patents provide the owner with the right to exclude others from practicing—making, using, and selling—an invention.¹ A patent, unlike a copyright, goes beyond the protection of written expression to accord an exclusive right to the operational principles that underlie the invention. Copyright prohibits unauthorized copying or modification of particular instances of expression; a patent permits the exclusion of work created independently, is not limited to the precise “expression,” and has no “fair use” exception, even for nonprofit purposes. Thus, patents may have an additional and potentially substantial impact on university research, may affect the value and role of scholarly publication, and may influence collaborations and the transfer of technology developed or improved in other research settings. The management of university-generated intellectual property is complex and carries significant consequences for those involved in direct negotiations (faculty inventors,

companies, university administrators, attorneys, and invention-management agents) as well as those who may be affected (competing companies, the public, patients, and the wider research community).

Whether ownership of a particular invention resides with the inventors or is assigned by the inventors to a university technology-transfer office, a university-affiliated foundation, or an independent invention-management agency, it is essential that all those involved recognize the distinctive role that inventions arising out of scholarly research should have. Faculty investigators and inventors, together with university administrators, must communicate this role and hold those involved accountable when they are engaged in the development and deployment of patent rights.

One fundamental principle should be clear: inventions are owned initially by their inventors. That principle is established in both the US Constitution and federal patent law. As the US Supreme Court affirmed in its 2011 decision in *Board of Trustees of Leland Stanford Junior University v. Roche Molecular Systems, Inc. (Stanford v. Roche)*, faculty inventors in a university setting are also the initial owners of their inventions. Ownership of patent rights that may attach to an invention, however, may be transferred to another party by a written instrument. Thus, control of patent rights may be distinguished from ownership, since the initial patent owner may choose to enter a contract with (or transfer title to) another entity that manages those patent rights on his or her behalf. A university may become the owner of patent rights in a faculty invention by voluntary assignment, as was the case at most universities prior to 1980.

1. “Practicing an invention” first of all means taking the concept and giving it material embodiment, a key step in its manufacture.

Some universities have sought to make their ownership of all faculty patent rights a condition of employment, citing the use of university facilities as a justification for asserting their ownership. Some also insist that externally funded research contracts specify that the university will manage all the resulting intellectual property. Though these strategies are increasingly preferred by many universities, there is little to indicate that such ownership claims advance university interests, whether taken narrowly as the pursuit of income from patent licenses or broadly in terms of the social value of research and access to its results. The 2011 *Stanford v. Roche* ruling affirmed that such rationales for the nonvoluntary confiscation of faculty intellectual property are often unfounded.

For many years university policies recognized that faculty members owned their intellectual property but required that they share profits with the institution when patentable intellectual property was commercialized. The AAUP regards such policies as fair and reasonable, so long as the faculty inventor or creator determines whether and how the work is to be marketed. Faculty members should have the right to distribute some work—software being a common example—for free if they choose.

Universities have often distinguished between copy-rightable and patentable intellectual property, ceding faculty ownership of the former and asserting institutional ownership of the latter. But both are products of scholarship and protected by academic freedom, which provides for control by faculty authors over dissemination of their works.

A fundamental problem that arises from university ownership of patent rights to faculty inventions is that it tends to create institutional conflicts of interest between the university's governance role and its financial and competitive interests in exploiting patented inventions for its own benefit. It is all too easy for universities to conflate royalty income with their public service mission to enhance economic growth while failing to perceive, or to acknowledge, the conflict that arises with respect to other institutional responsibilities and the university's long-standing commitment to the broad dissemination of knowledge.

Inventions—despite distinctions often drawn in university policy statements—are a natural outgrowth of scholarly activities. The scholarly nature of university-based inventions does not simply disappear with the addition of a potential patent or other intellectual property rights. Thus, the fundamental rights of faculty members to direct and control their own

research do not terminate when they make an invention or other research discovery; these rights properly extend to decisions involving invention management, intellectual property licensing, commercialization, dissemination, and public use. Faculty inventor “assignment” of an invention to a management agent, including the university that hosted the underlying research, should be voluntary and negotiated, rather than mandatory, unless federal statutes or previous sponsored-research agreements dictate otherwise.² Faculty inventors and investigators retain a vital interest in the disposition of their research inventions and discoveries and should, therefore, retain rights to negotiate the terms of their disposition. The university, or its management agents, should not undertake intellectual property development or take legal actions that directly or indirectly affect a faculty member's research, inventions, instruction, or public service without the faculty member's or inventor's express consent. Of course, faculty members, like other campus researchers, may voluntarily undertake specific projects, including online courses, under explicit and signed work-for-hire contracts. When such work-for-hire agreements are truly voluntary, their contracted terms may legitimately narrow faculty intellectual property rights.

Faculty members have a collective interest in how university inventions derived from academic research are managed. Through shared governance, they also have a responsibility to participate in the design of university protocols that set the norms, standards, and expectations under which faculty discoveries and inventions will be distributed, licensed, and commercialized. The faculty senate, or an equivalent governing body, should play a primary role in defining the policies and public-interest commitments that will guide university-wide management of inventions and other knowledge assets stemming from campus-based research. These management protocols should devote special attention to the academic and public-interest obligations traditionally central to the university mission. Governing bodies should also consider the formation of a specially assigned faculty committee to review the university's invention-management practices regularly, represent the interests of faculty

2. The term *invention-management agent*, as used in this statement, covers all persons tasked with handling university-generated inventions and related intellectual property, including, for example, university technology-transfer offices, affiliated research foundations, contract invention-management agents, and legal consultants.

investigators and inventors to the campus as a whole, and make recommendations for reform when necessary.

Standards should be set for the handling of faculty intellectual property rights in the design and subsequent use of instructional materials, including online courses. Course syllabi at many institutions are considered public documents; indeed, they may be posted on universally accessible websites. It is thus to be expected that teachers everywhere will learn from one another's syllabi and that syllabi will be disseminated as part of the free exchange of academic knowledge. Faculty lectures or original audiovisual materials, however, unless specifically and voluntarily created as works made for hire, constitute faculty intellectual property. As components of faculty-designed online courses, they cannot be revised, edited, supplemented, or incorporated into courses taught by others without the consent of the original creator. Nor can an online course as a whole be assigned to another instructor without the consent of the faculty member who created the course, unless, once again, the faculty member agreed to treat the course as a work made for hire with such ownership rights residing in the institution. Faculty governing bodies have a special—and increasing—responsibility to ensure that faculty members are not pressured to sign work-for-hire agreements against their will.

Just as the right to control research and instruction is integral to academic freedom, so too are the rights of faculty members to control the disposition of their research inventions. Inventions made in the context of university work are the results of scholarship. University policies should direct all invention-management agents to represent and protect the expressed interests of faculty inventors along with the interests of the institution and the broader public. Where the interests diverge irreconcilably, the faculty senate, or an equivalent governing body, should adjudicate the dispute with the aim of selecting a course of action that promotes the greatest benefit for the research in question, the broader academic community, and the public good. Students and academic professionals should also have access to grievance procedures if they believe their inventor rights or other intellectual property rights have been violated. Students should never be urged or required to surrender their intellectual property rights (for example, in their dissertations) in advance to the university as a condition of participating in a degree program. ■

Defending the Freedom to Innovate: Faculty Intellectual Property Rights after *Stanford v. Roche*

(JUNE 2014)

The report that follows, prepared by a subcommittee of the Association's Committee A on Academic Freedom and Tenure, was approved by Committee A and adopted by the Association's Council in November 2013.

Tensions over control of the fruits of faculty scholarship have been slowly building since the 1980s and have intensified over the last three years. There have long been differences of opinion over ownership of patentable inventions, but recently a number of universities have categorically asserted that they own the products of faculty research. And there is increasing institutional interest in declaring ownership of faculty intellectual property subject to copyright—most notably evident in demands that faculty members cede ownership of online courses and other instructional materials to their universities, a trend that began escalating in the 2012–13 academic year.

The AAUP is issuing this report in the midst of these fundamental changes in the character of faculty rights and academic freedom. Its purpose in doing so is to put the dialogue on intellectual property on a new path, one that leads to a principle-based restoration of faculty leadership in setting policy in this increasingly important area of university activity. Administrative efforts to control the fruits of faculty scholarship augur a sea change in faculty employment conditions, one too often imposed without negotiation or consent. Indeed, underlying these developments is an administrative conviction that faculty members are not independent scholars, teachers, and researchers but rather employees no different from those working in for-profit corporations that exist for the benefit of investors.

The topics addressed in this report are moving targets. New developments occur almost weekly. Thus, for example, in May 2013 the University of Pennsylvania issued a draft policy declaring that faculty members could not decide to design and offer an online course through an outside company without university permission. The draft policy makes it clear that Penn could refuse permission because it wants to curtail potential competition with its own online offerings. The same reasoning could be applied to a faculty member expecting to issue a potentially profitable book with a commercial press, since a university could insist that its own press publish the book instead or that it must negotiate the contract with the commercial press and take a share of the income for doing so. Penn's draft policy also makes it clear that it wouldn't matter if the faculty member designed the course on his or her own time. The mere fact of employment now apparently trumps the deeply rooted expectation of faculty independence.

This report begins with some basic definitions, then introduces the key issues at stake. A section summarizing the history of university policies on patentable and copyrightable intellectual property follows. Finally, the report offers eleven very specific principles that ought to be included in handbooks or collective bargaining agreements to clarify intellectual property policies.

Much of this report is adapted from *Recommended Principles to Guide Academy-Industry Relationships*,

a book-length study that the AAUP Foundation published in 2014.

I. Definitions

The management of inventions, patents, and other forms of intellectual property in a university setting warrants special guidance because it bears directly on the university's core values, including academic freedom, scholarship, research, shared governance, and the transmission of knowledge. These core values distinguish university activity from that of government and industry, and they provide a basis for the argument for public support of research and the role of the university as an independent contributor to both policy and commerce. The negotiation and management of faculty-generated intellectual property can be complex and can carry significant consequences for those directly involved in negotiations (faculty investigators, inventors, and authors as well as companies, university administrators, attorneys, and invention-management agents) and for others who may be less directly affected (competing companies, the public, patients, and the wider research community).

Intellectual property refers broadly to patents, copyrights, trademarks, and (according to some definitions) trade secrets.¹ In common usage the term also refers to the underlying subject matter that is controlled by the owner of these property rights (inventions, works of authorship, and identifiers that distinguish goods and services in the marketplace). Patents provide the owner with the right to exclude others from “practicing” (making, using, and selling) an invention. A patent, unlike a copyright, goes beyond the protection of written expression to accord an exclusive right to the operational principles that underlie the invention. Copyright prohibits unauthorized copying or modification of particular instances of expression; a patent permits the exclusion of work created independently, is not limited to the precise “expression,” and has no “fair use” exception, even for nonprofit purposes. Thus, patents may have an additional and potentially substantial impact on university research, may affect the value and role of scholarly publication, and may influence collaborations and the transfer of technology developed or improved in other research settings. Recognizing the

potential for harm, the faculty of a number of medical schools for years prohibited the patenting of inventions pertaining to public health.

Patents may cover new, useful, and nonobvious inventions, which are categorized by patent law as processes, machines, manufacture, and composition of matter. Patentable inventions thus may span a wide range of results of academic work, including devices, chemical compounds, biological materials, research methods and tools, production processes, and software. Design patents cover new designs of useful articles. Plant patents and related plant-variety protection laws cover reproducing, selling, or using patented plants. Patents are acquired by an application that is reviewed by a patent examiner; the process may take up to three years. A patent has a term of twenty years from the date of application.

Trademarks distinguish goods and services in the marketplace and are classed as trademarks, service marks, certification marks (showing testing by an independent laboratory, for instance), and collective marks (identifying membership in an organization, such as real estate agents). Trademarks may be common law—that is, acquired by use in commerce—or registered at the state or federal level. A trademark remains in existence as long as it is being used. In academic settings, names, logos, and tag lines for assets such as software programs, research laboratories, new techniques, services offered by departments, websites, and programs of research may all come to have trademark status.

Copyright encompasses original works of authorship fixed in any tangible medium of expression. Copyright vests in a work when it meets these requirements of the law; no application or registration process is now required. Classes of copyright-eligible subject matter include literature and other printed matter, architectural or engineering drawings, circuit diagrams, lectures and other instructional materials, musical or dramatic compositions, motion pictures, sound recordings, choreography, computer software and databases, and pictorial and sculptural works. Copyright now has a term of the life of the author plus seventy years, or, in the case of work made for hire, ninety-five years from the date of first publication or 120 years from the date of creation of the work, whichever is shorter.

These lists are not exhaustive. The scope of work subject to intellectual property claims has expanded considerably over the past thirty years as a result of both changes in law and changes in university policies.

1. Trade secrets, which have economic value that is not generally known to the public and is subject to reasonable controls on disclosure, are sometimes, but not always, included in discussions of intellectual property.

Additionally, the term of copyright has been extended and registration formalities removed. Thus, even where university intellectual property policies have not changed, the range of faculty-led work subject to these policies has expanded, complicating the landscape for discussions of the appropriate role for institutional controls on scholarship and the responsibilities to the public of faculty authors, inventors, and entrepreneurs.

II. Why Does Intellectual Property Matter?

Whether ownership of a particular invention resides with the inventor or is assigned by the inventor to a university technology-transfer office, a university-affiliated foundation, or an independent invention-management agency, all those involved need to recognize the distinctive role played by inventions emerging from scholarly research. Faculty investigators and inventors, together with university administrators, must shape policies that govern the development and deployment of patent rights accordingly.

One fundamental principle should be clear: inventions are owned initially by their inventors. That principle is established in both the US Constitution and federal patent law. As the US Supreme Court affirmed in its 2011 decision in *Board of Trustees of Leland Stanford Junior University v. Roche Molecular Systems, Inc. (Stanford v. Roche)*, federal funding of faculty-led research does not change this principle: inventors in a university setting using federal funds are also the initial owners of their inventions. Universities, as hosts of federally supported research, have neither an obligation nor a mandate under federal law to take ownership of faculty inventions made in such research. Ownership of patent rights attached to an invention, however, may be transferred to another party by a written instrument signed by the inventor. Control of patent rights can be distinguished from ownership. A patent owner may contract with (or transfer title to) another entity that manages those patent rights on the owner's behalf. Furthermore, a patent owner's invention may include elements that are subject to the patent claims of others, and therefore the owner and any of the owner's licensees may not be able to practice the invention without a license from other patent holders. A university may become the owner of patent rights through voluntary assignment by a faculty inventor, as was the case at most universities prior to the Bayh-Dole Act of 1980.

Some universities have sought to make their ownership of all faculty patent rights a general condition

of employment, which implies that the university controls faculty scholarship as an employer and that faculty members are expressly hired to invent. Some cite use of university facilities as a justification for asserting their ownership or claim that participation in externally funded research requires that the university own the resulting intellectual property. Though these strategies are increasingly preferred by many universities, there is little to indicate that such ownership claims advance university interests, whether taken narrowly as the pursuit of income from patent licenses or broadly in terms of the social value of research and broad access to its results.

One fundamental problem with university ownership of patent rights to faculty inventions is that it creates institutional conflicts of interest between the university's governance role and its own financial and competitive interests in exploiting patented inventions. It is all too easy for universities to conflate royalty income from the use or manufacture of patented inventions with their public service mission to enhance economic growth while failing to perceive, or to acknowledge, the conflict that arises with respect to other institutional responsibilities and the university's long-standing commitment to the broad dissemination of knowledge.

When faculty inventors and university administrators agree to use patents only for defensive purposes and to allow general access to technology platforms and make them readily available for adoption, there is generally minimal institutional conflict of interest. But when an invention is used to seek financial gain by exploiting monopoly marketplace positions—as necessary as this may be at times—faculty inventors and administrators alike find themselves in a far more conflicted position. In these situations, it may be beneficial for the university and the faculty inventor to use an external invention-management agent to promote development of the underlying invention while simultaneously protecting continued use of the invention in ongoing research and education.

Despite distinctions often drawn in university policy statements, inventions are a natural outgrowth of scholarly activities and have enjoyed a symbiotic role in faculty research for more than a century. As patent law has expanded what is patentable to include software, business methods, and biological materials, results of scholarly activity have become more exposed to ownership claims based on patents. The scholarly nature of university-based inventions does not disappear with the addition of a potential

patent or other intellectual property rights. A patent is simply a specialized way of transmitting knowledge to society, of sharing a new invention with the world in exchange for limited rights to exclude others from practice in order to promote investment, development, and exploitation of the invention. Thus, patented inventions and other discoveries subject to intellectual property protection should properly be viewed as extensions of scholarship subject to the principles of academic freedom and faculty rights, just as are copyrights in manuscripts prepared by faculty members. Patents are regularly used in industry to exclude others from using inventions. But faculty members should often be focused instead on creating conditions that give the public access to inventions, regardless of the possibility that a monopoly position might attract more payment to the university for granting an exclusive license. It is a rare university-hosted invention that absolutely must enjoy a monopoly in order to attract the investment necessary to be used and developed.

Commercial development of university knowledge to stimulate economic growth and bring public benefits is unquestionably good. But some administrative practices associated with patenting and licensing operations may negatively affect economic growth as well as scholarship, the public interest, and the university's educational mission.² These include narrow exclusive licensing, speculative reselling and relicensing of patent rights, "assert licensing" (in which an offer to license is preceded by a claim of possible infringement), trolling activities (in which litigation is considered the primary means to realize the value of a patent), and aggressive reach-through provisions (which claim an interest—ownership or license—in inventions and other developments made with the use of a licensed invention). Other activities associated with commercialization may be consistent with scholarship and academic norms, particularly when broad access to university inventions and research is protected through fair, reasonable, nonexclusive licensing and where practice of the invention does not require any product to be developed, as is the case with many inventions that are methods. The university or other licensing agent should make an explicit dedication of rights for research and experimental practice. Faculty investigators and inventors must have a strong voice in decisions involving patent management. A university

administration and its faculty collectively also have an obligation to ensure that both institutional and individual interests in using patents to seek financial and logistic advantages are pursued within the context of (and remain subordinate to) the university's broader scholarly and public research missions.

Both contracting and licensing of intellectual property may be managed directly by the university or through one or more outside agents (such as a research foundation working under contract with the university or a private invention-management agency). Licensing is also regularly undertaken by inventors acting privately, as with open-source software. When negotiating sponsored research agreements, a university administration and its invention-management agents must address the management of intellectual property and proprietary matter that may be provided by the sponsor as well as the disposition of any inventions or discoveries that may arise in the course of the sponsored project (including intended deliverables, unexpected discoveries, or findings entirely unrelated to the sponsor's commercial goals).

University administrators and faculty members can also make research funded by the federal government and other sources available for public benefit. This might occur through broad dissemination of the research (as happened with the Cohen-Boyer gene-splicing technique, developed at Stanford University and the University of California, San Francisco, which launched the biotechnology revolution) or through more targeted exclusive licensing, which gives one firm—say, a pharmaceutical company—monopoly rights to a discovery provided that the company invests the substantial resources required to develop the discovery into a viable new drug.

Finally, a university's nonprofit status and its reliance on public funding mean that its management agents are responsible for upholding high academic, educational, and research standards. The obligations of nonprofit institutions necessarily shape the opportunities that may be considered by faculty members and administrators in choosing licensing models, invention-management agents, and acceptable licensing terms and practices.

The keys to proper intellectual property management are consultation, collaboration, and consent. Consultation does not guarantee that invention licensing and management negotiations will be easy, but it does promote a system of checks and balances that can potentially produce better overall results. Any of the parties to such negotiations can exercise bad

2. Mark A. Lemley, "Are Universities Patent Trolls?," *Fordham Intellectual Property, Media and Entertainment Law Journal* 18, no. 3 (2008).

judgment. Faculty members may have a sound understanding of the science and technology underlying their inventions but be unable to gauge their usefulness to industry or their marketability. University technology-transfer officers, by contrast, may understand the legal and technical aspects of an invention but not the underlying science with its uncertainties and thus may overstate an invention's commercial value and misjudge how to disseminate it most effectively. Each party in these negotiations (a university technology-transfer office and a sponsoring company or a faculty member) can be motivated by the narrower goal of maximizing profits and fail to consider the best interests of the public. That is one reason why faculty members collectively, through their governing bodies, need to be involved in setting policy.

The dangers in having institutions or their agents exercise unilateral authority over patenting and other intellectual property decisions are illustrated in a cautionary tale summarized by Siddhartha Mukherjee in his 2010 book *The Emperor of All Maladies: A Biography of Cancer*. In the late 1980s, Brian Drucker, a young faculty member at Boston's Harvard University-allied Dana-Farber Cancer Institute, was investigating chronic myelogenous leukemia (CML), a disease that affected only a few thousand people annually but was incurable, leaving those it did affect with a life expectancy after diagnosis of only three to five years. Drucker wanted to determine whether drugs might intervene in the cancer's genetics. Scientists at the pharmaceutical company Ciba-Geigy had synthesized a number of promising compounds, which were held in the firm's freezer in Basel, Switzerland. Drucker proposed a collaboration between Ciba-Geigy and the Dana-Farber Cancer Institute to test those compounds in patients, but, according to Mukherjee's account, "the agreement fell apart; the legal teams in Basel and Boston could not reach agreeable terms. . . . Scientists and lawyers could not partner with each other to bring these drugs to patients."³ It was not until Drucker moved to Portland's Oregon Health and Science University in 1993 that he was able to get independent authority from an academic institution to move his research forward.

One of the Ciba-Geigy compounds had shown dramatic results in the lab, but because CML afflicts only a few thousand patients a year in the United States, the company questioned whether further

research was worth the investment. Ciba-Geigy had meanwhile merged with Sandoz to form Novartis, and eventually the new company agreed to synthesize the experimental drug—Gleevec—for patient testing. The results were dramatic: Drucker witnessed dozens of deep remissions. Today the drug is so effective that the cumulative number of surviving patients is significant: "As of 2009, CML patients treated with Gleevec are expected to survive an average of thirty years after their diagnosis. . . . Within the next decade, 250,000 people will be living with CML in America."⁴

As this account reminds us, faculty members and administrators can fulfill an important shared governance role by collaboratively establishing the university-wide protocols for managing faculty inventions that will protect the best interests of the faculty, the university, and the national science and research communities while also promoting technological innovation, public health, economic development, and the public good. The AAUP recommends that faculty senates, together with their university administration, consider adoption of principles 11–21, delineated below in section V, to ensure that academic inventions and intellectual property management advance all these goals while protecting academic freedom.

III. The Struggle over Faculty Intellectual Property

Current disputes over faculty intellectual property have their roots in several trends and events. Declining state funding for higher education has led public universities to seek new revenue streams, including royalties from the licensing of faculty inventions. Unfortunately, many universities do not break even, and where there is licensing income, it is used not to offset costs in education but rather to supplement research budgets, which may actually create even more demands on administrative resources. More recently, the impulse to seek profits from faculty work has been extended to instructional materials. The long-term effects of landmark congressional legislation designed to stimulate campus-based research and development have also come to a head over the last two years, dramatically increasing administrative efforts to control faculty intellectual property. Legislation in this area began with a 1980 bill sponsored by Senators Birch Bayh and Robert Dole, known as the Bayh-Dole Act. Although it continued with a 1981 tax credit for

3. Siddhartha Mukherjee, *The Emperor of All Maladies: A Biography of Cancer* (New York: Scribner, 2010), 434.

4. *Ibid.*, 400.

research and development (enhanced in 1986) and relaxed antitrust rules for joint research and development ventures passed in 1984, Bayh-Dole remains the key piece of legislation in current controversies.

The Bayh-Dole Act addresses inventions and associated patent rights, not other forms of intellectual property. It established a uniform policy across all government agencies with regard to the use of inventions by federal agencies in federally supported research at universities, nonprofit organizations, and small businesses. The act did not mandate that universities own or that they have a first right to own inventions made with federal support, nor did it require that they commercialize such inventions. It did require universities to honor the conditions of a standard patent-rights clause to be developed by the Department of Commerce for use in all federal funding agreements. That standard rights clause instructs universities to require their research personnel to make a written agreement to protect the government's interest in any inventions they may make.

The written agreement—under the standard patent-rights clause, to be required by universities of their research personnel—provides (1) that faculty members notify their university when they have made an invention with federal support; (2) that faculty members (as initial owners of their inventions) sign documents allowing patent applications to be filed when the owner of the invention, which may be the government or an invention-management agent, desires such an application to proceed; and (3) that the inventors sign documents that establish the government's rights in their inventions, which may include assignment of ownership or a grant to the government of a non-exclusive right to use an invention developed with federal funds. The latter requirement assures federal agencies that they have access to federally funded inventions for government purposes.

These requirements were spelled out in a patent-rights clause that Bayh-Dole authorized the Department of Commerce to create. Universities—including the entire University of California system—have tried to claim that the only way they can guarantee that faculty members will honor these responsibilities is by taking ownership of all faculty inventions, but obviously there are contractual alternatives to what amounts to a wholesale institutional grab of significant developments of faculty scholarship. Indeed, faculty members have long been able to honor these requirements without assigning their intellectual property rights to the university. Bayh-Dole also carefully

avoided dictating to universities and faculty members alike what patent rights they might be interested in or how these rights might be used—whether dedicated to the public, licensed nonexclusively, licensed exclusively, or held so the university could develop an invention directly.

Nowhere does the act mandate university ownership of faculty inventions. Indeed, until a university intervenes—except for the requirement of the written agreement, which confirms the delegation of personal responsibility to potential inventors—the operative relationship is between the government and the inventor. It is only when a faculty member chooses to assign rights to another agent, such as the university, that Bayh-Dole's complexities come into play.

Nevertheless, over the course of thirty years, US university patent managers came to interpret the Bayh-Dole Act as granting them automatic ownership rights to all federally supported inventions generated on campus, including the right to license this intellectual property to industry and others in exchange for royalties, equity, and other fees. The US Supreme Court, however, in its landmark 2011 decision in *Stanford v. Roche*, offered a different interpretation of the Bayh-Dole Act. The court firmly rejected the claims by Stanford and other institutions favoring federally sanctioned, compulsory university ownership of faculty research inventions.⁵

Stanford had sued Roche in 2005, alleging that Roche's kits for detecting the human immunodeficiency virus infringed university patents. After years of litigation, Stanford pushed its case to the highest court, with support from other universities, including many major research universities, who saw the case as an opportunity to secure court endorsement for their interpretation of Bayh-Dole.⁶ In an amicus brief filed on behalf of Stanford, the Association of University Technology Managers (a professional organization representing university licensing staff) and the

5. The complete US Supreme Court decision in *Board of Trustees of Leland Stanford Junior University v. Roche Molecular Systems, Inc.* (2011) is available at <http://www.supremecourt.gov/opinions/10pdf/09-1159.pdf>.

6. Maddy F. Baer, Stephanie Lollo Donahue, and Rebecca J. Cantor, "Stanford v. Roche: Confirming the Basic Patent Law Principle That Inventors Ultimately Have Rights in Their Inventions," *les Nouvelles* (March 2012): 12–23, <http://www.lesi.org/les-nouvelles/les-nouvelles-online/march-2012/2012/02/29/stanford-v.-roche-confirming-the-basic-patent-law-principle-that-inventors-ultimately-have-rights-in-their-inventions>.

Association of American Universities (an association of sixty-two top research universities), joined by six other research associations and five dozen universities, argued that Bayh-Dole had been “incredibly successful in stimulating innovation by giving universities certainty regarding their ownership of federally funded inventions.” The brief went on to argue that Bayh-Dole vested ownership of inventions made with federal funds in the university that contracted to do the research: “Where, as here, a university elects to exercise its right under Bayh-Dole to retain title to an invention, the individual inventor cannot assign that invention to a third party because the invention is assigned, by operation of law, to the university.”⁷

But the Supreme Court in its ruling refuted this interpretation of the law. For while Bayh-Dole requires universities to secure faculty agreement to protect and honor *the US government’s interest* in federally funded inventions, the Court concluded that there was nothing in the act that automatically vested title to faculty members’ own inventions in their university employers. Nor does the act require faculty members to assign their inventions to their universities or any other agent for management.

In its own successful amicus brief, the AAUP elaborated on this very point, arguing that Bayh-Dole does not alter the basic ownership rights granted to inventors by law. Rather, it helps bring inventions forward to benefit the public by clarifying that government agencies are to allow certain assignees of federally funded inventions to retain ownership, if and when they come to accept ownership, provided they meet various requirements to protect the government’s interest and the public interest.⁸ The high court agreed, ruling that US patent law has always favored, and should continue to favor, the rights of individual inventors and that universities need a written assignment from researchers to establish ownership of their inventions.

The AAUP considers *Stanford v. Roche* an important victory for faculty rights. The Supreme Court decision demonstrates once again that academic researchers and inventors remain, as they have traditionally been, much more than mere employees of

their institutions, a conclusion underscored by the respect afforded them by the federal government in its contracting with universities. Arguments underlying the compulsory assignment of faculty intellectual property to university employers (which continue to be advanced by Stanford, the Association of University Technology Managers, the Association of American Universities, and many university administrations) begin with the assumption that faculty members are no different from corporate employees who owe their employers the fruits of their labor. But the AAUP’s 1915 *Declaration of Principles on Academic Freedom and Academic Tenure* anticipated and firmly disputed that claim. The declaration observed that faculty members could not maintain academic freedom and the ability to serve the interests of society as truly independent experts and academic scholars unless they were recognized as “appointees,” not corporate employees.

Few academic administrators would now disagree that academic freedom firmly secures faculty members’ rights to direct and control their own scholarly research and classroom instruction. By attempting to assign ownership of faculty research inventions (and, more broadly, intangible assets in any form) to institutions, university administrations are effectively arguing that faculty members lose academic freedom the moment they become inventors, at which point their scholarly autonomy disappears and they become mere employees. The argument amounts to an assertion of employer control over faculty research, including the dissemination and possible future uses of academic research discoveries and results. Such a claim is as objectionable for faculty research as it is for classroom instruction. It is also objectionable to postdoctoral fellows and students, who should never be expected to give away their rights as inventors to their universities.

Of course, professors (and other kinds of academic investigators) may choose to negotiate separate contractual agreements with their universities outside of their normal teaching, research, and scholarly responsibilities. These agreements typically involve the performance of optional tasks that may be expressly identified in advance as “works for hire,” in which university ownership claims to resulting intellectual property may be reasonably included by mutual agreement. Such a situation might arise, for example, if a professor voluntarily consents to signing a discrete work-for-hire contract to develop a new online course. This kind of arrangement—which permits a university to own and distribute a course through

7. Lisa Lapin, “Stanford ‘Disappointed’ in Supreme Court Ruling in Roche Case,” Stanford University Press Release, June 7, 2011, <http://news.stanford.edu/news/2011/june/court-roche-ruling-060711.html>.

8. Kathi Westcott, “Faculty Ownership of Research Affirmed,” *Academe*, September–October 2011, 7–8, <http://www.aaup.org/AAUP/pubsres/academe/2011/SO/nb/patentlaw.htm>.

its online education division—is altogether different from university claims to automatic, broad ownership of all intellectual property developed in the course of ordinary and continuing faculty research, scholarship, and teaching. Such claims pose a direct challenge to academic freedom because they undermine faculty members' ability to control and direct the dissemination of their research.

That said, it is altogether inappropriate to *require* a faculty member to cede ownership of a course to the university merely because the course is prepared in a format suitable to online presentation. Faculty members who do so should realize they may be signing away to the university their right to modify the course or control its performance. The university may modify the course, assign it to someone else to teach, or change the attribution of authorship. The major national outlets for massive open online courses (MOOCs) are so far apparently not demanding ownership of university-based courses. Nor do they require universities to assert ownership. University administrators are simply exploiting the situation as an opportunity to take ownership of instructional intellectual property, when all that is needed is for a faculty member to grant permission to the university to host a course in an online program.

Contrary to the emerging pattern of coopting the faculty's instructional intellectual property, an April 2013 memorandum from the California State University, Long Beach, administration established an interim agreement for faculty members applying for 2013 internal grants to support development of online courses, using a very different approach to define a principle that could be widely adopted:

the faculty member shall retain ownership of all works he or she produces for . . . online instruction. Thus, in the absence of a separate, written "work-for-hire agreement" which may supersede this agreement, the undersigned faculty member shall be deemed to be the sole owner of all intellectual property rights in his or her course materials, even though the faculty member is receiving a financial stipend to support the creation of online lectures, electronic presentations, podcasts, quizzes, tests, readings, simulations, including development of software, and other teaching and learning activities or material. The fact that the faculty member might use common campus resources (e.g., computers, library books, library databases, software licensed to CSULB for

faculty and staff use, consultations with reference librarians, assistance from the Faculty Center for Professional Development and Instructional Technology Support Services staff) shall not alter faculty ownership of the works produced by the faculty member.

Faculty handbooks or collective bargaining agreements could embody the principle at stake—rejecting any institutional claim of ownership based on the use of university resources in course development—with the following language:

The university shall make no claim of ownership or financial interest in course materials prepared under the direction of a faculty member unless the university and faculty member have so agreed in a separate, voluntary agreement. Payment of a financial stipend, use of university resources, or release time to develop course materials shall not be construed by the university as creating a basis for a claim of institutional ownership of such materials, nor shall it be assumed that a work-for-hire relationship exists between the university and the faculty member with regard to the preparation of any such materials.

A provision like this would be especially relevant to the creation of MOOCs, where the use of university resources—especially assistance from staff—tends to be greater. One might note, however, that universities do not typically ask for an actual accounting of resources used.

The *Stanford v. Roche* decision challenges a number of practices university administrators have imposed on faculty members since Bayh-Dole, practices that lack legal standing. Soon after the Supreme Court's ruling, intellectual property experts predicted that US universities would respond defensively by incorporating new clauses in faculty employment contracts that assign ownership of faculty inventions to the institutions automatically.⁹ The University of

9. See Matt Jones, "Supreme Court Rules for Roche, Clarifies Bayh-Dole," *GenomeWeb Daily News*, June 6, 2011: "The most likely effect of the ruling will be that universities will begin making sure that their employees sign assignment agreements that make it clear if they expect to own the rights to the patents their employees generate, Steve Chang, an attorney with the IP firm Banner and Witcoff, told *GenomeWeb Daily News* Monday." For an example of a comprehensive claim of intellectual property ownership by a university, see the University of Washington's "Patent and Invention Policy" at <http://www.washington.edu/admin/rules/policies/PO/E36.html>.

California is acting comprehensively with a different strategy: at the end of 2011 it began demanding that current faculty members sign a letter assigning ownership to all their future inventions to the university.¹⁰ Such an arrangement is called an assignment of expectant interests, or a “present assignment.” The claim made for such assignments is that they become effective the moment an invention is made, without the need for notice to the university, review of circumstances, or a determination of the university’s proper interest in the invention as provided by policy.

The AAUP has in its files copies of letters from senior UC administrators informing UC faculty members that the university will refuse to approve their grant applications if they have not signed the new patent/invention assignment form. Indeed, the university is withdrawing already-submitted applications if faculty members refuse to comply.

In requiring present assignment of all future patent rights from current faculty members, the UC system is effectively violating the agreements faculty members made when they were appointed, for it had long followed a policy of evaluating inventions on a case-by-case basis. If that long-standing policy had contractual status, then the new requirement effectively modifies a contract without negotiation or consent. At the same time, institutions like the University of Illinois that have responded to *Stanford v. Roche* simply by posting a universal claim to institutional patent ownership on the university website are no better observers of academic freedom and faculty rights. They are imposing an objectionable condition of employment without a contract at all.

These deliberate strategies represent a disturbing, ongoing trend. Most of the developments in university research and invention policies over the past thirty years have significantly limited or even ended opportunities for faculty investigators and inventors to control the disposition of their research results

and instructional materials, whether prepared for their colleagues, for a research sponsor, for industry, or for the classroom. Some universities, such as the University of Washington, invoke state ethics laws to exclude faculty investigators from participating in intellectual property and invention-management transactions involving the state because, the universities argue, the faculty members might receive pay and other financial benefits from such negotiations (such as summer salary, which would not otherwise be allocated) and might therefore have a personal interest in the research agreement.

Universities also now sometimes insert automatic institutional ownership clauses into standard sponsored research agreements with industry and private foundations, claiming title and management rights to all faculty inventions created under the agreement even when the sponsor does not require such institutional interest. Faculty members with little bargaining power, including PhDs in their first tenure-track jobs, are particularly vulnerable to pressure to sign away their invention rights, possibly for their entire careers.

Many current university policies distinguish between faculty intellectual property that can be protected by copyright and intellectual property that is patentable, with universities commonly asserting automatic institutional ownership claims only on patentable intellectual property. This distinction is fundamentally flawed and should not be used in determination of ownership rights: it is not based on any rational analysis of the nature of faculty research and productivity, and it violates academic freedom. Indeed, the possibility arises that universities will expand their intellectual property ownership claims to copyrightable faculty work as well, given that the distinction in this context is arbitrary.

Since 2007 the National Association of College and University Attorneys (NACUA) has promoted university ownership of both patentable and copyrightable intellectual property. That year, four attorneys delivered a paper, “Creating Intellectual Property Policies and Current Issues in Administering Online Courses,” at NACUA’s annual meeting, and NACUA posted the paper on the members-only section of its website. The AAUP obtained a copy in 2012, and *Inside Higher Ed* subsequently obtained permission from NACUA to make it public.¹¹ The authors call for comprehensive

10. The University of California’s letter of assignment that all faculty members are required to sign reads, in part, “[in] consideration of my employment, and of wages and/or salary to be paid to me during any period of my employment, by University, and/or my utilization of University research facilities and/or my receipt of gift, grant, or contract research funds through the University . . . I acknowledge my obligation to assign, and do hereby assign, inventions and patents that I conceive or develop 1) within the course and scope of my University employment while employed by the University, 2) during the course of my utilization of any University research facilities, or 3) through any connection with my use of gift, grant, or contract research funds received through the University.”

11. Beth Cate, David Drooz, Pierre Hohenberg, and Kathy Schulz, “Creating Intellectual Property Policies and Current Issues in Administering Online Courses” (paper presentation, NACUA meeting,

university ownership of faculty intellectual property whenever its creation has involved substantial use of university resources. “Substantial resources,” they argue, “might include specialized computer resources or other equipment and significant use of student or research support.” A large number of income-producing activities, including textbook authorship, would readily fall under this broad definitional umbrella.

The NACUA paper also stipulates that institutions may claim a share of faculty consulting income if “the faculty member is involved with university research in the same area as the consulting” or if the consulting is in the same general area in which the faculty member teaches. Both conditions are widely applicable to faculty members consulting across numerous academic disciplines. Indeed, it is improbable that faculty members would be consulting in areas for which they have no demonstrated expertise as scholars and teachers. The NACUA paper further recommends that faculty members’ right to make any software they have created freely available through open-source licensing should be subject to review to determine whether “the goals of the institution would be better served through commercialization.” Such positions are serious challenges to academic freedom; from the perspective of universities’ long-standing commitments to broad public dissemination of new knowledge, they are all the more troubling. If a professor judges that his or her research would be more broadly used in continuing research or commercial applications if it were freely disseminated through “open sourcing,” why should that professor be compelled to adhere to the dictates of the university’s technology-transfer officers, who typically have far less insight into the technology in question and its possible applications? Why, furthermore, should faculty members lose the right to provide open access to their research if the technology-transfer office’s preference for control—and the imposition of licensing fees—stems principally from a desire to maximize revenue for the university rather than a desire to maximize public use of the invention? Such preferences for profit seeking undermine claims that institutional ownership is the best route to serving the public good.

San Diego, CA, November 7–9, 2007). See also Cary Nelson, “Whose Intellectual Property?,” *Inside Higher Ed*, June 21, 2012, <http://www.insidehighered.com/views/2012/06/21/essay-faculty-members-and-intellectual-property-rights>. The paper is posted on NACUA’s members-only website, but NACUA permitted *Inside Higher Ed* to link to it, noting that while the paper reflected the authors’ views at the time, some of the issues may have changed since then.

The recommendations contained in the 2007 NACUA paper violate the fundamental principle that faculty members should control their own research, and they further encourage universities to assert control over all potentially profitable faculty research products, regardless of whether those products are subject to copyright or are patentable. Indeed, one attitudinal survey of university technology-transfer officers, conducted by researchers Jerry Thursby, Richard Jensen, and Marie Thursby, found that most such individuals assume that comprehensive institutional ownership of faculty inventions is already the norm.¹² In response to the question “Who owns inventions and materials made or developed by faculty members or other personnel in your university?” all but one technology-transfer officer in the sample asserted that the university owns patentable inventions and materials. For copyrightable inventions, 66 percent stated that the university was also the owner.

A compulsory ownership claim changes the relationship between the faculty and the administration from one of administrative governance and support to one of an employer with authority over the disposition of work of employees. However routine in companies, such a relationship is neither routine nor acceptable for university faculty members.

Interestingly, the history of intellectual property management at universities makes it clear that some institutions once strongly respected faculty intellectual property rights.¹³ Whereas Stanford, the Massachusetts Institute of Technology, and the University of Illinois sought comprehensive control over faculty intellectual property as early as the 1930s or 1940s, the University of California’s 1943 policy went a different route: “Assignment to the Regents of whatever rights the inventor or discoverer may possess in the patent or appointment of the Board as the agent of the inventor or discoverer shall be optional on the part of the faculty member or employee.” Rutgers was

12. Kerry G. Thursby, Richard Jensen, and Marie C. Thursby, “Objectives, Characteristics and Outcomes of University Licensing: A Survey of Major US Universities,” *The Journal of Technology Transfer* 26, no. 1/2 (2001): 59–72.

13. Thirty-seven university patent policies were reprinted in the appendix to Archie M. Palmer, *Survey of University Patent Policies: Preliminary Report* (Washington, DC: National Research Council, 1948). Also see Archie M. Palmer, *University Research and Patent Policies, Practices, and Procedures* (Washington, DC: National Academy of Science–National Research Council, 1962), for a more extensive list of patent policies.

even more concise in 1946: “the University claims no interest in any invention by members of its staff.” That same year the University of Cincinnati affirmed “the right of absolute ownership by a faculty member or student or other person connected with the teaching or research staff of the University of his own inventions, discoveries, writings, creations, and/or developments, whether or not made while using the regular facility of the University.” Columbia included an exception typical of a number of institutions: “While it is the policy of the Faculty of Medicine to discourage the patenting of any medical discovery or invention[,] . . . the right of staff members in other divisions of the University to secure patents on their own inventions is well recognized.”

The policy for the University of Texas, adopted in 1945, similarly asserted that “the title to a patent for any discovery or invention made by an employee of the University of Texas belongs to the said employee and he is free to develop or handle it in any manner he sees fit.” The University of Arizona in 1939 also declared that “no inventor shall be compelled to submit an invention to the Patent Committee.” Princeton adopted its policy in 1938: “If a member of the University desires to obtain a patent on his own responsibility he may do so.” All three institutions did mandate modest profit sharing, which remains an appropriate and reasonable practice today. These university policies demonstrate that faculty research ownership and intellectual property rights do not have to be invented; they merely need to be revived, publicized, and reinforced.

The *Stanford v. Roche* decision opens the door for faculty members and their governing bodies to press for a return to the far stronger faculty inventor rights that led the development of new technology in the decades prior to the passage of the Bayh-Dole Act, and it highlights the need for more visionary shared governance systems around intellectual property and invention management. The Supreme Court’s ruling strongly bolsters the AAUP’s position that faculty members should be free to control the disposition of their scholarship without interference by university intellectual property administrators. It logically follows that faculty members should be free to choose how their inventions are managed, including how best to disseminate, license, or develop their discoveries, as well as which management agent is best equipped to work with them to handle the patenting and license negotiations. As a university makes disposition of these rights a condition of employment, these rights

could be secured for faculty members in collective bargaining agreements.

Under such a system, professors might very well choose to grant invention rights to their own institutions. But those institutions would have to compete for faculty business on a level playing field; they could not simply claim automatic monopoly control over faculty research. Instead, they would have to offer services consistent with faculty investigator objectives and be held accountable for the commitments made to support licensing of the invention. The institutions would also, then, have to show how their program of invention deployment better served the public than comparable services offered by private invention-management agents. Faculty members could choose instead to work with an outside intellectual property expert or management agency (unless they had previously agreed otherwise).

Allowing faculty members to retain title to their inventive scholarship protects academic freedom and inventors’ rights. It also requires universities to work much more collaboratively with faculty members, both in negotiations over individual faculty inventions and in the development of shared protocols to guide invention-management practices university-wide. The establishment of such shared governing protocols for the management of university intellectual property is critically important. In its 2011 report *Managing University Intellectual Property in the Public Interest*, the National Research Council and the National Academies called on faculty members, administrators, and other constituencies with an interest in campus-based inventions and intellectual property management practices to develop such protocols. As the authors of the report explained, “It is essential that universities give a clear policy mandate to their technology transfer offices and acknowledge the tensions among frequently stated goals: knowledge dissemination, regional economic development, service to faculty members, generation of revenue for the institution, and, more recently, addressing humanitarian needs.”¹⁴

Most universities currently operate without clear shared governance protocols to guide their invention-management and technology-transfer operations. The result is the widespread complaint—from faculty members, industry, private foundations, legal experts,

14. National Research Council, *Managing University Intellectual Property in the Public Interest* (Washington, DC: The National Academies Press, 2010), http://www.nap.edu/catalog.php?record_id=13001. See recommendations 1 and 2, quoted on pages 4 and 66.

government agencies, and public interest groups—that universities are unaccountable, overly focused on maximizing profits, and ineffective in managing inventions in the public interest. In 2007, officials from the Ewing Marion Kauffman Foundation, the leading US foundation dedicated to entrepreneurship research, wrote that university-based technology-transfer offices “were envisioned as gateways to facilitate the flow of innovation but have instead become gatekeepers that often constrain the flow of inventions and frustrate faculty, entrepreneurs, and industry.”¹⁵ Many in industry are quite vocal about the poor university management of research inventions, the lack of sufficient expertise in university technology-transfer offices, and the imposition of excessive licensing restrictions and fees that impede industry use.¹⁶

The AAUP agrees with the US Supreme Court that universities have a legal obligation to honor faculty inventor rights and to respect the central role of faculty members in the disposition of intellectual property deriving from their own research. The strongest opposition to this position is likely to emanate from the technology-transfer offices themselves, which have a vested interest in the status quo. In a written public comment submitted to the AAUP on July 17, 2012—after the Supreme Court’s *Stanford v. Roche* ruling—AUTM’s board of directors continued to proclaim that as “employees of a university, faculty members are subject to employment contracts like any other profession” and should not be granted “free agency” when it comes to the ownership and management of their research discoveries and inventions.

According to AUTM’s letter, compulsory assignment of invention rights is justified because technology-transfer offices are best equipped to fulfill the public objectives of technology transfer, which AUTM defines as follows: “1. to give taxpayers a return on their invested research dollars, and 2. to benefit the public by transferring new technologies for public use expeditiously and effectively.” In AUTM’s view,

university technology-transfer offices (also known as technology-licensing offices, or TLOs) are the most experienced managers of these inventions and also the least biased: “University TLOs, experienced in dealing with multiple inventors and multiple institutions, are in the best position to be neutral, objective, and unbiased advocates of federally funded inventions. Further, the benefit of this expertise extends to the transfer of technologies that have other sources of funding.”

AUTM provided no evidence to support its assertions, but most data on the management of campus-based research and inventions would counter the claim that technology-transfer offices are neutral and unbiased guardians of the public interest. Most universities expect these offices to be financially self-sustaining, which, given their operating costs, creates a strong incentive for their officers to put institutional revenue generation ahead of competing public interest goals. The survey cited above found that university technology-transfer officers rank revenue generation (from licensing royalties and fees) as their top priority, valuing it over widespread use of faculty inventions and even effective commercialization.

Yet there is one general caveat that applies to all invention-management negotiations: no party to a contract is inherently immune to disabling motivations and biases. Faculty inventors and administrators alike may be biased by the apparent opportunity for substantial profit when negotiating intellectual property and research contracts. The reality of such influences strengthens the argument for collectively defined university intellectual property protocols, such as the ones we recommend. These protocols could benefit the public by clarifying institutional support for procedures by which creative workers hosted by a university may transfer academic knowledge to society. When universities assume monopoly ownership over research inventions (and therefore do not negotiate with faculty inventors or face competition from independent intellectual property management agencies and professionals), they have a powerful incentive to pursue more restrictive licensing arrangements, which they believe are more profitable. In actual practice, such behaviors tend to rely on a very few licensing deals generating a disproportionate amount of licensing income, while the vast majority of inventions claimed by a university languish: the extra licensing income serves to file patents—that is, to claim formal institutional ownership of inventions—but is not used to transfer these inventions to the public. In fact, the institutionally created patents become barriers to access and serve

15. Robert E. Litan, Lesa Mitchell, and E. J. Reedy, “Commercializing University Innovations: A Better Way” (working paper), http://regulation2point0.org/wp-content/uploads/downloads/2010/04/RP07-16_topost.pdf.

16. Bayh-Dole—*The Next 25 Years, Testimony Before Comm. on Science and Technology, Subcomm. On Technology and Innovation*, 110th Cong. (July 17, 2007) (Statement of Wayne Johnson, vice president of university relations, Hewlett-Packard); David Kramer, “Universities and Industry Find Roadblocks to R&D Partnering,” *Physics Today* 61, no. 5 (2008): 20–22.

to undermine the value of the research that led to the discoveries and inventions in the first place.

In its written comments, AUTM argued that in order to foster successful technology transfer, it was necessary to give universities the power to patent government-funded inventions and license them exclusively to private companies. Otherwise, it stated, those companies would be unwilling to invest the capital required to bring embryonic academic inventions into commercial development. This more aggressive university focus on patents and exclusive licensing may aid in the development of some inventions, but—as recent cases involving stem cells, breast cancer genes, disease patents, and software demonstrate—it by no means helps with all university discoveries, and it is often not in the public interest.

AUTM and the university technology-licensing community routinely disparage all alternatives to their adopted policy model. Viable alternatives include using specialized invention-management agents, allowing investigators and inventors to work with the intellectual property attorneys and management agents of their choice, using nonexclusive licensing to promote competition and free enterprise, dedicating inventions to the public domain, using open innovation strategies, and licensing for quality control without requiring payment. Studies show that such alternative methods of technology transfer remain the most common channels by which industry gains access to academic knowledge and inventions. One survey of firms in the manufacturing sector reported that the four highest-ranked avenues for accessing university knowledge were traditional, open academic channels: publications, conferences, informal information exchange, and consulting.¹⁷ Patents and licensing ranked far lower on the list. Even in pharmaceuticals, where patents and licenses are considered important to facilitate commercialization, firms still rely heavily on traditional open channels.¹⁸

The notion that stronger intellectual property control accelerates commercialization of federally funded research runs contrary to important economic principles. When publicly funded knowledge is “non-rivalrous,” as academic science frequently is, its use in

additional applications poses no real economic cost. By contrast, when any one party is denied access to a discovery, it can stifle the potential for continuing research and other commercial applications.¹⁹

Ironically, most academic inventions reach the attention of strategically located people in industry through existing contacts with faculty inventors. When Thursby and colleagues asked technology-transfer officers to describe the procedures used to market scholarly work, the role of faculty inventors was paramount. Fifty-eight percent of the respondents listed faculty inventor contacts as useful for marketing academic technology to industry. “It is also likely,” noted the survey’s authors, “that some of the 75% of [the technology-transfer officers] who listed personal contacts as important were referring to the personal contacts of faculty.” A companion survey of businesses that license university technologies generated similar results: 46 percent of industry respondents said that personal contacts between their research and development staff and university faculty members were extremely important in identifying new technologies to license.²⁰ These results accord with a 1999 study finding that 56 percent of the primary leads for university license adoptions, in the 1,100 licenses examined, originated from faculty members.²¹ Technology-transfer offices, these surveys suggest, could not operate effectively without help from faculty inventors, through their contacts in industry and their deep knowledge of invention technologies and applications. According to the authors of the survey on technology-transfer officers, “[t]he importance of the faculty in finding licensees follows . . . from the generally early stage of university technologies since, for such technologies, it is the faculty who are able best to articulate the value and nature of such technologies.”

It thus seems particularly shortsighted for AUTM and university administrations to insist on the compulsory assignment of faculty research inventions to the

17. Wesley M. Cohen, Richard R. Nelson, and John P. Walsh, “Links and Impacts: The Influence of Public Research on Industrial R&D,” *Management Science* 48, no. 1 (2002): 1–23; Ajay Agrawal and Rebecca Henderson, “Putting Patents in Context: Exploring Knowledge Transfer from MIT,” *Management Science* 48, no. 1 (2002): 44–60.

18. Alfonso Gambardella, *Science and Innovation* (Cambridge: Cambridge University Press, 1995).

19. Kenneth J. Arrow, “Economic Welfare and the Allocation of Resources for Invention,” in *Science Bought and Sold: Essays in the Economics of Science*, ed. Philip Mirowski and Esther-Miriam Sent (1962; repr., Chicago: University of Chicago Press, 2002), 165–81; Richard R. Nelson, “The Simple Economics of Basic Research,” in *Science Bought and Sold* (1959; repr.), 151–64.

20. Jerry G. Thursby and Marie C. Thursby, “Industry Perspectives on Licensing University Technologies: Sources and Problems,” *Industry and Higher Education* 15, no. 4 (2001): 289–94.

21. Christina Jansen and Harrison F. Dillon, “Where Do the Leads for Licenses Come From? Source Data from Six Institutions,” *The Journal of the Association of University Technology Managers* 11 (1999).

university—a process that necessarily distances faculty members from the management and marketing of their own inventions. Given that faculty inventors have the deepest knowledge of their own inventions and sometimes are sole sources of the expertise that surrounds their scholarly work (which is often experiential and cannot be patented), it is simply sound policy for faculty members to control the dissemination of their own scholarship and research.

In seeking to strengthen these rights, faculty members will likely face considerable opposition from university technology-licensing officers and universities' legal counsel, who have grown accustomed to asserting monopoly positions on faculty scholarship and have a powerful interest in maintaining the status quo that funds their salaries. Propelled by Bayh-Dole and other legislative reforms, universities have invested heavily in their technology ownership and licensing operations over the last three decades, expending large sums on licensing staff, legal experts, patenting and licensing fees, and intellectual property-related litigation.

This expenditure has certainly brought some returns for a handful of institutions, but it has also generated substantial infrastructure overhead and expense. From 1983 to 2003, the number of patents issued directly to American universities grew from 434 to 3,259.²² The overwhelming majority of these patents were concentrated in biomedicine, but patents also came from engineering, computer science, agriculture, and numerous other fields. Universities, however, refuse to disclose how many of these patents have not been licensed and, of those that have, which of these licenses have resulted in new products made available to the public at a reasonable cost. Total annual revenues from the licensing of university inventions increased from roughly \$200 million in 1991 to \$1.85 billion in 2006.²³ In 2007, AUTM reported a

total of 3,148 cumulative, operational start-up firms associated with US university patenting and licensing activities. But it does not report how many of these firms are still in business or which of them has ever produced a new product offered for sale.²⁴

The figures are intended to look impressive. But they are not. Contrary to widespread assumptions, most universities have not actually generated substantial income from their patenting and licensing activities, nor has their licensing activity resulted in a significant number of new products coming into commercial use. Only roughly two dozen US universities with “blockbuster” inventions generate sizable revenue from their licensing activities.²⁵ A 2006 econometric analysis found that, after subtracting the costs of patent management, universities netted “on average, quite modest” revenues from 1998 until 2002, two decades after Bayh-Dole took effect. The study concluded: “[U]niversities should form a more realistic perspective of the possible economic returns from patenting and licensing activities.”²⁶ Lita Nelsen, director of the technology-licensing office at MIT, made similar observations: “[T]he direct economic impact of technology licensing on the universities themselves has been relatively small (a surprise to many who believed that royalties could compensate for declining federal support of research) . . . [M]ost university licensing offices barely break even.”²⁷ Licensing offices less than twenty years old and institutions with annual research budgets of less than \$100 million have particular difficulty breaking even. Those universities, especially, should adopt policies that restore faculty control of their inventive scholarship, for financial reasons and to protect academic freedom and support innovation. The

22. Wesley M. Cohen and John P. Walsh, “Real Impediments to Academic Biomedical Research,” *Innovation Policy and the Economy* 8 (2008): 1–30, <http://www.nber.org/~marschke/mice/Papers/cohenwalsh.pdf>.

23. All original statistics on university and hospital patenting and licensing come from licensing activity surveys coordinated by AUTM. However, these figures were extracted from Cohen and Walsh, “Real Impediments to Academic Biomedical Research” and from Anthony D. So, Bhaven N. Sampat, Arti K. Rai, Robert Cook-Deegan, Jerome H. Reichman, Robert Weissman, and Amy Kapczynski, “Is Bayh-Dole Good for Developing Countries? Lessons from the US Experience,” *PLoS Biology* 6, no. 10 (2008): e262, <http://www.plosbiology.org/article/info:doi/10.1371/journal.pbio.0060262>.

24. Association of University Technology Managers, *FY 2007 Licensing Activity Survey Full Report*, ed. Robert Tieckelmann, Richard Kordal, Sean Flanigan, Tanya Glavicic-Théberge, and Dana Bostrom (2007).

25. So et al., “Is Bayh-Dole Good for Developing Countries?” Original sources: Association of University Technology Managers, *FY 2006 US Licensing Activity Survey* (2006) and David C. Mowery, Richard R. Nelson, Bhaven N. Sampat, and Arvids A. Ziedonis, “The Growth of Patenting and Licensing by US Universities: An Assessment of the Effects of the Bayh-Dole Act of 1980,” *Research Policy* 30, no. 1 (2001): 99–119.

26. Harun Bulut and Giancarlo Moschini, “US Universities’ Net Returns from Patenting and Licensing: A Quantile Regression Analysis,” Center for Agricultural and Rural Development at Iowa State University Working Paper 06-WP 432 (2006), <http://www.card.iastate.edu/publications/dbs/pdf/06wp432.pdf>.

27. Lita Nelsen, “The Rise of Intellectual Property Protection in the American University,” *Science* 279, no. 5356 (1998): 1460–61.

blockbuster invention that a faculty member might make is more likely to benefit the institution when the relationship between the faculty inventor and the university is one of voluntary collaboration than when it is governed by a compulsory ownership policy.

Supporters of Bayh-Dole may have hoped the legislation would create opportunities for universities to manage academic inventions made with federal support and thus speed the pace of technological innovation in the United States. But here too the legislation's economic legacy has been mixed. Though university patents soared after Bayh-Dole, studies have found that academic patenting does not correlate well with increased industrial use or commercial development of academic discoveries.²⁸ A 2002 study of the patent portfolios of Stanford and Columbia found that, of eleven major inventions, seven would have been commercialized without any assertion of patent rights or technology-transfer office licensing, because "strategically located people in industry were well aware of the university research projects even before the universities' [technology-transfer offices] began to market the inventions."

IV. AAUP Policy Statements on Copyright and Patent Rights

The academic freedom principles undergirding principle 11 (below) have been guiding the AAUP since its founding. To our knowledge, this principle has not been endorsed previously by other professional academic groups; however, it builds on several recent policy statements issued by the AAUP relating to faculty-generated intellectual property. It is also consistent with long-standing principles of academic freedom and with US patent and copyright laws pertaining to the ownership rights of inventors.

As the AAUP's 1999 *Statement on Copyright* observed regarding faculty research and inventions subject to copyright, "the faculty member rather than the institution determines the subject matter, the intellectual approach and direction, and the conclusions"; for the institution to control the "dissemination of the work" would be "deeply inconsistent with fundamental principles of academic freedom." The statement goes on to note that "it has been the prevailing academic practice to treat the faculty member as the

copyright owner of works that are created independently and at the faculty member's own initiative for traditional academic purposes." And it adds, "It is unlikely that the institution will be regarded as having contributed the kind of 'authorship' that is necessary for a 'joint work' that automatically entitles it to a share in the copyright ownership."

In 1998, the AAUP established a Special Committee on Distance Education and Intellectual Property Issues, which released several documents the following year, including one recommending language for campus policies regarding intellectual property rights and management, *Sample Intellectual Property Policy and Contract Language*. This document begins, "The copyright statement takes as its guiding assumption that the faculty member (or members) who create the intellectual property own the intellectual property," adding that "that assumption applies to the patent area as well." It goes on to recommend the following language for campus adoption: "Intellectual property created, made, or originated by a faculty member shall be the sole and exclusive property of the faculty, author, or inventor, except as he or she may voluntarily choose to transfer such property, in full or in part." Drawing on a detailed discussion of "work made for hire" in the *Statement on Copyright*, the special committee endorsed the following: "A work should not be treated as 'made for hire' merely because it is created with the use of university resources, facilities, or materials of the sort traditionally and commonly made available to faculty members." It went on to note: "Funds received by the faculty member from the sale of intellectual property owned by the faculty author or inventor shall be allocated and expended as determined solely by the faculty author or inventor." Recognizing the current trend for universities to assign intellectual property rights to institutions involuntarily, the AAUP further warned in its *Statement on Copyright*: "If the faculty member is indeed the initial owner of copyright, then a unilateral institutional declaration cannot effect a transfer, nor is it likely that a valid transfer can be effected by the issuance of appointment letters to new faculty members requiring, as a condition of employment, that they abide by a faculty handbook that purports to vest in the institution the ownership of all works created by the faculty member for an indefinite future."

The AAUP's *Statement on Distance Education and Intellectual Property* is prefaced by a warning that the "vital intersection of emergent technologies and

28. David C. Mowery, Richard R. Nelson, Bhaven N. Sampat, and Arvids A. Ziedonis, *Ivory Tower and Industrial Innovation: University-Industry Technology Transfer before and after the Bayh-Dole Act* (Stanford, CA: Stanford Business Books, 2004): 5.

the traditional interests of faculty members in their own intellectual products requires scrutiny and the formulation of policies that address the former while preserving the latter.” The statement itself emphasizes that “the faculty should have primary responsibility for determining the policies and practices of the institution in regard to distance education.” That includes authority for determining whether particular courses should receive credit at a college and how much credit they should receive. The statement does not anticipate the phenomenon of a MOOC enrolling one hundred thousand students, but it takes a firm stand on principles that should govern online courses no matter what their size: “Provision should also be made for the original teacher-creator, the teacher-adapter, or an appropriate faculty body to exercise control over the future use and distribution of recorded instructional material and to determine whether the material should be revised or withdrawn from use.”

Even when a faculty member willingly creates a distance education course on a work-for-hire basis, the statement clarifies a key condition: “the faculty member should, at a minimum, retain the right to take credit for creative contributions, to reproduce the work for his or her instructional purposes, and to incorporate the work in future scholarly works authored by the faculty member.”

Principle 11 was additionally informed by recent evidence of university technology-transfer offices abrogating the academic freedom rights of faculty in intellectual property decisions pertaining to their research (some of these cases are discussed above or in *Recommended Principles to Guide Academy-Industry Relations*) and by a 2010 faculty advisory board ruling in an academic freedom case involving a dispute between Stanford University and a Stanford professor (also discussed in *Recommended Principles*).

Principle 12 grows directly out of earlier AAUP policy statements on intellectual property-related issues. The AAUP has already recommended that a campus intellectual property committee “play a role in policy development.” The AAUP’s 2004 *Statement on Corporate Funding of Academic Research* further observes, “Consistent with principles of sound academic governance, the faculty should have a major role not only in formulating the institution’s policy with respect to research undertaken in collaboration with industry, but also in developing the institution’s plan for assessing the effectiveness of the policy.” The AAUP has long asserted the faculty’s primary responsibility for the “subject matter and methods” of

research, a principle reaffirmed in the 1966 *Statement on Government of Colleges and Universities*. With regard to principle 13, one should note that the AAUP’s *Statement on Graduate Students* points out that “graduate students are entitled to the protection of their intellectual property rights.” More broadly, the AAUP’s 1999 *Sample Intellectual Property Policy and Contract Language* takes a parallel approach to the one offered here:

In light of the changing legislative environment, and in view of the evolution of contracts and policies in the intellectual property area, AAUP believes that the establishment of an on-going Intellectual Property Committee representing both faculty and administration would serve a useful purpose in both collective bargaining and non-collective bargaining environments. Such a committee could serve a variety of purposes, including keeping faculty and administration apprised of technological changes that will affect the legislative, contract, and policy contexts. Such a committee would play a role in policy development, as well as perform a dispute resolution function. In the absence of such an overall policy committee, a dispute resolution committee with both administrative and faculty representation is essential.

Principle 14 flows logically from the recommendations contained in principle 11, which were drawn from earlier AAUP statements relating to the rights of faculty members to own and control their intellectual property. The purpose of principle 14 is to extend these faculty rights to both traditional and larger-scale corporate sponsored research agreements.

Recommended Principles to Guide Academy-Industry Relations offers detailed citation of consensus statements by other academic and professional groups that support principles 15–21. Finally, the statement *Academic Freedom and Electronic Communications* reminds us that “teachers are entitled to freedom in the classroom in discussing their subject” and adds that “a classroom is not simply a physical space, but any location, real or virtual, in which instruction occurs.”

V. Intellectual Property Principles Designed for Incorporation into Faculty Handbooks and Collective Bargaining Agreements

These principles are reproduced (with the original numbering retained) from *Recommended Principles to Guide Academy-Industry Relations*.

HANDBOOK PRINCIPLE 11: Faculty Inventor Rights and Intellectual Property (IP) Management:

Faculty members' fundamental rights to direct and control their own research do not terminate when they make a new invention or other research discovery; these rights extend to decisions about their intellectual property—involving invention management, IP licensing, commercialization, dissemination, and public use. Faculty assignment of an invention to a management agent, including the university that hosted the underlying research, will be voluntary and negotiated, rather than mandatory, unless federal statutes or previous sponsored research agreements dictate otherwise. Faculty inventors retain a vital interest in the disposition of their research inventions and discoveries and will, therefore, retain rights to negotiate the terms of their disposition. Neither the university nor its management agents will undertake IP decisions or legal actions directly or indirectly affecting a faculty member's research, inventions, instruction, or public service without the faculty member's and the inventor's express consent. Of course, faculty members, like other campus researchers, may voluntarily undertake specific projects as "work-for-hire" contracts. When such work-for-hire agreements are truly voluntary and uncoerced, their contracted terms may legitimately narrow faculty IP rights.

HANDBOOK PRINCIPLE 12: Shared Governance and the Management of University Inventions: The faculty senate or an equivalent body will play a primary role in defining the policies and public-interest commitments that will guide university-wide management of inventions and other knowledge assets stemming from campus-based research. University protocols that set the norms, standards, and expectations under which faculty discoveries and inventions will be controlled, distributed, licensed, and commercialized are subject to approval by the faculty senate or an equivalent governance body, as are the policies and public-interest commitments that will guide university-wide management of inventions and other knowledge assets stemming from campus-based research. A standing faculty committee will regularly review the university's invention-management practices, ensure compliance with these principles, represent the interests of faculty investigators and inventors to the campus, and make recommendations for reform when necessary.

HANDBOOK PRINCIPLE 13: Adjudicating Disputes Involving Inventor Rights: Just as the right to control research and instruction is integral to academic freedom, so too are faculty members' rights to

control the disposition of their research inventions. Inventions made in the context of university work are the results of scholarship. Invention-management agents are directed to represent and protect the expressed interests of faculty inventors, along with the interests of the institution and the broader public, to the maximum extent possible. Where the interests diverge insurmountably, the faculty senate or an equivalent body will adjudicate the dispute with the aim of recommending a course of action to promote the greatest benefit for the research in question, the broader academic community, and the public good. Student and other academic professional inventors have access to grievance procedures if they believe their inventor or other IP rights have been violated. Students will not be urged or required to surrender their IP rights to the university as a condition of participating in a degree program.

HANDBOOK PRINCIPLE 14: IP Management and Sponsored Research Agreements: In negotiating outside sponsored research agreements, university administrators will make every effort to inform potentially affected faculty researchers and to involve them meaningfully in early-stage negotiations concerning invention management and IP. In the case of large-scale corporate sponsored research agreements like strategic corporate alliances (SCAs), which can have an impact on large numbers of faculty members, not all of whom may be identifiable in advance, a special faculty committee will be convened to participate in early-stage negotiations, represent collective faculty interests, and ensure compliance with relevant university protocols. Faculty participation in all institutionally negotiated sponsored research agreements will always be voluntary.

HANDBOOK PRINCIPLE 15: Humanitarian Licensing, Access to Medicines: When lifesaving drugs and other critical public-health technologies are developed in academic laboratories with public funding support, the university will make a strong effort to license such inventions in a manner that will ensure broad public access in both the developing and the industrialized world. When issuing an exclusive license to a company for the development of a promising new drug—or any other critical agricultural, health, or environmental safety invention—the university will always seek to include provisions to facilitate distribution of these inventions in developing countries at affordable prices.

HANDBOOK PRINCIPLE 16: Securing Broad Research Use and Distribution Rights: All contracts

and agreements relating to university-generated inventions will include an express reservation of rights—often known as a “research exemption”—to allow for academic, nonprofit, and governmental use of academic inventions and associated intellectual property for noncommercial research purposes. Research exemptions will be reserved and well publicized prior to assignment or licensing so that faculty members and other academic researchers can share protected inventions and research results (including related data, reagents, and research tools) with colleagues located at this university or at any other nonprofit or governmental institution. The freedom to share and practice academic discoveries, for educational and research purposes, whether legally protected or not, is vitally important for the advancement of research and scientific inquiry. It also enables investigators to replicate and verify published results, a practice essential to scientific integrity.

HANDBOOK PRINCIPLE 17: Exclusive and Nonexclusive Licensing: The university, its contracted management agents, and faculty will always work to avoid exclusive licensing of patentable inventions, unless such licenses are absolutely necessary to foster follow-on use or to develop an invention that would otherwise languish. Exclusive and other restrictive licensing arrangements will be used sparingly, rather than as a presumptive default. When exclusive licenses are granted, they will have limited terms (preferably less than eight years); include requirements that the inventions be developed; and prohibit “assert licensing,” sometimes referred to as “trolling” (aggressively enforcing patents against an alleged infringer, often with no intention of manufacturing or marketing the product yourself). Exclusive licenses made with the intention of permitting broad access through reasonable and nondiscriminatory sublicensing, cross-licensing, and dedication of patents to an open standard should meet public-access expectations. However, the preferred methods for disseminating university research are nonexclusive licensing and open dissemination, to protect the university’s public-interest mission, open-research culture, and commitment to advancing research and inquiry through broad knowledge sharing. To enhance compliance and public accountability, the university requires all invention-management agents to report publicly and promptly any exclusive licenses issued together with written statements detailing why an exclusive license was necessary and why a nonexclusive one would not suffice. The faculty senate, or another designated governance

body, has the authority to review periodically any exclusive licenses and corresponding statements for consistency with the principle.

HANDBOOK PRINCIPLE 18: Upfront Exclusive Licensing Rights for Research Sponsors: The university will refrain from signing sponsored research agreements, especially multiyear, large-scale SCA agreements, granting sponsors broad title, or exclusive commercial rights, to future sponsored research inventions and discoveries unless such arrangements are narrowly defined and agreed to by all faculty members participating in, or foreseeably affected by, the alliance. If this arrangement is not feasible, as in the case of larger SCAs, the faculty senate (or another designated governance body) will review and approve the agreement and confirm its consistency with principles of academic freedom and faculty independence and with the university’s public-interest missions. Special consideration will be given to the impact exclusive licenses could have on future, as-yet-unimagined uses of technologies. When granted, exclusive rights will be defined as narrowly as possible and restricted to targeted fields of use only, and every effort will be made to safeguard against abuse of the exclusive position.

HANDBOOK PRINCIPLE 19: Research Tools and Upstream Platform Research: The university and its contracted management agents will undertake every effort to make available and broadly disseminate research tools and other upstream platform inventions in which they have acquired an ownership interest. They will avoid assessing fees, beyond those necessary to cover the costs of maintaining the tools and disseminating them, and avoid imposing other constraints that could hamper downstream research and development. No sponsored research agreement will include any contractual obligations that prevent outside investigators from accessing data, tools, inventions, and reports relating to scholarly review of published research, matters of public health and safety, environmental safety, and urgent public policy decisions.

HANDBOOK PRINCIPLE 20: Diverse Licensing Models for Diverse University Inventions: Faculty investigators and inventors and their management agents will work cooperatively to identify effective licensing or distribution models for each invention with the goal of enhancing public availability and use.

HANDBOOK PRINCIPLE 21: Rights to “Background Intellectual Property” (BIP): University administrators and their agents will not act unilaterally when granting sponsors rights to university-managed background intellectual property related to a sponsor’s

proposed research area but developed without the sponsor's funding support. The university will be mindful of how BIP rights will affect faculty inventors and other investigators who are not party to the sponsored research agreement. University administrators and managers will not obligate the BIP of one set of investigators to another's sponsored research project, unless that BIP is already being made available under nonexclusive licensing terms or the affected faculty inventors and investigators have consented. ■

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The Subcommittee

Faculty Communication with Governing Boards: Best Practices

(FEBRUARY 2014)

The statement that follows was prepared by a subcommittee of the Association's Committee on College and University Governance and approved for publication by the parent committee.

I. Introduction

From its initial statement of principles in 1915 and its earliest investigations into violations of academic freedom, the American Association of University Professors has emphasized the necessity of effective communication among those who participate in academic governance. Based on a consideration of relevant AAUP documents and in view of the current climate in higher education, this statement urges greater communication between faculties and governing boards in colleges and universities.¹ Communication between the faculty and the governing board differs in obvious ways from faculty communication with administrative officers. Faculty members and administrative officers ordinarily engage in both formal and informal meetings and discussions through ongoing joint governance activities. By contrast, communication between faculty and board members, when it occurs at all, tends to be ritualized, infrequent, and limited to specific agenda items.

Communication between faculties and governing boards has worsened on many campuses in recent years. At a time when governing board members are increasingly drawn from the business

community, some critics of the tradition of shared governance have encouraged boards to adopt top-down decision-making strategies and to intrude into decision-making areas in which the faculty traditionally has exercised primary responsibility. In this context, it is especially important to recall the dictum of the Association's 1915 *Declaration of Principles on Academic Freedom and Academic Tenure* that, in both private and public institutions, "trustees are trustees for the public." That notion of a public trust is based on the understanding—to quote the 1940 *Statement of Principles on Academic Freedom and Tenure*—that "[i]nstitutions of higher education are conducted for the common good." Faculty-board communication, like shared governance in general, should help to ensure that higher education contributes to the common good.

Direct communication between the faculty and the board is sometimes actively discouraged, despite ample evidence that failures of faculty-board communication may lead to serious governance breakdowns, as occurred with the recent removal of the president of the University of Virginia by its board of visitors.² In a number of cases involving program closures, the AAUP has conveyed its concern regarding the administration's and the

1. The AAUP's recent statement *The Inclusion in Governance of Faculty Members Holding Contingent Appointments* emphasizes that "'faculty' should be defined inclusively rather than exclusively; faculty status should not be limited to those holding tenured or tenure-track appointments" (*Bulletin of the American Association of University Professors* [special issue of *Academe*], July–August 2013, 81). In accordance with that recommendation, this report uses the term *faculty* to refer to faculty members in tenured, tenure-track, and contingent appointments.

2. See "College and University Governance: The University of Virginia Governing Board's Attempt to Remove the President," in *Bulletin of the American Association of University Professors* (special issue of *Academe*), July–August 2013, 40–60. It should be noted that, on this occasion, the governance breakdown eventually led to the adoption of measures which will dramatically improve faculty-board communication.

governing board's failure to consult with the faculty in areas where the faculty exercises primary responsibility.³ A recent Committee A report on financial exigency argues that restricting faculty-board communication reduces the capacity of colleges and universities to fulfill their educational missions.⁴

II. Previous Recommendations of the AAUP

Early in the Association's history, the conference or liaison committee came to be viewed as a particularly effective vehicle for faculty-board communication. The AAUP conducted its first investigation into violations of academic freedom and tenure in 1915 at the University of Utah. The resulting report noted that a faculty committee appointed in response to the events to devise a "Plan of Administration" proposed the establishment of an "Administrative Council of the University of Utah." The council, effectively a mixed faculty-administration senate, was to consist of the president, deans, and faculty members. Among its proposed charges was the provision that "[t]he regular medium of communication with the Regents shall be the Administrative Council, but the Faculty may at any time communicate with the Regents by conference, resolution, special committee, or otherwise." The report's authors commended the proposal as a way to address the general issue of faculty-board communication, stating that it would "provide practicable means for the correction of two of the most serious imperfections in the constitution of most American colleges and universities, namely: the lack of conference, and frequently of a good understanding, between the two legislative bodies of such institutions, the Faculty and the Board of Trustees; and the anomalous position of the college president, as the only representative before the board of trustees, of the views and wishes of a faculty which does not select him as its representative, and to which he is in no way responsible."

Following the investigation, John Dewey, serving as first president of the Association, prepared a paper to be read at a meeting of the Association of American

Universities.⁵ In it, he outlined the basics of what was called a conference or liaison committee: "The essentials are that the faculty conference committee should be elected; that joint meetings should have an official and not merely a personal status; that all new measures under consideration by the governing board should be made known to the committee and discussed by its members before adoption; that no legislation of faculties should be vetoed without thorough discussion of the joint committee. In all important matters, the committee should report matters to the faculty by which it is elected, and receive instructions from it."

In 1920, the AAUP's Committee T on the Place and Function of Faculties in University Government and Administration (now the Committee on College and University Governance) issued a report that included several recommendations on the conduct of shared governance. The committee stated that faculty-board communication "may be accomplished in several ways: members may be elected by the faculty to membership on the board of trustees for limited terms of office and without vote (the Cornell plan); or the faculty committee on university policy may be elected by the faculty from its own members to be present and advise with the board as a whole, or with the regularly appointed committee of the board on university policy (the plan in vogue at Princeton, Stanford, Wisconsin, etc.)." A majority of the committee endorsed the latter recommendation, calling it the "conference committee" model.

In 1938, Committee T issued a subsequent report that included further recommendations on the conduct of shared governance. On the subject of faculty-board communication, the report noted that

it seems clear that such consultation must be accomplished through a conference committee authorized to represent the faculty, or through joint committees of faculty and trustees set up to confer on specific problems or created ad hoc to confer on some special occasion. Provisions of these sorts are now sufficiently common in university government so that they are in no sense radical or merely experimental departures from the traditional division of functions. This

3. See, for example, "Academic Freedom and Tenure: National Louis University" and "Academic Freedom and Tenure: Southern University, Baton Rouge," in *Bulletin of the American Association of University Professors* (special issue of *Academe*), July–August 2013, 17–39.

4. See *The Role of the Faculty in Conditions of Financial Exigency*, in *Bulletin of the American Association of University Professors* (special issue of *Academe*), July–August 2013, 120–47.

5. "Faculty Share in University Control." Prepared on behalf of Columbia University and delivered by Cassius J. Keyser to the Association of American Universities, August 27, 1915. Published in the *Journal of Proceedings and Addresses of the Annual Conference* (1915): 27–32.

traditional division, which assigns financial control to the trustees and educational policy to the faculty, is sound and should be protected in the interest of the faculty's independence in educational matters. . . . In order that the faculty may be genuinely represented in such conference committees, it must necessarily participate in the selection of its conferees.

The Association in 1966 issued the *Statement on Government of Colleges and Universities*, jointly formulated with the American Council on Education and the Association of Governing Boards of Universities and Colleges (AGB). Adopted as policy by the AAUP and commended by the other two organizations to their membership, the *Statement on Government* addresses the need for adequate communication among the key constituents of institutions of higher education: "The variety and complexity of the tasks performed by institutions of higher education produce an inescapable interdependence among governing board, administration, faculty, students, and others. The relationship calls for adequate communication among these components, and full opportunity for appropriate joint planning and effort." It further delineates the means of communication between these constituents: "The means of communication among the faculty, administration, and governing board now in use include: (1) circulation of memoranda and reports by board committees, the administration, and faculty committees; (2) joint ad hoc committees; (3) standing liaison committees; (4) membership of faculty members on administrative bodies; and (5) membership of faculty members on governing boards. Whatever the channels of communication, they should be clearly understood and observed."

While the *Statement on Government* does not identify a preferred method for the conduct of faculty-board communication, the preceding survey indicates the central role that the institution of a faculty-board conference or liaison committee has played in the development of the Association's position on academic governance, with the elements of such a committee having been succinctly summarized by Dewey in 1915.

III. Recommendations and Conclusions

College and university governance works best when each constituency within the institution clearly understands its role and relationship to the other constituents and when communication among the governing board, the administration, and the faculty is regular,

open, and unmediated. Too often the president serves as the sole conduit for faculty-board communication. While this practice may be efficient, it is not always effective in enhancing understanding between governing boards and faculties.

In 2009, the AGB issued a report presenting the results of a survey of presidents, board chairs, and chief academic officers regarding faculty-board relations.⁶ The report recommended providing "opportunities for faculty and trustees to interact in meaningful ways, in formal as well as informal settings," including through "faculty membership on board committees or participation in committee meetings," as a way of improving communication between faculties and governing boards. The report stated that 87 percent of the 417 institutions surveyed included faculty presentations on board meeting agendas and that about one-fourth of surveyed institutions (27 percent) included faculty representatives as members of the governing board. In 14 percent of the institutions, the head of the faculty senate was a member of the board. More than half of respondents (56 percent) reported faculty membership on board committees. The report also stated that it was almost twice as common for faculty members to serve on committees of boards of independent colleges and universities (61 percent) as on boards of public institutions (32 percent).

Because governing boards tend to accomplish much of their work in committees, standing committees of the board, including the executive committee, should include a faculty representative. In addition, faculty representatives should be able to attend the business meetings of the full governing board. As the AGB report notes, in some cases these faculty representatives are members, presumably with voting privileges, of the standing committees. Certainly in the case of an honorary degrees committee, an academic affairs committee, or other committees of the board that deal with areas that are the primary responsibility of the faculty, the case can be made that the faculty representative should be a voting member of the committee. This arrangement acknowledges the significant expertise that faculty members can bring to these areas. It does differ, however, from a model in which faculty members serve on the full board—as faculty trustees,

6. Merrill Schwartz, Richard Skinner, and Zeddie Bowen, *Faculty, Governing Boards, and Institutional Governance* (Washington, DC: Association of Governing Boards of Universities and Colleges, 2009).

for example—since committees make recommendations to the full board but are not responsible for final action.

If faculty representatives on board committees do not have voting privileges, they should at least participate fully in discussions. As a first step, the position held by the faculty member should have a designation such as *faculty representative*, rather than *faculty visitor* or *faculty observer*, to indicate that his or her role is not passive. While perhaps mostly symbolic, the position's title may help to shape the role that the faculty representative assumes when attending committee and board meetings.

Consistent with this committee's recommendations in the 2013 statement *Confidentiality and Faculty Representation in Academic Governance*, faculty representatives to the governing board and its committees should regularly report to the faculty on board activities and actions and should seek out the views of the faculty members they represent. As the statement noted, "the ability of faculty representatives to convey the views of their constituents should lend more authority to their statements." Both the 1938 Committee T statement and the *Statement on Government* assert that faculty members who serve as representatives of the faculty should be "selected by the faculty according to procedures determined by the faculty." A genuinely representative faculty member can claim more legitimacy in his or her role than an administrative appointee. As the University of Virginia investigating committee noted with respect to presidential appointments of faculty members to the governing board, "nomination by the senate of candidates for appointment to the board's committees would conduce toward greater confidence in faculty representation without sacrificing competence."

The AGB report recommended including new faculty representatives to the governing board in trustee orientation sessions. Doing so not only would give those faculty members an overview of the functions of the board but also would allow them to participate in the discussions at the orientation session, thus improving mutual understanding. Additionally, faculty representatives who serve on faculty governance bodies can explain their governance activities to new trustees, particularly in areas, such as promotion and tenure, with which trustees may not be as familiar.

The role of faculty members on the governing board was a subject of dispute in Committee T's 1920 report. Nearly a century later there still seems to be an inherent conflict between the respective roles of board

member and faculty member.⁷ A recent survey of faculty members on governing boards notes that 41.7 percent of respondents viewed their role on the board as representing the faculty, 10.2 percent viewed their role as representing the institution as a whole, and 22 percent saw themselves in a dual role of representing both.⁸ Faculty trustees did, however, identify areas in which they believed their service on the board had a "major impact," notably academic affairs (49 percent) and finance and budget (32 percent).

Faculty representation on an institution's governing board and its committees should not be a substitute for regular, substantive communication between the faculty and the board, unmediated by members of the administration. Such communication is best accomplished through the establishment of a liaison or conference committee that consists only of faculty members and trustees and that meets to discuss items brought to its attention by trustees or faculty members. Institutions must be clear about the role of a conference committee in their governance structure in order to avoid overlapping jurisdiction of the conference committee with standing committees of the governing board, the administration, or the faculty.⁹

In addition to a standing liaison committee, joint ad hoc committees are sometimes needed to address specific issues of mutual concern. The *Statement on Government* refers to the crucial joint responsibility of the faculty and governing board for the selection of the president: "Joint effort of a most critical kind must be taken when an institution chooses a new president. The selection of a chief administrative officer should follow upon a cooperative search by the governing

7. Faculty members serving as board members always retain their academic freedom as faculty members, including the freedom of intra-mural utterances, in spite of this inherent conflict.

8. Ronald G. Ehrenberg, Richard W. Patterson, and Andrew V. Key, "Faculty Members on Boards of Trustees," *Academe*, May–June 2013, 13–18.

9. For example, the Regents-Faculty Conference Committee at Saint Olaf College has the following charge: "The purpose of the Regents-Faculty Conference Committee is to provide a way by which, on a regular basis, representatives of the Board of Regents and the faculty may discuss together matters of mutual concern regarding the college. The Regents-Faculty Conference Committee does not replace other faculty, administration, or Board functions and prerogatives. It does not legislate or otherwise determine college policy. It may, as a result of its deliberations, direct recommendations either to the faculty or to the Board for consideration and action. Members serve two-year terms."

board and the faculty, taking into consideration the opinions of others who are appropriately interested.”

The above recommendations apply to all colleges and universities, public and private, whether or not the faculty bargains collectively. Faculty collective bargaining requires a clear demarcation of responsibilities between faculty union and senate, but both agencies are vehicles for giving voice to the faculty and should be mutually supportive. As the Association’s *Statement on Academic Government of Institutions Engaged in Collective Bargaining* asserts, “Collective bargaining should not replace, but rather should ensure, effective traditional forms of shared governance.” Accordingly, faculty collective bargaining agreements should ensure faculty-board communication. The nature of that faculty-board communication and the particular faculty representatives involved may depend, however, on the subject matter under discussion and the specific provisions of the relevant collective bargaining agreement. It should also be recognized that public institutions may be subject to political and legislative constraints that limit or restrict shared governance and are detrimental to effective faculty-board communication.

One additional aspect of faculty-board communication in the context of public higher education is the existence of statewide boards of higher education, in which one governing board oversees multiple institutions. On this topic, the Committee on College and University Governance in 1984 issued a joint statement with the Committee on Government Relations that is consistent with the recommendations in this report.¹⁰

In sum, effective faculty-board communication is a critical component of shared governance. Its absence can result in serious misunderstanding between campus constituents and in significant governance failures leading to flawed decision making. The present statement has thus recommended the following:

1. Every standing committee of the governing board, including the executive committee, should include a faculty representative.
2. New faculty representatives to the governing board should participate in orientation for new trustees.
3. Direct communication between the faculty and the governing board should occur through a

liaison or conference committee consisting only of faculty members and trustees and meeting regularly to discuss topics of mutual interest. ■



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10. *Statewide Boards of Higher Education: The Faculty Role*, in *Academe*, May–June 1984, 16a.

Report of Committee A on Academic Freedom and Tenure, 2013–14

Introduction

The 2013–14 Committee A report includes both judicial and legislative activities. The judicial work of Committee A involves the imposition and removal of censure. In 2012–13, two administrations were censured, and two others were removed from the censure list. In a fifth case, positive developments subsequent to our investigation led the committee to defer any recommendation on censure and instead to monitor developments and report back to the annual meeting in June 2014. At the 2014 meeting, we reported that these positive developments continued and announced that the committee had closed its file on the case. The 2014 annual meeting also voted to censure one administration and to delegate to Committee A the authority to remove another from the list, providing certain criteria are met.

In legislative activity, Committee A completed its revision and expansion of *Academic Freedom and Electronic Communications*, a report first adopted in 2004. The revised and expanded report is certainly timely, given the growing number of assaults on faculty members' speech rights as exercised in social media and other electronic formats. The committee also approved two new policy documents on intellectual property, a statement on the freedom of teaching in multisection courses, and a statement on Confucius Institutes. Committee A also discussed the apparent proliferation of instances in which institutions mandate use of "trigger warnings" in syllabi and other course materials. The committee agreed that such mandates violate principles of academic freedom and appointed a subcommittee to develop an official statement on the subject, which we hope to issue even before our next meeting in November.

I am also pleased to report that in a major victory for academic freedom and tenure, the American Bar Association rejected proposals to eliminate or dilute the tenure provisions in the ABA accreditation standards

for law schools. In January, the AAUP submitted comments to the Council of the ABA Section of Legal Education and Admissions to the Bar strongly opposing the elimination of the tenure provisions and arguing against the proposal that would have diluted tenure protections. Theresa Chmara, the AAUP's general counsel, attended a hearing in Chicago on February 5 to present the AAUP's position and respond to questions. Although we had been informed that passage of at least one of these proposals was a "done deal," the ABA council in March voted to reject both proposals and retain the current accreditation standards. This was a great and somewhat unexpected victory for the AAUP, for our law school colleagues, and for all those who opposed these changes. Special thanks go to Theresa and to our legal staff, Aaron Nisenson and Nancy Long, as well as to Steve Sanders, law professor at Indiana University, who was the primary author of the AAUP submission, and to AAUP members Robert Gorman, Robert O'Neil, Matthew Finkin, David Rabban, and Rana Jaleel for their contributions.

Judicial Business

Imposition of Censure

At its June meeting, Committee A considered one case that had been the subject of an ad hoc investigating

Status of Committee A Cases and Complaints, as of May 31, 2014

All current open complaints, not opened as cases	269
All current open cases	145
Total complaints and cases currently open	414

committee report published since the 2012 annual meeting. The committee adopted the statement below recommending that Northeastern Illinois University be added to the Association's list of censured administrations, the AAUP Council concurred, and the 2014 annual meeting voted to impose censure. I want to thank the members of the investigating committee, Rebecca Williams (chair), Betty DeBerg, and Joseph Persky, as well as Peter Kirstein, chair of the Illinois AAUP conference Committee A, and the other members of Illinois Committee A, who first took up this case.

Northeastern Illinois University. The AAUP investigating committee's report, published on the AAUP website in December and included in this year's *Bulletin*, deals with a case of tenure denial at this public institution in Chicago. The candidate, an assistant professor of linguistics, had been recommended for tenure successively by his tenured linguistics colleagues, his department chair, the dean of the College of Arts and Sciences, and, unanimously, the faculty's elected University Personnel Committee. The NEIU president, however, declined to support the professor's candidacy by forwarding it to the board of trustees for final action. Of the sixteen candidacies for tenure to reach her desk that year, his was the only one that she rejected.

The NEIU president provided only two reasons for denying the faculty member tenure: his failure to meet her deadline for filing a plan regarding student advising and the inadequacy of his "cooperation with colleagues and students." The AAUP's subsequent report found that his missing the deadline was inadvertent and harmless and that all available evidence "showed him to have been fully cooperative." The president had initially written that the administration possessed "significant information" which the candidate's supporters lacked. She did not comply with the AAUP staff's request for it, but she did agree to a meeting, accompanied by her chief administrative officers, with the AAUP investigating committee during its visit to NEIU in August 2012. Committee members recall asking her three times during the course of a half-hour meeting why she rejected recommending the candidate to the board. She first replied that there was no unrevealed additional information. On the second occasion, she suggested that there was information but she was not inclined to provide it, and finally she stated that she was comfortable with her decision and would not discuss it further.

Without the president's having come forth with a credible reason for opposing the candidate, the investigating committee focused on an opinion broadly held by NEIU faculty members on what in fact had motivated her. Upon first joining the NEIU faculty, the candidate had found himself involved in an ongoing dispute between tenured colleagues in linguistics and others in the department with credentials more appropriate to instruction in English as a second language (TESL). The linguistics professors became increasingly hostile toward the president and the provost, whom they accused of favoring TESL faculty in curricular decisions at their expense. A linguistics professor became chair of the faculty senate in fall 2009 for a two-year term, whereupon the senate began a study of faculty governance at NEIU that culminated in faculty votes of no confidence in the president and her provost in 2010–11. Four linguistics professors were widely seen as leaders in this anti-administration movement: three with tenure and the fourth the candidate for tenure. Faculty members interviewed by the investigating committee expressed the belief that the only nontenured member of the quartet was a convenient target for the president's retaliation because of the quartet's active opposition to her administration. The investigating committee found no evidence that the candidate himself played a major role in procuring the faculty votes of no confidence in the administration. Ample evidence exists, however, of the major role played by the three other linguistics professors, whose tenure largely protected their academic freedom to act as they did. The nontenured professor, lacking that protection, found himself paying the price.

The investigating committee concluded that the Northeastern Illinois University administration, in denying tenure for the un rebutted reasons that have been indicated, violated principles of academic freedom. The committee concluded further that the administration, in failing to state credible reasons for denying tenure, did not afford the candidate academic due process as called for in several applicable AAUP policy documents. Finally, the committee concluded that the administration, by questioning the candidate's collegiality in denying him tenure, disregarded the admonitions in the AAUP statement *On Collegiality as a Criterion for Faculty Evaluation*.

Committee A recommends to the One Hundredth Annual Meeting of the AAUP that Northeastern Illinois University be placed on the Association's list of censured administrations.

Closure of Investigation Following Deferral of Censure

At its June meeting, Committee A, having informed the 2013 annual meeting that it would retain the University of Northern Iowa on its agenda and report back to the 2014 annual meeting, approved the following statement, which was conveyed to the AAUP Council and the annual meeting.

The University of Northern Iowa. The December 2012 report of the investigating committee recounted unilateral actions taken in February and March 2012 by the administration of the University of Northern Iowa to discontinue nearly 20 percent of the university's academic programs. In carrying out these program closures, the administration threatened to terminate more than fifty faculty appointments. Although the terminations did not occur, a number of faculty members, including several with tenure, accepted retirement offers in the belief that refusing to do so would result in the immediate termination of their appointments with no severance pay.

The investigating committee concluded that the administration had defined program areas for elimination solely for the purpose of laying off faculty members it no longer wished to retain, that many of the retirements accepted as alternatives to layoff were in fact cases of constructive discharge in which the administration terminated tenured appointments without having demonstrated its grounds for so doing, and that these actions violated standards set forth in the joint 1940 *Statement of Principles on Academic Freedom and Tenure* and Regulations 4c and 4d of the Association's derivative *Recommended Institutional Regulations on Academic Freedom and Tenure*. The committee also found that the administration's actions violated principles articulated in the AAUP's *Statement on Government of Colleges and Universities* as well as the university's own policies.

In June 2013, a new president took office. In the months preceding his appointment, he engaged the faculty union (UNI-United Faculty, an AAUP chapter), the faculty senate, and the AAUP's staff in discussions aimed at addressing the issues raised in the investigating committee's report. Following these discussions, UNI faculty leaders, including the AAUP chapter president, informed the AAUP's staff of improvements in academic governance and urged that any action regarding censure be deferred to allow more time to address the investigating committee's concerns. In the meantime, the AAUP chapter and the Iowa board

of regents had reached a settlement in the cases of the faculty members who had been constructively discharged.

As a result of these developments, Committee A made no recommendation regarding the University of Northern Iowa to last year's annual meeting. Instead, it stated that it would retain the matter on its agenda and report back to this year's meeting.

In May 2014, letters responding to a staff request for updates came from key faculty groups and the administration. The chair of the UNI faculty outlined efforts the new president had made to improve communication between the faculty and the administration and noted the "greatly improved relationship" between the faculty and the Iowa board of regents. In closing, he thanked the AAUP, on behalf of the UNI faculty, for its assistance during the past three years and for helping to "move things in a positive direction." The chair of the university faculty senate cited increased faculty control of the curriculum (with further progress expected) and increased faculty involvement in budgetary decision making (again, with further progress expected) in addition to improved communication. He stated that he and his fellow faculty leaders have found the new administration to be "transparent, open-door, and supportive of innovation."

The president of the AAUP chapter reported that the administration has been meeting productively with UNI-United Faculty to address the issue of program definition in times of financial stress, that the cases of individual faculty members affected by the threatened layoffs have been resolved through cooperative efforts, that additional outstanding issues have been addressed, and that new channels of communication between the president and the chapter have resulted in several promising joint initiatives, including discussions of interest-based bargaining with the board of regents. He closed by stating that by working cooperatively, the administration and UNI-United Faculty "have made significant progress in restoring respect for academic freedom, tenure, and faculty governance at the University of Northern Iowa."

The UNI president informed the staff that, after assessing the challenges the university faced upon his taking office, his administration had made a commitment to "communication, collaboration, and service." He cited specific steps taken to increase faculty involvement in all areas of institutional decision making, including making structural changes to key governance bodies, and to address other issues raised

in the investigating committee's report. He thanked the AAUP's leadership for its "support and assistance" over the past year in helping the university "move forward with AAUP as a partner in the educational process."

In view of these many favorable developments, Committee A is pleased to close its file on the University of Northern Iowa investigation.

Removal of Censure

Committee A adopted the following statement recommending that the annual meeting delegate to Committee A the authority to remove Louisiana State University, Baton Rouge, from the Association's list of censured administrations during the months immediately ahead. The Council concurred in the statement, and the annual meeting voted its approval.

Louisiana State University, Baton Rouge. The Association's 2012 annual meeting imposed censure on the administration of Louisiana State University and Agricultural and Mechanical College, Baton Rouge (LSU), based on actions concerning two cases that differed regarding the administrative officers involved and the matters under dispute but that were alike in testing core issues of academic freedom.

The first case, involving a nontenured associate professor of engineering who was denied retention after seventeen years of full-time service, tested freedom regarding research and publication and regarding extramural utterances in a politically charged atmosphere. The professor's work in coastal erosion and in hurricane- and flood-related issues had brought him prominence and favorable evaluations. Hurricane Katrina's August 2005 onslaught placed him in a national spotlight that the LSU authorities were at first glad to share. Their support of him ended, however, after he found that a main cause of the flooding in the New Orleans area was the structural failure of the levees overseen by the US Army Corps of Engineers. Anticipating cooperation from the corps in coastal restoration projects, the LSU administrators expressed resentment over having been linked in the media with the professor's findings. They took several steps to restrain his public activities, to keep LSU at a distance from those activities, and, subsequently, to deny him further appointment.

The AAUP investigating committee concluded that the administration denied the engineering professor the academic due process that should have been afforded under AAUP-supported standards and

violated his academic freedom in the following ways: terminating his services largely in retaliation for having dissented from the LSU position on the levees and the flooding, restricting the nature of his research, and penalizing him for having exercised his citizen's rights to speak out extramurally.

The second case, that of a tenured full professor of biological sciences in her thirty-first year of full-time faculty service, tested the freedom of a classroom teacher to assign grades as she saw fit. She had been commended on several occasions for teaching excellence, with praise for her "rigorous approach" and "demanding coursework" in her upper-level courses. In spring 2010, she agreed to "pitch in" by teaching a section of an introductory course for the first time in fifteen years. Her midterm grades were strongly skewed to D and F, leading the college dean, without having consulted with her, to remove her immediately from teaching the course. She asked the dean to hear her explanation for the grades and reconsider, and he replied that he was willing to discuss the matter but his decision stood. LSU's faculty grievance committee found unanimously in her favor, whereupon the administrators assured the committee that the senate was at work on an improved policy on student grading. The dean apologized to the professor for having failed to meet with her personally to tell her he was removing her from the course, but he did not apologize for not having consulted with her before he acted.

The AAUP investigating committee concluded that the LSU administration violated the professor's rights to assign grades and, in peremptorily removing her from an ongoing course, violated her academic freedom to teach. It concluded further that the administration's imposing the severe sanction of suspending her, without opportunity for a faculty hearing, denied her the protections of academic due process.

* * *

The engineering professor filed suit in federal district court. Late in 2012, after extensive discovery proceedings, he reached a financial settlement with the university. The biology professor received an apology for the actions against her which supporters claimed could have been stronger, but the administrators responsible for the actions had by then all moved on. In May 2014, the LSU Honors College published an article, "Always at the Cutting Edge," that praised the biology professor for her teaching leadership. The administration immediately linked the article to

a press release posted on the LSU homepage. With the two major cases settled for all practical purposes, remaining to be considered by Committee A in its statement on this case to the One Hundredth Annual Meeting are its knowledge of desired changes in official LSU policies and its sense of current conditions for academic freedom and tenure at Louisiana's flagship public university.

The year 2012 witnessed not only the settlement with the engineering professor but also the departures of the president of the Louisiana State University system in April and the chancellor of the system's Baton Rouge institution in August. A former LSU president served as interim president-chancellor, the two positions to be combined pending the selection of a successor. After a selection process that was stormy even by Louisiana standards, with faculty groups complaining of being shut out, Dr. F. King Alexander was appointed in spring 2013 to the combined office.

Writing in March 2014 to AAUP president Rudy Fichtenbaum, Dr. Alexander informed the Association of his interest in having the censure removed. In the two years since the publication of AAUP's investigative report, he remarked, "a number of factors have changed internally," and he noted that, in the cases with which the report deals, "every administrative position involved in those cases, except one, is now held by a person different from when the cases occurred." Associate General Secretary Jordan E. Kurland, as the staff member most versed in handling Louisiana cases and the person currently handling the LSU censure situation, immediately assured Dr. Alexander that his interest was welcome, and Dr. Alexander promptly designated Vice Provost for Academic Programs T. Gilmour Reeve as his representative for discussion of the censure and its potential removal. The AAUP staff shared the Alexander letter with current and former officers of the AAUP chapter and faculty senate, inviting their comment on what else, beyond recommended changes in official policies, may need to be done before the censure is removed.

* * *

Over the ensuing weeks, Vice Provost Reeve and his staff have been fully cooperative in locating and providing the AAUP staff with requested information on changes in official policy documents and in numbers of full-time persons holding faculty appointments outside as well as inside the tenure system. The following examples of policy changes strongly support

the argument that the LSU administration's current interest in censure removal be honored.

First, with respect to a key change involving academic freedom, the adoption in August 2013 of Policy Statement 44, "Student Grading," has been acknowledged by all parties in the 2010 actions against the biology professor as the best that can be said at the upper-class level on fairness in assigning grades, on the basis of grades, and on the respective rights of involved students, instructors, and administrators.

Current official LSU provisions governing tenure-track and tenured full-time faculty appointments are set forth in Policy Statement 36-T, adopted in August 2009. A parallel document adopted at the same time, PS 36-NT, governs full-time faculty appointments at specified ranks designated as ineligible for tenure. PS 36-T merits high praise for its emphasis on the crucial role of a strong tenured faculty. It states in its preamble that

the university seeks to employ and maintain a staff of tenured and tenure-track faculty with superior qualifications to advance its mission and to nurture and support the work of those faculty members, while observing the principles of academic freedom and the tenets of the tenure system. . . . Among personnel decisions, the decision to award tenure is of distinguished and central importance. . . . The decision entails the presumption of professional excellence. It implies the expectation of an academic career that will develop and grow in quality and value, and one that will be substantially self-supervised and self-directed. [Tenure] assures that the employee will not be dismissed without adequate justification and without due process. With tenure comes a steward's role in the university's governance and leadership. In particular, the tenured faculty will play a key role in the decisions to appoint new faculty and to promote continuing faculty.

At least as important as the role of the tenured faculty in granting tenure to candidates is its role in dismissing a tenured faculty member for cause. Until the end of the twentieth century, official LSU policy on "Termination for Cause" was starkly simple and deficient: "appointments may be terminated prior to normal expectation for any conduct that is demonstrably prejudicial to the university. Before termination for cause, faculty members shall be entitled to have the charges against them stated in writing and to request a hearing, according to procedures of due process,

before a special committee of the faculty appointed by the Chancellor.” Current policy on “Dismissal for Cause for Faculty,” PS 104, is a radical improvement. It meets all of the AAUP’s recommended standards with respect to dismissal proceedings and in fact exceeds those standards. The faculty senate president is to be consulted before any action is taken to reassign or suspend the faculty member during the proceedings. The administration’s charges are still to be heard by a “Committee of the Faculty,” but no longer by a committee whose members are appointed solely at the discretion of the chief administrative officer to whom the committee is to report. Rather, that officer, the chancellor, is to solicit names of at least eight possible committee members from the faculty senate executive committee and at least eight from the LSU AAUP chapter. The hearing committee will consist of no fewer than five and no more than seven faculty members, with the chancellor selecting all of the members from the lists of individuals provided by the senate executive committee and the AAUP.

* * *

The good news reported in this statement is tempered by one important area of uncertainty that leaves Committee A hesitant about recommending the censure’s removal today. A major concern over the past few years for the AAUP nationally, and particularly at large research universities such as LSU in the context of a removal of censure, is the status and the number of full-time faculty members who serve, beyond any reasonable period of apprenticeship, on term appointments renewable at the administration’s discretion. They thus lack the safeguards of academic due process that accrue with the indefinite tenure for which they are not officially eligible.

Late in April the AAUP staff received from the provost’s office the previously noted Policy Statement 36-NT, the parallel statement to PS 36-T for tenure-track and tenured faculty, that governs full-time appointments at specified ranks outside the tenure system. The faculty senate had called for the issuance of PS 36-NT so that procedures for hiring, evaluating, and retaining faculty on contingent appointments are spelled out as clearly as they are for tenure-track faculty, with the result that the procedures in the two documents are much the same until the transition from probation to tenure occurs in PS 36-T. As to the numbers of full-time contingent faculty, figures

supplied by the administration indicate that, among those holding one of the three professorial ranks, there were 86 such faculty during 2009–10 when PS 36-T and PS 36-NT were issued, and there have been 93 during 2013–14, both numbers subject to some increase when faculty members holding a nonprofessorial rank such as instructor are included. Certainly the similarity in the numbers over five years indicates that there has been no rush at LSU to fill vacancies with full-time contingent professors. On the contrary, the vice provost reports that, pending funding in the state fiscal budget, the university plans to fill twenty-five new tenure-track and tenured positions in selective needed specialties.

The LSU administration has not quarreled with Committee A’s position that the number of faculty members on full-time contingent appointments can and should be substantially reduced, yet this is the kind of task that cannot be responsibly accomplished by the stroke of a pen. In order to recommend censure removal today, Committee A would need to predict, based on its knowledge of the discussions that have been held on the matter, that within a few weeks after the start of the new academic year, actions that significantly reduce contingent faculty appointments will be in process. Lacking evidence upon which to base that prediction, Committee A is reluctant to recommend LSU’s removal from the censure list at this moment. With all of the positive steps toward removal that the LSU administration has taken, however, the committee is equally reluctant to have the action held over until the annual meeting in 2015. It accordingly recommends that this annual meeting delegate to Committee A authority for removing the censure once it can attest that actions are in process which will ensure the protections of academic due process for full-time faculty members holding contingent appointments. If the committee cannot so attest by the time of its November meeting, the issue of censure removal will be held over for consideration by the annual meeting in 2015.

Legislative Business

At its November meeting Committee A approved and sent to Council a much revised and expanded version of its 2004 report *Academic Freedom and Electronic Communications*. After receiving Council approval, the revised report was published online in April. It appears in this edition of the AAUP *Bulletin* and will be included in the centennial edition of *Policy Documents and Reports* (the Redbook), scheduled for publication in January 2015.

At that meeting Committee A also approved for publication as part of this report *The Freedom to Teach*, a statement articulating existing AAUP policy on the relationship between the academic freedom of individual faculty members in the classroom and collective faculty responsibility for the curriculum, particularly with regard to multisection courses. The text follows.

The freedom to teach includes the right of the faculty to select the materials, determine the approach to the subject, make the assignments, and assess student academic performance in teaching activities for which faculty members are individually responsible, without having their decisions subject to the veto of a department chair, dean, or other administrative officer. Teaching duties that are commonly shared among a number of faculty members require a significant amount of coordination and the imposition of a certain degree of structure, often involving a need for agreement on such matters as general course content, syllabi, and examinations.

In a multisection course taught by several faculty members, responsibility is often shared among the instructors for identifying the texts to be assigned to students. Common course syllabi and examinations are also typical but should not be imposed by departmental or administrative fiat. The shared responsibility bespeaks a shared freedom, which trumps the freedom of an individual faculty member to assign a textbook that he or she alone considers satisfactory. The individual's freedom in other respects, however, remains undiluted. Individuals should be able to assign supplementary materials to deal with subjects that they believe are inadequately treated in the required textbook. Instructors also have the right to discuss in the classroom what they see as deficiencies in the textbook; doing so could turn out to be as effective in engaging the students as requiring them to use an alternate textbook. These principles apply equally to faculty in the tenure system and those with contingent appointments. Although under these circumstances the decisions of the group may prevail over the dissenting position of a particular individual, the deliberations leading to such decisions ought to involve substantial reflection and discussion by all those who teach the courses. The department should have a process for periodically reviewing

curricular decisions and altering them based on a consensus of the appropriate teaching faculty, subject to review at other levels of governance.

The statement may also be found on the AAUP website and was noticed in the January–February 2014 issue of *Academe*.

In addition, the committee at its fall meeting approved the *Statement on Intellectual Property* and the much more extensive *Defending the Freedom to Innovate: Faculty Intellectual Property Rights after Stanford v. Roche*. Both documents were adopted by the Council at its November meeting, were posted in June 2014 on the AAUP's website, and are included in this issue of the *Bulletin*. The *Statement on Intellectual Property* will also be published in the centennial edition of the Redbook.

At its June meeting, Committee A approved *On Partnerships with Foreign Governments: The Case of Confucius Institutes*, produced by a subcommittee formed at the committee's fall meeting. In it, we join the Canadian Association of University Teachers in recommending that colleges and universities decline involvement with Confucius Institutes unless certain specific conditions are met. Committee A also discussed the mandated use of "trigger warnings" in syllabi and other course materials. A subcommittee was formed to study the issue and to prepare a draft text for the full committee's consideration. Another subcommittee was created to collect information from AAUP chapters and other sources about outside funding and its influence on research and curriculum. The subcommittee will prepare a report or an *Academe* article based on its findings.

Operational Items

The committee was informed of the appointment, effective August 16, of Professor Donna Young of Albany Law School to fill a senior program officer position in the Department of Academic Freedom, Tenure, and Governance. Professor Young, an authority on employment law and discrimination, organized and is president of her AAUP chapter, which recently defeated attempts to lay off tenured and tenure-track faculty without due process. We welcome her to the AAUP staff and look forward to her positive contributions to the committee's work.

Conclusion

I am grateful to the members of the committee and its subcommittees, who serve as volunteers, and to the

staff of the Association, especially those in the Department of Academic Freedom, Tenure, and Governance, for their continued dedication and hard work. In particular, I must acknowledge the extraordinary and continuing contributions of Jordan Kurland, who in 2015, AAUP’s centennial year, will complete fifty years of service on our staff. Jordan is truly a legend in his own time, and his vast knowledge, acuity, and tireless efforts continue to inform and strengthen the work of Committee A. I want also to acknowledge the support of AAUP executive director Julie Schmid, whose optimism and energy have helped infuse not only Committee A but the entire Association with new vitality.

I must also recognize the departures of two valuable staff members.

On December 31, 2013, Susan Smee retired from her position as executive assistant in the Department of Academic Freedom, Tenure, and Governance after ten years of exemplary service to the AAUP. Sue was initially appointed to provide administrative support for the Association’s activities in the area of academic freedom, tenure, and governance, a responsibility that she performed with remarkable efficiency—coordinating requests for advice and assistance from members and non-members alike; keeping and archiving the department’s extensive records; managing its calendar of activities; and arranging for the meetings of Committee A on Academic Freedom and Tenure, the Committee on College and University Governance, the Committee on Women in the Profession, the Committee on Accreditation, and their numerous subcommittees. In November, the AAUP Council passed a resolution honoring Sue for her stellar work on behalf of our profession, commending her “invaluable service to the Association” and expressing the Council’s “deep appreciation for the great quantity and high quality of that service.”

I also want to acknowledge the fine work of

Jennifer Nichols, who left the Association’s staff for a new position elsewhere earlier this year. Jenn began her work with the AAUP in what was then our Department of Organizing and Services and played a critical role in several organizing campaigns, especially the successful campaign to establish a collective bargaining unit at Bowling Green State University in Ohio. Jenn moved to the Department of Academic Freedom, Tenure, and Governance where her hard and careful work in handling cases was characterized by tact, sound practical judgment, and quick awareness of the core issues. Her fellow staff members praised her passion for justice, her enthusiasm, her outspokenness and courage, her kindness and empathy, and her positive outlook. In particular, Jenn was a strong advocate for extending the protections of academic freedom to those faculty members on contingent employment contracts, a major priority for our work.

In conclusion, 2015 will mark AAUP’s centennial as the foremost advocate for the American professoriate and for academic freedom. The Association will be celebrating its centennial in numerous ways, many of which will recognize the accomplishments of Committee A over the years. The efforts of committee member Hans-Joerg Tiede, who also serves as chair of the Committee on the History of the Association, in uncovering new information about the early years of our committee are worth commendation. His riveting presentation to the 2014 annual meeting, his regular posts about AAUP history on the *Academe Blog*, and his forthcoming publications are not only informative; they also can be inspiring. I would also urge all AAUP members and others who may read this report to celebrate the centennial by donating generously to the AAUP Foundation or to its Academic Freedom Fund.

HENRY REICHMAN (History), *chair*
California State University, East Bay

Cases Settled through Staff Mediation

The four selective accounts that follow illustrate the nature and effectiveness of the mediative work of Committee A’s staff in successfully resolving cases during the 2013–14 academic year.

Early in 2014, the administration of a major public university system in New England announced the discontinuance of four academic programs as of the following semester. Resulting notifications of termination of services were issued to the faculty mem-

bers, tenured and nontenured alike, who staffed the programs. The administration cited financial considerations, but neither it nor the governing board claimed that financial or specified educational factors called for the particular closures. Several of the affected faculty

members sought assistance from the Association, as did concerned colleagues. The staff responded within forty-eight hours, distributing widely by e-mail a detailed communication explaining AAUP-supported criteria for terminating appointments on financial or curricular grounds and requisite procedural safeguards to be afforded. Pending adherence to these criteria and procedures, the staff's communication urged, the notifications that were issued need to be rescinded.

The very next day, the university president announced the rescission of the termination notifications. Faculty members in the system were quick to praise the Association's contribution to this result. "Surely your [staff's] letter yesterday influenced this decision today," one faculty member wrote, while another stated, "To know you have our back . . . I'd walk into anything!"

* * *

After thirty years without his competence having been questioned, a tenured professor at a church-related university in the West became the object of student complaints in increasing number and intensity about poor teaching. The administration, finding him unwilling to do anything that might remedy the situation or even to discuss it, ceased assigning courses to him and, after consulting with the faculty union, informed him that it was receptive to negotiating an arrangement for his retirement but, should he refuse the offer, it would move to dismiss him for cause. The union officers concurred in the draft of a proposed retirement arrangement and urged his acceptance. The professor said he would do so only if the AAUP also concurred.

The Association was accordingly consulted, and a staff member eventually managed to convince the reluctant professor that the proposed settlement was not subject to challenge under either the collective bargaining agreement or recommended AAUP standards. The professor expressed no happiness in signing the settlement, but the administration's representatives, the faculty union leaders, and the professor's domestic partner all conveyed appreciation for the AAUP's role in bringing the matter to resolution.

* * *

A remedial program at a regional university in the South was closed, with general faculty support, on grounds that the coursework in it should no longer

carry academic credit, and the faculty members in the program were accordingly notified of nonretention after a year of notice. One of the faculty members requested help from the Association in getting explicit written assurance from the administration that his release was because of a redefinition of the job, not because of dissatisfaction with his work. With this assurance, he said that he would accept the decision and not pursue a grievance.

A member of the staff discussed the faculty member's concern with the university provost, who was receptive to accommodating the faculty member in the matter. He invited the staff to propose a text that would suit its recipient. The result was a letter assuring the faculty member that the quality of his performance was never in question and that he was welcome to apply for any new position at the university that he believed he was qualified to fill. Both parties expressed appreciation to the staff for its mediative assistance.

* * *

The spring of 2014 witnessed the publication of *Oliver's Travels*, the memoirs of an emeritus political science professor at the University of Hawaii. The memoirs recount in detail an AAUP investigation of his case. The published report on the case dealt with a dean's letter granting the professor tenure effective the next semester that was rescinded a few weeks later when the professor was arrested for having assisted students in a civil rights demonstration. The report concluded that the professor's academic freedom was violated in the process, and the AAUP's staff resisted urgings by the governing board to persuade the professor to agree to a settlement that would not include granting him tenure. Apparently seeing an inevitable AAUP censure as more to be avoided than granting the professor tenure, the board of regents granted tenure.

The above events culminated in 1969. The professor dedicates his memoirs to the AAUP staff "to whom I have been indebted for 45 years. . . . The AAUP under your guidance found that the university had violated my academic freedom and was central in the process of compelling the regents to reinstate me, with tenure guaranteed. I have never ceased to be grateful to you and the AAUP for achieving this crucial protection of academic freedom for me and the University of Hawaii and indeed the nation." ■

Report of the Annual Meeting

From June 11 to 15, 2014, the AAUP hosted its One Hundredth Annual Meeting in Washington, DC. Concurrent with the annual meeting was the AAUP Conference on the State of Higher Education, which included plenary addresses and presentations on current issues confronting the academic community. The AAUP Collective Bargaining Congress also held its annual business meeting in conjunction with the AAUP annual meeting.

Keynote speeches at the conference focused on technology and its role in education, as well as on ways to protect the rights of all faculty members. Henry Reichman, chair of the AAUP's Committee A on Academic Freedom and Tenure, delivered the opening plenary address on Thursday about the contemporary role of academic freedom and electronic communications. The address elucidated the principles of a recently revised and expanded version of *Academic Freedom and Electronic Communications*, an AAUP report that addresses the threats to academic freedom that can arise from the use of electronic media. (The report appears in this issue of the *Bulletin*.)

The Friday plenary luncheon speaker was Daniel Maxey of the Delphi Project, which studies contingency in academia and works with a variety of groups, ranging from unions to accreditors to boards of trustees, to ameliorate the problems of contingency. Maxey discussed the numbers and common working conditions experienced by part- and full-time non-tenure-track faculty and highlighted some positive steps being taken on campuses.

Saturday's luncheon celebrated AAUP's centennial with a special presentation by Joerg Tiede, chair of the Committee on the History of the Association, who talked about the events before, during, and after the founding that led to the AAUP's focus on academic freedom. At Saturday night's banquet, award winners and fifty-year AAUP members were recognized for their respective commitments to fellow faculty and the betterment of higher education.

AAUP Collective Bargaining Congress

Risa Lieberwitz, professor of labor and employment law at Cornell University, was the featured speaker

at the AAUP-CBC banquet, where she spoke about expanding unionization efforts in private universities and related cases pending before the National Labor Relations Board.

This year two people shared the Marilyn Sternberg Award, which is given by the AAUP-CBC in recognition of the AAUP members who "best demonstrate concern for human rights, courage, persistence, political foresight, imagination, and collective bargaining skills." The award was given to David Shiman of United Academics-University of Vermont and Mary King of the Portland State University AAUP chapter.

Shiman's accomplishments include leadership in a successful organizing drive in 2003 and subsequent service as chapter president, during which membership increased significantly. He also served repeatedly on the chapter's bargaining team. King, who also served as chapter president, has strengthened the membership of her chapter and worked to establish faculty networks, challenge misinformation, build alliances between faculty and students, and include the local community in its demands for student-centered education.

Capitol Hill Day

On June 12, AAUP members visited Capitol Hill to discuss legislation affecting higher education with their senators and representatives. This year's discussions focused on three important areas: access and affordability for college students, political interference in higher education research, and sensible regulations that protect both students and taxpayers. The day ended with a reception on Capitol Hill, where discussions continued between AAUP members and congressional staff.

Censure

The annual meeting voted to place Northeastern Illinois University on the Association's list of censored administrations. The members also delegated to Committee A on Academic Freedom and Tenure the authority to remove Louisiana State University at Baton Rouge from the censure list. Additionally, Committee A announced that it was pleased to close its investigation of the University of Northern Iowa because of favorable developments.

The *Report of Committee A on Academic Freedom and Tenure, 2013–14*, included elsewhere in this issue, contains Committee A's statements on these institutions and the committee's recommendations regarding the imposition or removal of censure.

Media Awards

The Iris Molotsky Award for Excellence in Coverage of Higher Education was given to journalists David Glovin and John Hechinger of *Bloomberg News* for their series "Broken Pledges." Glovin and Hechinger's series presented a chilling and thought provoking examination of how fraternity life and the Greek system in higher education has dramatically changed over the past twenty years.

This year the AAUP presented a new award, the Martin D. Snyder Award for Excellence in Student Coverage of Higher Education, for high-caliber reporting in student newspapers. Snyder, an advocate of student journalism, served as the AAUP's associate general secretary and as director of the AAUP's Department of External Relations. The inaugural winner of the award is Marissa Ditkowsky, who won for her story "Cuts Affect Doctoral Program." The story ran in Brandeis University's *The Justice* on October 29, 2013.

More information about the winners and links to their articles are at <http://www.aaup.org/media-release/2014-AAUP-awards-for-excellence>.

Georgina M. Smith Award

Mary King, professor of economics at Portland State University, was selected as the 2014 recipient of the AAUP's Georgina M. Smith Award. King, who has served on the PSU-AAUP chapter in a number of leadership roles, was recognized for her work on PSU-AAUP's negotiating team. After the chapter voted to strike, King and her team worked tirelessly to achieve a contract settlement that received a 97 percent ratification vote from the chapter's members.

The Georgina M. Smith Award was established in 1979 to honor the memory of Professor Smith (Rutgers University), who was a committed feminist, an AAUP leader, and a strong supporter of her faculty union. The award is presented "to a person who has provided exceptional leadership in the past year in improving the status of academic women or in advancing collective bargaining and through that work has improved the profession in general."

Rather than grant these awards annually, the Association reserves the distinction for those occasions

when the judges have identified a particular candidate as so outstanding as to merit being singled out. The last Georgina M. Smith award had been presented in 2012.

Assembly of State Conferences Awards

This year's William S. Tacey Award, which recognizes outstanding service to a state conference over a number of years, was given to Dean Saitta for his work as a co-president of the Colorado conference.

Caprice Lawless, president of AAUP's Front Range Community College chapter, won the Al Sumberg Award, which is given to an individual or group to recognize excellent work in lobbying for higher education issues.

The New York State conference received a communications award for its publication *New York Academe*.

Travel Awards

Scott McMillan, incoming president of the Tennessee AAUP conference, was the recipient of the Konheim Travel Fund Grant. The Konheim Travel Fund Grant is for travel-related expenses for chapters engaged in advancing the Beatrice G. Konheim Award criteria, which are to advance the AAUP's objectives in academic freedom, student rights and freedoms, the status of academic women, the elimination of discrimination against minorities, or the establishment of equal opportunity for members of colleges and universities.

Hopper Travel Fund Grants are for individuals attending their first AAUP annual meeting. Nominees may be nominated by either a chapter or a conference. The Hopper Travel Fund winners for 2014 were Katherine Bryant, Emory University; Gregory Comer, St. Louis University; Christala Smith, Southeastern Oklahoma State University; and James D. Strange, Western Nevada College.

Resolutions

The One Hundredth Annual Meeting approved a resolution commending the work of John W. Curtis, the AAUP's outgoing director of research and public policy, during his twelve years on the staff. ■

Fifty-Year AAUP Members

Robert D. Alberetti
Western Connecticut State
University

Henry E. Allison
Sacramento, California

J. Marshall Ash
DePaul University

Werner Baer
University of Illinois at
Urbana-Champaign

Robert N. Bellah
University of California,
Berkeley

William P. Berlinghoff
Colby College

Robert T. Binhammer
University of Nebraska
Medical Center

Lynn Z. Bloom
The University of
Connecticut

Morton K. Brussel
University of Illinois at
Urbana-Champaign

William P. Bryan
Farmington, New Mexico

William S. Cassels
Montgomery Village,
Maryland

Isabelle A. Cazeaux
Bryn Mawr College

Brian F. Chellas
Alberta, Canada

Donald D. Clarke
Fordham University

Thomas M. Creese
University of Kansas

William H. Cumberland
Winona, Minnesota

John Joseph Curry, III
University of Nevada,
Las Vegas

Gordon A. Fellman
Brandeis University

David W. Foster
Arizona State University

Katherine A. Geffcken
Wellesley College

**Raymond T.
Grontkowski**
Fordham University

Frank R. Haig
Loyola University
Maryland

Philip C. Hanawalt
Stanford University

Frank Homer
University of Scranton

Ronald L. Huston
University of Cincinnati

Miles V. Klein
University of Illinois at
Urbana-Champaign

Charles M. Knobler
University of California,
Los Angeles

Conan Kornetsky
Boston University

Mary R. Mattingly
Texas A&M University—
Kingsville

William L. McBride
Purdue University

N. Franklin Modisett
San Pedro, California

Henry W. Parker
Stanford University

Leonard Plotnicov
University of Pittsburgh

Lawrence S. Poston
University of Illinois at
Chicago

Albert H. Rubenstein
Northwestern University

Richard C. Sapp
University of Kansas

Thomas C. Schelling
University of Maryland
College Park

Samuel B. Seigle
Sarah Lawrence College

Barbara H. Settles
University of Delaware

Lee B. Silverglade
University of Illinois at
Chicago

David A. Smith
Duke University

Louis Solomon
University of Wisconsin—
Madison

R. Leo Sprinkle
University of Wyoming

Corrections to the 2013–14 Annual Report on the Economic Status of the Profession

The data shown on the following pages include corrections or additions to the faculty compensation data reported in appendix I of the *Annual Report on the Economic Status of the Profession, 2013–14*, published in the March–April 2014 issue of *Academe*. Boldface type indicates corrections or additions.

APPENDIX I

ST. NAME	(1) NOTES	(2) CAT.	AVG. SAL. RTG.					(3) AVG. SALARY (\$1000s)					(4) AVG. COMP. RTG.				(5) AVG. COMPENSATION (\$1000s)				
			PR	AO	AI	IN		PR	AO	AI	IN	AR	PR	AO	AI	IN	PR	AO	AI	IN	AR
AL Jacksonville St U		IIA	4	5	5	4	77.3	63.3	54.7	46.3	60.3	4	4	4	3	105.9	86.3	74.3	64.5	82.7	
CA Harvey Mudd Coll		IIB	1*	1*	1*		139.3	98.2	80.4		117.8	1*	1*	1*		177.5	130.2	110.7		152.9	
CO Western St Colorado U	240	IIB	4	5	3		70.9	54.7	55.2	56.5											
CT Eastern Connecticut St U		IIA	2	2	3	2	95.7	77.1	62.4	53.8	80.9	1	1	1*	1	144.5	115.7	104.9	82.7	124.9	
CT U Bridgeport		IIA	3	2	3		88.6	75.5	60.4	71.6	3	2	2		113.7	100.6	85.5	96.7			
GA Valdosta St U		IIA	5	5	4	4	75.8	60.9	56.1	45.1	60.0	5	5	5	5	96.7	79.2	70.8	56.3	76.4	
IN Hanover Coll		IIB	3	3	3	-	78.9	66.0	57.1	----	70.6	3	3	3	-	103.9	89.2	70.0	----	93.1	
IN Huntington U	25	IIB	5	5	5	5	62.3	54.1	44.6	39.8	53.5	5	4	4	4	83.3	73.5	65.2	55.9	73.7	
IN U Notre Dame	15	I	1	1	1	-	158.7	104.1	94.8	----	113.7	1	1	1	-	203.9	139.7	124.3	----	149.2	
IN Wabash Coll		IIB	1	2	2	-	100.7	76.7	58.8	----	76.8	2	1	3	-	129.5	102.1	77.0	----	100.7	
IA Drake U	16	IIA	1	3	2	2	109.2	73.6	68.1	54.1	81.7	1	3	2	3	136.6	94.3	86.6	64.3	103.5	
IA Wartburg Coll		IIB	4	4	3		68.5	58.7	53.9	60.5	4	3	3		95.1	84.0	73.3		84.3		
MA Lasell Coll	31	IIB	2	2	2	2	86.1	73.7	62.4	53.7	68.7	1	2	3	3	163.8	90.3	76.6	61.5	88.3	
MA Simmons Coll	28	IIA	1	2	1	-	104.0	77.1	72.5	----	83.0	2	2	1	-	128.7	96.8	90.5	----	103.3	
MO St. Louis CC		III	3	2	2	1	76.4	65.2	59.5	53.3	65.7	3	3	2	2	100.5	87.4	78.7	71.1	87.1	
NJ Ramapo Coll New Jersey		IIB	1	1	1	1*	118.1	92.9	75.8	82.3	95.2	1*	1*	1*	1*	171.7	135.1	110.2	119.6	138.4	
NJ Rutgers St U-New Brunswick	20,43,152	I	1	1	2	3	155.3	103.7	82.4	57.2	111.5	1	1	1	1	199.1	141.3	117.9	89.2	150.1	
NY Barnard Coll		IIB	1*	1*	1		148.2	107.3	74.1		107.6	1*	1*	1		198.1	144.0	100.3		145.8	
NY CUNY-Bernard Baruch Coll		IIA	2	1	1	3	98.3	82.8	77.6	51.4	84.9	2	1	1*	1	128.4	112.9	107.7	81.5	115.1	
NY CUNY-Borough Manhattan CC		III	2	2	2	5	86.1	69.6	56.4	40.5	62.6	2	1	1	2	115.0	98.5	85.3	69.3	91.5	
NY CUNY-Bronx CC		III	2	2	3	3	82.5	66.2	53.7	46.0	62.4	2	2	2	1	111.4	95.1	82.5	74.9	91.2	
NY CUNY-Brooklyn Coll		IIA	3	3	3	4	91.2	72.6	60.0	44.4	73.9	2	2	2	2	120.8	102.2	89.6	74.0	103.5	
NY CUNY-City Coll		IIA	2	2	3	4	100.3	76.3	63.3	44.5	81.1	1	1	1	2	130.3	106.3	93.3	74.5	111.0	
NY CUNY-Coll Staten Island		IIA	3	3	4		88.6	72.0	58.6		70.7	3	2	2		118.0	101.4	88.0		100.1	
NY CUNY-Graduate Ctr		I	4	5	5		112.5	77.8	49.6		98.6	4	4	5		142.9	108.2	80.0		129.0	
NY CUNY-Guttman CC		III	2	1	2	3	79.3	74.4	60.3	47.1	59.5	2	1	1	1	107.9	103.1	89.0	75.7	88.2	
NY CUNY-Hostos CC		III	1	2	2	4	88.4	67.8	57.6	41.4	63.2	1	2	1	2	117.3	96.7	86.5	70.3	92.1	
NY CUNY-Hunter Coll		IIA	2	3	3	2	93.3	73.9	61.2	53.4	77.5	2	2	1	1	123.1	103.7	91.0	83.2	107.3	
NY CUNY-John Jay Coll		IIA	2	3	3	-	94.2	72.3	61.2	----	72.1	2	2	1	-	123.7	101.8	90.7	----	101.6	
NY CUNY-Kingsborough CC		III	2	2	2	2	84.3	69.2	56.7	48.5	61.0	2	1	1	1	113.0	98.0	85.4	77.3	89.8	
NY CUNY-La Guardia CC		III	2	2	2	2	86.2	66.1	55.0	48.8	65.5	2	2	1	1	115.2	95.2	84.1	77.9	94.6	
NY CUNY-Law School Queens Coll		IIA	1	1		1*	115.8	94.1		68.4	101.0	1	1*		1*	146.5	124.8		99.1	131.7	
NY CUNY-Lehman Coll		IIA	2	3	3	-	92.5	73.3	61.7	----	71.4	2	2	1	-	122.0	102.7	91.1	----	100.8	
NY CUNY-Medgar Evers Coll		IIB	2	2	2	-	91.8	72.9	60.2	----	70.8	2	1	1	-	121.2	102.3	89.6	----	100.3	
NY CUNY-New York City Coll Tech		IIB	2	2	2		88.1	69.9	58.8		65.8	2	2	1		117.2	99.0	87.9		94.9	
NY CUNY-Queens Coll		IIA	2	3	3	3	92.6	73.3	61.5	50.7	74.9	2	2	1	1	122.2	103.0	91.2	80.3	104.5	
NY CUNY-Queensborough CC		III	1	2	2	2	89.7	69.0	57.2	50.6	63.9	1	1	1	1	118.7	97.9	86.1	79.5	92.9	
NY CUNY-York Coll		IIB	2	2	2		86.5	72.3	59.4		68.7	2	2	1		115.8	101.6	88.7		98.1	
NY Mercy Coll	28	IIA	3	2	1	1	92.0	78.3	71.0	58.1	74.7	2	1	1	1	123.1	105.3	94.0	76.7	99.5	
NY Nazareth Coll Rochester	28	IIA	4	3	4	-	83.5	68.6	59.7	----	71.3	4	4	4	-	105.6	88.9	73.8	----	90.1	
NC Barton Coll	28	IIB	5	5	4	-	59.3	50.0	52.3	----	52.7	5	5	4	-	74.0	62.8	63.6	----	65.2	
NC U North Carolina-Chapel Hill	5	I	2	2	2	1	146.2	97.2	84.2	72.1	105.2	2	2	2	1	181.8	124.0	108.2	94.4	133.2	
ND Dickinson St U		IIB	4	3	1	4	73.8	67.9	72.4	41.0	65.1	3	2	1	3	100.5	94.4	96.3	59.9	88.7	
OH Bluffton U		IIB	5	5	5		58.8	49.3	44.4		51.3	5	5	5		74.4	65.0	54.6		64.9	
SC Coastal Carolina U		IIA	3	3	4	4	90.9	70.2	59.6	45.3	63.1	2	3	3	4	119.6	93.9	80.7	63.0	85.2	
VA Blue Ridge CC		III	3	3	2	2	70.6	60.2	56.6	47.6	56.5	4	4	2	3	91.4	79.2	74.9	64.3	74.8	
VA Central Virginia CC		III	4	3	3	2	62.0	58.5	51.3	50.3	55.0	4	4	4	2	81.3	77.2	68.7	67.6	73.1	
VA Dabney S. Lancaster CC		III	-	3	3	1	----	62.5	53.1	53.8	57.3	-	3	3	2	----	81.9	70.8	71.6	75.7	
VA Danville CC		III	4	3	3	2	66.3	59.0	52.2	5											

Corrections to the 2013–14 Annual Report on the Economic Status of the Profession

(6) BEN. as % of SAL.	(7) PCT. TENURED				(8) PCT. INCR. (CONT. FAC.)				(9) F-T FAC. MEN				(9) F-T FAC. WOMEN				(10) AVG. SAL. MEN				(10) AVG. SAL. WOMEN				
	PR	AO	AI	IN	PR	AO	AI	IN	PR	AO	AI	IN	PR	AO	AI	IN	PR	AO	AI	IN	PR	AO	AI	IN	
37.2	87	74	7	0					55	36	31	23	22	30	29	61	77.8	64.5	54.1	44.5	76.2	61.8	55.3	46.9	
29.8	98	88	0	0	2.6	3.7	3.7		38	10	6	0	10	14	9	0	142.3	96.8	81.9		128.1	99.2	79.4		
	100	91	0	0					29	6	14	0	16	5	4	0	72.9	55.3	56.5		67.2	53.9	50.6		
54.4	100	96	7	0	5.1	6.5	7.5	4.9	48	29	29	1	42	23	25	4	97.0	80.6	63.3	----	94.2	72.7	61.4	----	
35.1	100	69	5	0	1.0	2.1	5.0		15	31	18	0	3	18	20	0	89.0	78.3	61.4		86.9	70.6	59.5		
27.4	100	92	5	0	3.3	2.1	2.0	4.1	82	45	89	22	50	45	84	43	77.0	63.3	58.3	44.1	73.8	58.5	53.7	45.6	
31.9	100	93	6	--	3.2	3.3	6.1	3.0	32	19	8	1	17	10	9	1	80.2	66.7	57.1	----	76.5	64.6	57.1	----	
37.8	95	67	12	0	0.0	1.0	0.1	0.0	13	11	10	1	8	4	7	2	62.6	53.8	45.1	----	61.7	54.9	43.9	----	
31.3	100	94	0	--	3.3	4.1	4.2	2.0	352	175	121	1	75	76	75	0	161.4	106.7	99.0	----	145.7	98.1	88.2	----	
31.1	100	97	0	--	2.3	3.0	3.9	3.9	17	27	8	1	3	8	17	0	101.0	77.3	54.1	----	98.7	74.8	61.0	----	
26.6	92	82	3	0	1.3	2.2	2.8	2.0	57	54	48	3	26	60	41	2	113.4	77.6	68.5	----	99.8	70.0	67.7	----	
39.3	100	89	7	0	2.6	3.6	5.5		24	12	16	0	14	16	11	0	69.3	60.6	53.5		67.0	57.3	54.6		
28.7	0	0	0	0	2.3	2.1	3.6	2.5	2	14	10	2	4	20	25	2	----	73.9	63.6	----	----	73.6	61.9	----	
24.4	70	60	0	--	-0.9	2.4	1.1		20	29	10	1	47	62	28	1	102.0	81.1	76.4	----	104.8	75.2	71.2	----	
31.7	0	0	0	0	-0.4	1.2	0.3	0.5	64	48	52	20	84	51	77	39	76.3	65.5	59.8	53.9	76.4	64.9	59.3	53.0	
45.3	100	94	21	33	2.1	3.9	3.3	2.7	37	35	37	0	30	43	31	3	119.6	93.5	73.8		116.3	92.4	78.1	82.3	
34.6	95	80	0	0					579	256	181	98	212	257	266	169	158.5	106.3	85.5	57.5	146.6	101.1	80.3	57.1	
35.5	90	94	0	0	3.4	5.5	4.5		39	10	19	0	41	22	34	0	152.7	105.5	75.5		143.9	108.1	73.4		
35.5	93	96	3	0					139	86	61	2	64	56	57	2	99.1	84.1	78.4	----	96.5	80.7	76.6	----	
46.1	98	81	19	0					54	52	80	28	51	49	136	30	88.4	69.9	55.3	39.2	83.7	69.3	57.1	41.7	
46.3	99	76	19	0					47	31	43	2	25	35	48	5	82.2	66.7	54.2	----	83.1	65.8	53.2	----	
40.1	97	91	17	0					133	75	67	2	73	59	87	10	92.7	73.1	59.3	----	88.3	72.0	60.5	----	
36.9	94	86	15	0					174	90	72	1	68	74	73	2	101.7	76.4	64.0	----	96.8	76.3	62.7	----	
41.7	99	84	18	0					65	70	50	0	35	60	59	0	88.8	72.4	59.2		88.2	71.5	58.1		
30.8	78	67	0	0					93	16	9	0	58	5	14	0	116.2	79.8	51.0		106.7	71.2	48.8		
48.2	67	33	0	0					2	2	2	5	1	1	12	3	----	----	----	48.0	----	----	----	45.4	
45.7	97	88	34	0					15	18	36	2	14	14	49	3	87.5	67.9	57.8	----	89.5	67.5	57.5	----	
38.5	83	88	15	0					155	112	65	2	135	117	81	1	94.6	73.9	60.8	----	91.8	73.8	61.5	----	
40.9	93	80	20	--					59	77	63	0	36	70	70	1	95.2	73.4	61.5	----	92.6	71.0	61.0	----	
47.1	98	90	23	0					34	27	51	3	28	25	93	4	84.8	68.7	57.3	50.1	83.6	69.7	56.3	47.3	
44.4	100	39	8	0					41	44	41	3	45	48	74	3	85.1	65.4	53.6	50.1	87.1	66.7	55.8	47.6	
30.4	92	33	0	0					9	3	0	1	15	6	0	8	114.2	98.3		----	116.7	91.9		----	
41.3	94	85	21	--					64	41	40	1	35	56	72	1	94.6	73.8	62.1	----	88.8	72.9	61.4	----	
41.5	93	71	18	--					35	12	28	2	19	16	34	0	93.6	74.5	59.4	----	88.4	71.6	60.7	----	
44.3	98	79	24	0					37	54	108	0	26	53	100	0	88.4	70.2	59.3		87.7	69.6	58.3		
39.6	95	96	16	0					153	78	69	3	69	71	95	3	94.2	73.2	61.7	52.2	88.8	73.5	61.5	49.1	
45.3	100	100	6	0					34	44	68	7	31	47	74	6	91.8	69.6	56.3	49.9	87.4	68.4	58.0	51.4	
42.6	81	79	18	0					22	29	36	0	20	33	32	0	92.3	73.6	60.0		80.1	71.1	58.7		
33.3	80	28	7	0	3.8	3.4	3.0	3.4	13	22	30	6	12	38	58	14	88.7	79.5	67.9	66.7	95.4	77.6	72.7	54.4	
26.4	99	80	5	--	1.8	2.1	2.6	2.0	30	17	18	0	39	28	43	1	85.0	68.8	57.9	----	82.4	68.4	60.5	----	
23.6	100	69	8	--	2.5	5.8	7.9	1.5	10	14	11	0	8	12	13	1	63.0	47.1	51.9	----	54.8	53.4	52.6	----	
26.6	99	94	0	0	0.4	1.8	1.9	0.0	391	196	157	3	156	149	159	2	151.5	98.6	89.6	----	133.1	95.4	78.8	----	
36.2	100	92	28	0	-0.3	6.0	7.3	12.7	13	7	24	8	4	6	22	8	71.5	70.8	60.1	46.1	81.3	64.6	85.8	35.9	
26.5	100	79	4	0	0.0	1.3	1.1		18	9	11	0	7	5	12	0	58.3	50.9	43.9		60.1	46.6	44.8		
34.8	100	90	3	0	2.9	2.3	1.6	1.0	50	66	62	6	19	41	58	5	91.3	71.0	57.9	45.7	89.9	68.9	61.4	44.9	
32.4	0	0	0	0					8	7	12	5	2	13	13	10	----	60.2	59.1	49.5	----	60.2	54.3	46.6	
32.8	0	0	0	0					8	9	12	4	5	12	6	3	62.1	59.1	52.2	48.2	61.8	58.1	49.4	53.1	
32.2	--	0	0	0					2	4	5	1	0	5	5	2	----	64.2	53.9	----	----	61.2	52.3	----	
32.4	0	0	0	0					9	16	6	5	3	7	14	5	67.1	59.8	50.6	52.2	63.8	56.9	52.9	49.6	
32.7	0	0	0	--					0	4	5	1	0	4	2	1		58.0	----	----		63.1	----	----	

APPENDIX I

ST. NAME	NOTES	(1)		(2)				(3)					(4)				(5)				
		CAT.	PR	AO	AI	IN	PR	AO	AI	IN	AR	PR	AO	AI	IN	PR	AO	AI	IN	AR	
VA Germanna CC		III	4	3	2	2	69.2	63.1	55.1	50.8	55.8	4	3	3	2	89.8	82.6	73.1	68.1	74.0	
VA J. Sargeant Reynolds CC		III	4	3	2	2	69.8	62.2	55.2	48.8	59.9	4	3	3	2	90.4	81.5	73.2	65.7	78.8	
VA John Tyler CC		III	4	3	2	2	66.7	62.5	56.7	50.6	58.6	4	3	2	2	86.8	81.9	75.0	67.9	77.3	
VA Lord Fairfax CC		III	4	3	2	2	65.4	62.4	54.5	49.0	57.8	4	3	3	2	85.3	81.7	72.4	66.0	76.3	
VA Mountain Empire CC		III	4	3	3	2	63.1	59.2	51.4	48.5	53.3	4	4	4	3	82.5	78.0	68.8	65.4	71.0	
VA New River CC		III	3	3	2	1	74.0	64.3	55.7	55.2	63.6	3	3	3	1	95.4	84.0	73.8	73.3	83.2	
VA Northern Virginia CC		III	2	2	1	1	79.0	70.0	62.1	56.3	66.0	3	2	2	1	101.3	90.7	81.4	74.6	85.9	
VA Patrick Henry CC		III	5	3	4	2	61.8	58.9	50.8	49.2	54.1	4	4	4	2	81.0	77.7	68.1	66.2	72.0	
VA Paul D. Camp CC		III	4	3	2	3	61.9	63.0	56.2	45.9	57.0	4	3	3	3	81.2	82.5	74.5	62.4	75.4	
VA Piedmont Virginia CC		III	4	3	2	2	65.1	59.4	56.0	49.7	57.5	4	4	3	2	85.0	78.2	74.3	66.9	76.0	
VA Rappahannock CC		III	-	4	2	2	----	58.0	54.5	51.3	54.3	-	4	3	2	----	76.6	72.4	68.7	72.2	
VA Southside Virginia CC		III	3	3	2	2	71.7	62.8	56.0	48.0	58.4	4	3	3	3	92.7	82.2	74.2	64.8	77.0	
VA Southwest Virginia CC		III	4	3	3	2	64.5	61.5	53.7	48.6	57.6	4	3	3	3	84.2	80.7	71.6	65.5	76.1	
VA Thomas Nelson CC		III	3	2	2	1	70.8	64.5	58.9	52.9	59.8	4	3	2	2	91.7	84.3	77.6	70.6	78.7	
VA Tidewater CC		III	3	2	2	2	71.4	65.1	56.2	50.2	60.2	4	3	3	2	92.4	85.0	74.5	67.4	79.1	
VA Virginia Highlands CC		III	4	3	3	3	67.7	59.3	53.3	45.9	56.8	4	4	3	3	88.0	78.1	71.1	62.3	75.2	
VA Virginia Western CC		III	4	3	2	2	66.2	59.6	55.0	51.1	56.3	4	4	3	2	86.2	78.5	73.1	68.5	74.6	
VA Wytheville CC		III	4	3	3	2	66.9	60.8	51.7	50.8	55.4	4	3	4	2	87.1	79.9	69.2	68.1	73.5	
WA U Washington-Bothell	28	IIA	1	1	1*		117.7	93.1	90.3		86.2	1	1	1*	150.4	120.1	115.0		111.6		
WA U Washington-Seattle	5	I	3	2	2	4	128.1	96.3	86.2	47.6	102.6	3	2	2	4	161.4	123.5	109.8	65.3	130.8	
WA U Washington-Tacoma	28	IIA	1	1	1*		106.6	89.8	79.4		78.6	1	1	1	137.1	116.3	102.6		102.5		
WA Washington St U	27,213	I	4	4	3	4	116.4	81.4	75.8	46.7	84.4	4	4	3	4	145.4	104.3	96.9	63.7	107.7	
WV West Virginia U	5	I	4	4	5	5	110.4	82.3	67.0	44.2	81.7	5	5	5	5	132.5	100.1	82.2	55.3	99.3	
WI U Wisconsin-Oshkosh		IIA	5	5	4	1	76.5	61.9	57.3	66.5	61.0	4	4	3	1*	101.9	85.0	79.9	93.0	84.1	
WY U Wyoming	12	I	4	5	4	1	109.1	75.8	68.9	70.5	79.5	4	4	4	2	144.6	104.2	93.6	79.3	107.6	

Corrections to the 2013–14 Annual Report on the Economic Status of the Profession

(6) BEN. as % of SAL.	(7) PCT. TENURED				(8) PCT. INCR. (CONT. FAC.)				(9) F-T FAC. MEN F-T FAC. WOMEN								(10) AVG. SAL. MEN AVG. SAL. WOMEN							
	PR	AO	AI	IN	PR	AO	AI	IN	PR	AO	AI	IN	PR	AO	AI	IN	PR	AO	AI	IN				
32.6	0	0	0	0					3	4	6	6	11	11	26	11	73.4	63.1	55.4	53.5	68.1	63.1	55.0	49.3
31.6	0	0	0	0					18	23	18	9	13	30	29	10	72.9	61.7	54.5	51.4	65.4	62.6	55.5	46.5
31.9	0	0	0	0					10	16	7	11	13	22	15	16	70.7	64.4	55.0	52.7	63.5	61.1	57.5	49.1
32.1	0	0	0	0					8	10	6	4	9	15	11	8	66.5	64.3	56.9	48.4	64.5	61.1	53.1	49.4
33.3	0	0	0	0					7	2	8	8	3	4	5	6	63.6	----	52.0	50.6	61.9	----	50.3	45.6
30.8	0	0	0	0					8	7	9	1	6	15	7	3	74.3	63.1	58.3	----	73.6	64.9	52.2	----
30.3	0	0	0	0					70	78	112	53	68	103	131	100	80.6	71.2	62.5	56.3	77.4	69.1	61.7	56.3
33.1	0	0	0	0					5	9	8	5	2	10	11	5	----	59.1	48.8	49.1	----	58.8	52.3	49.3
32.3	0	0	0	0					3	3	1	0	0	3	8	4	61.9	63.3	----	----	62.8	----	45.9	
32.2	0	0	0	0					9	10	8	5	7	10	21	6	64.1	59.2	55.1	48.9	66.4	59.5	56.4	50.4
33.0	--	0	0	0					1	1	4	3	0	5	8	7	----	----	53.3	55.1	----	----	55.0	49.7
31.9	0	0	0	0					3	12	11	10	7	15	12	9	69.9	62.5	55.2	47.7	72.4	63.0	56.7	48.2
32.2	0	0	0	0					3	5	11	0	5	7	4	5	72.6	62.9	52.8	----	59.6	60.4	56.3	48.6
31.6	0	0	0	0					2	15	8	13	11	15	29	15	----	65.0	59.8	52.2	----	64.1	58.6	53.6
31.5	0	0	0	0					46	53	38	40	31	51	54	51	72.4	66.4	58.2	52.0	70.0	63.8	54.8	48.8
32.3	0	0	0	0					2	4	4	2	4	16	7	5	----	59.5	55.0	----	----	59.3	52.3	----
32.5	0	0	0	0					5	14	5	6	10	16	20	7	65.9	58.8	56.3	52.0	66.4	60.3	54.7	50.4
32.7	0	0	0	0					4	4	4	5	6	8	9	3	67.1	63.6	50.0	48.6	66.8	59.4	52.5	54.4
29.4	100	94	0	0	4.1	3.9	4.3		17	22	25	0	11	11	28	0	127.1	96.8	88.0	----	103.1	85.6	92.3	----
27.5	95	90	0	0	6.4	7.8	5.8	4.1	604	248	192	36	238	223	154	21	131.4	100.0	87.8	46.5	119.5	92.3	84.3	49.4
30.4	97	100	0	0	3.8	5.4	6.0		19	26	16	0	12	27	19	0	116.1	99.9	77.4	----	91.6	80.2	81.1	----
27.5	100	98	0	0	9.6	9.4	9.5	8.3	266	188	126	56	79	124	88	80	120.1	84.0	78.6	47.8	104.1	77.5	71.8	45.9
21.5	96	79	1	0					227	182	187	21	56	134	183	39	111.7	87.7	69.5	47.5	105.2	74.9	64.4	42.4
37.8	100	96	1	0	3.6	3.8	3.5	6.5	83	58	48	2	38	47	46	1	78.5	63.9	58.2	----	72.1	59.5	56.3	----
35.4	100	97	0	0	1.6	1.5	0.1		165	140	96	1	48	77	72	3	110.8	77.3	71.3	----	103.3	72.9	65.7	----

NOTES TO APPENDIX I

- 5. Includes faculty in schools or programs of law, dentistry, nursing, engineering, and business.
- 12. Includes faculty in schools or programs of law, nursing, engineering, and business.
- 15. Includes faculty in schools or programs of law, engineering, and business.
- 16. Includes faculty in schools or programs of law and business.
- 20. Includes faculty in schools or programs of dentistry, nursing, engineering, and business.
- 25. Includes faculty in school or program of nursing.
- 27. Includes faculty in schools or programs of nursing, engineering, and business.
- 28. Includes faculty in schools or programs of nursing and business.
- 31. Includes faculty in school or program of business.
- 43. Factor used to convert 12-month data: 0.8640.
- 152. Rutgers St U—Includes faculty members previously part of the University of Medicine and Dentistry of New Jersey. Data are not comparable with prior years.
- 213. Washington St U—Includes Pullman, Spokane, Tri Cities, and Vancouver campuses.
- 240. Western St Colorado U—Formerly Western State College of Colorado.

AAUP Officers and Council, 2014–15

AAUP officers and the immediate past president are ex officio members of the Council, as are the chair and past chair of the Assembly of State Conferences and the chair and past chair of the AAUP-CBC.

A list of Association officers, general counsel, and Council members follows, with dates of term expiration noted at the end of each entry. An asterisk denotes a Council member serving in his or her second consecutive term or an officer serving in his or her fourth term. The distribution of states in each district is based on the redistricting plan approved by the Council on June 9, 2006.

Officers

President

Rudy H. Fichtenbaum (Economics), Wright State University, 2016

First Vice President

Henry Reichman (History), California State University, East Bay, 2016

Second Vice President

Susan Michalczyk (Arts and Science Honors Program), Boston College, 2016

Secretary-Treasurer

Michele Ganon (Accounting), Western Connecticut State University, 2016

Immediate Past President

Cary R. Nelson (English), University of Illinois at Urbana-Champaign, 2015

General Counsel

Risa L. Lieberwitz (Law), Cornell University, 2016

Council Members

District I (Arizona, California, Colorado, Hawaii, Nevada, New Mexico, Utah)

Angela Brommel (Humanities), Nevada State College, 2015

Chris Nagel (Philosophy), California State University, Stanislaus, 2016

District II (Alaska, Idaho, Kansas, Minnesota, Montana, Nebraska, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Washington, Wisconsin, Wyoming)

Philip Cole (Physics), Idaho State University, 2015

Ann McGlashan (German), Baylor University, 2016

District III (Michigan)

Lisa Minnick (English), Western Michigan University, 2016

Mehmet Yaya (Economics), Eastern Michigan University, 2018

District IV (Arkansas, District of Columbia, Illinois, Indiana, Iowa, Kentucky, Missouri, Tennessee, Virginia)

Nancy McKenney (Library), Eastern Kentucky University, 2015

Hans-Joerg Tiede (Computer Science), Illinois Wesleyan University, 2016

District V (Alabama, Canada, Florida, Foreign, Georgia, Guam, Louisiana, Maryland, Mississippi, North Carolina, Puerto Rico, South Carolina, Virgin Islands, West Virginia)

Jeffrey A. Butts (Biology), Appalachian State University, 2015

*Linda L. Carroll (Italian), Tulane University, 2016

District VI (Ohio)

Ashlee Brand (English), Cuyahoga Community College, 2016

*Linda Rouillard (French), University of Toledo, 2018

District VII (New Jersey)

Harry W. Janes (Plant Biology and Pathology), Rutgers University, 2015

*Robert S. Boikess (Chemistry), Rutgers University, 2016

District VIII (New York)

Anne Friedman (Developmental Education), City University of New York Borough of Manhattan Community College, 2015

Sally Dear-Healey (Sociology and Anthropology), State University of New York College at Cortland, 2016

District IX (Connecticut, New Hampshire, Vermont)

Julian Madison (History), Southern Connecticut University, 2016

Irene T. Mulvey (Mathematics), Fairfield University, 2018

District X (Delaware, Maine, Massachusetts, Pennsylvania, Rhode Island)

Maria T. Bacigalupo (Administration, Planning, and Social Policy), Curry College, 2015

*Charles A. Baker (French and Film), College of the Holy Cross, 2016

At-Large Delegates

Mayra Besosa (Spanish), California State University, San Marcos, 2015

*Rana Jaleel (American Studies), Columbia Law School, 2015

*Charles J. Parrish (Political Science), Wayne State University, 2015

*Jane L. Buck (Psychology), Delaware State University, 2016

Dan O'Connor (Library and Information Science), Rutgers University, 2016

*Deanna D. Wood (Library), University of New Hampshire, 2016

Natalio Avani (Secondary Education), San Francisco State University, 2016

Jacqueline Aranté (English), Portland State University, 2018

Richard Gomes (English as a Second Language), Rutgers University, 2018

Ex Officio from Assembly of State Conferences

Hans-Joerg Tiede (Computer Science), Illinois Wesleyan University, chair, 2015

Donna L. Potts (English), Washington State University, past chair, 2015

Ex Officio from AAUP-CBC

Howard Bunsis (Accounting), Eastern Michigan University, chair, 2015

Julie M. Schmid, staff ■

Officers and Executive Committee of the AAUP-CBC, 2014–15

The executive committee of the AAUP-CBC is the leadership board elected by the members of AAUP-CBC chapters.



Chair

Howard Bunsis (Accounting), Eastern Michigan
University, 2015

Vice Chair

Paul Davis (Behavioral and Social Sciences), Cincinnati
State Technical and Community College, 2015

Secretary

Deanna D. Wood (Library), University of New
Hampshire, 2016

Treasurer

Dennis Mazzocco (Radio, Television, and Film),
Hofstra University, 2016

At-Large Members of the Executive Committee

Cecil Canton (Criminal Justice), California State
University, Sacramento, 2015

James C. Davis (English), City University of
New York Brooklyn College, 2015

Katherine Morrison (Community Health and
Wellness), Curry College, 2015

Abel Bult-Ito (Biology), University of Alaska
Fairbanks, 2016

Deborah Cooperstein (Biology), Adelphi University,
2016

Martin Kich (English), Wright State University, 2016

Jamie Owen Daniel, staff ■

Board of Directors and Committees of the AAUP Foundation, 2014–15

The president, first vice president, second vice president, and secretary-treasurer of the AAUP serve as ex officio directors of the AAUP Foundation, as does the chair of Committee A on Academic Freedom and Tenure. One additional member of the AAUP's Council, elected by that body, serves as an ex officio director for a term of two years or until the termination of his or her service on the AAUP's Council, whichever is shorter. Public directors are elected by a majority vote of the remaining directors in attendance at a regular or special meeting of the board.



Board of Directors

Chair

Susan Michalczyk (Arts and Science Honors Program), Boston College, AAUP second vice president, 2015

Secretary

*To be elected by AAUP Foundation Board of Directors

Treasurer

Michele Ganon (Accounting), Western Connecticut State University, AAUP secretary-treasurer, 2016

Directors

Maria T. Bacigalupo (Administration, Planning, and Social Policy), Curry College, AAUP council member, 2015

Rudy H. Fichtenbaum (Economics), Wright State University, AAUP president, 2016

Henry Reichman (History), California State University, East Bay, AAUP first vice president and chair of Committee A on Academic Freedom and Tenure, 2016

Public Directors

Arthur Caplan, director of the Division of Medical Ethics, Department of Population Health, Langone

Medical Center, New York University, March 2015
Heidi Bogin Oshin, executive vice president of Menemsha Films, June 2015
Robbie McCauley, professor emerita, (Performing Arts), Emerson College, April 2016

Nancy Long, staff

Grant Committee

Irene T. Mulvey (Mathematics), Fairfield University, chair, 2016
John T. McNay (History), University of Cincinnati—Blue Ash College, 2016
Karen Miller (US Public Policy, Diplomatic and Economic History), Oakland University, 2016
Nancy Long, staff

Investment Committee

Michele Ganon (Accounting), Western Connecticut State University, chair, 2016
Fall Ainina (Finance), Wright State University, 2015
Howard Bunsis (Accounting), Eastern Michigan University, 2015
Carlton Briscoe, staff

Governing Board of the Academic Freedom Fund

Maria T. Bacigalupo (Administration, Planning and Social Policy), Curry College, 2015
Gregory L. Comer (Physics), Saint Louis University, 2016

Michael DeCesare (Sociology), Merrimack University,
2016

Joan Wallach Scott (History), Institute for Advanced
Study, 2016

Susan Michalczyk (Arts and Sciences Honors
Program), Boston College, ex officio as chair of the
AAUP Foundation Board of Directors, 2015

Henry Reichman (History), California State University,
East Bay, ex officio as chair of Committee A on
Academic Freedom and Tenure, 2015

Gregory F. Scholtz, staff

Governing Board of the Contingent Faculty Fund

Howard Bunsis (Accounting), Eastern Michigan
University, ex officio as chair of the AAUP-CBC,
2015

David Kociemba (Visual and Media Arts),
Emerson College, ex officio as chair of
the Committee on Contingency and the
Profession, 2016

Susan Michalczyk (Arts and Sciences Honors
Program), Boston College, ex officio as chair of the
AAUP Foundation Board of Directors, 2015

Anne Sisson Runyan (Women's, Gender, and Sexuality
Studies), University of Cincinnati, ex officio as
chair of the Committee on Women in the Academic
Profession, 2015

Hans-Joerg Tiede (Computer Science), Illinois
Wesleyan University, ex officio as chair of the ASC,
2015

Dawn Tefft, staff

Governing Board of the Legal Defense Fund

Paulette M. Caldwell (Law), New York University,
2015

Martha E. Chamallas (Law), Ohio State University,
2016

Ann C. Hodges (Law), University of Richmond, 2017

Linda H. Krieger (Law), University of Hawaii at
Manoa, 2015

Michael A. Olivas (Law), University of Houston, 2016

Edward F. Sherman (Law), Tulane University, 2014

Risa L. Lieberwitz (Law), Cornell University, ex officio
as general counsel of the AAUP, 2016

Susan Michalczyk (Arts and Sciences Honors
Program), Boston College, ex officio as chair of the
AAUP Foundation, 2015

Julie M. Schmid, ex officio as executive director of the
AAUP

Nancy Long, staff

Aaron M. Nisenson, staff ■

Committees of the AAUP, 2014–15

Appointments to standing committees of the Association are ordinarily for a term of three years; the terms of approximately one-third of the members of each committee expire with the adjournment of each annual meeting. By Council action in June 1977 (as amended in November 1988), appointments to a “second consecutive three-year term shall be occasional; a third consecutive three-year term shall be rare.” An appointment may be extended beyond nine consecutive years only in extraordinary circumstances and is subject to ratification by the executive committee and the Council. Appointments are made by the president of the Association, who has the advice of members of the Association, the executive director, and other members of the staff. The executive director assigns members of the staff to assist the committees in their work.

A list of committee appointments follows, with the date of expiration given after each name. In addition to standing committees, there are special committees whose members serve ex officio or are appointed by the president according to regulations established by the Council. The AAUP Constitution provides that the president shall be a member ex officio of all committees except the Nominating Committee, the Election Committee, and the Election Appeals Committee. The officers of the Assembly of State Conferences are elected by that body. The Executive Committee of the Council consists of the Association’s officers, general counsel, and past president; the chairs of the ASC and the AAUP-CBC; and four at large members elected by the Council from among their number.

Executive Committee of the Council

Rudy H. Fichtenbaum (Economics), Wright State University, president, 2016
Henry Reichman (History), California State University, East Bay, first vice president, 2016
Susan Michalczyk (Arts and Sciences Honors Program), Boston College, second vice president, 2016
Michele Ganon (Accounting), Western Connecticut State University, secretary-treasurer, 2016
Maria T. Bacigalupo (Administration, Planning, and Social Policy), Curry College, member at large, 2015
Charles A. Baker (French and Film), College of the Holy Cross, member at large, 2015
Linda L. Carroll (Italian), Tulane University, member at large, 2015
Anne Friedman (Developmental Skills), City University of New York Borough of Manhattan Community College, member at large, 2015
Howard Bunsis (Accounting), Eastern Michigan University, chair of the AAUP-CBC, 2015
Hans-Joerg Tiede (Computer Science), Illinois Wesleyan University, chair of the ASC, 2015

Cary R. Nelson (English), University of Illinois at Urbana-Champaign, past president of the AAUP, 2015
Risa L. Lieberwitz (Law), Cornell University, general counsel, 2016
Julie M. Schmid, staff

Committee A on Academic Freedom and Tenure

Henry Reichman (History), California State University, East Bay, chair, 2015
Michael F. Bérubé (English), Pennsylvania State University, 2015
Don M. Eron (Writing and Rhetoric), University of Colorado Boulder, 2015
Marjorie Heins (Communications), New York University, 2015
Christopher Hoofnagle (Law), University of California, Berkeley, 2017
Walter Benn Michaels (English), University of Illinois at Chicago, 2016
Debra Nails (Philosophy), Michigan State University, 2015

Cary R. Nelson (English), University of Illinois at Urbana-Champaign, 2015
Joan Wallach Scott (History), Institute for Advanced Study, 2015
Hans-Joerg Tiede (Computer Science), Illinois Wesleyan University, 2015
Risa Lieberwitz (Law) Cornell University, ex officio as general counsel, 2016
Joan E. Bertin (Public Health), Columbia University, consultant, 2016
Barbara M. Jones, American Library Association Office for Intellectual Freedom, consultant, 2016
Irene T. Mulvey (Mathematics), Fairfield University, liaison from the Assembly of State Conferences, 2015
Gregory F. Scholtz, staff

Committee on Academic Professionals

Angela Brommel (Humanities), Nevada State College, chair, 2016
Iris Delutro (Labor Education and Advancement Program), City University of New York Queens College, 2016
Karen Kennedy (Academic Advising), Portland State University, 2017
Vijay Nair (Library Science), Western Connecticut State University, 2016
Emily McCann, staff

Committee on Accreditation

Thomas Coffey (Modern Languages), Creighton University, chair, 2017
J. Michael Bernstein (Management & International Business), Wright State University, 2017
A. Lee Fritschler (Public Policy), George Mason University, 2015
Anita Levy, staff

Committee on Association Investments

Michele Ganon (Accounting), Western Connecticut State University, chair, 2016
Fall Ainina (Finance), Wright State University, 2015
Paul Savoth (Accounting), Monmouth University, 2017
Carlton Briscoe, staff

Committee on College and University Governance

Charles A. Baker (French and Film), College of the Holy Cross, chair, 2015
Linda L. Carroll (Italian), Tulane University, 2016

George Cohen (Law), University of Virginia, 2016
Michael DeCesare (Sociology), Merrimack College, 2017
Michael Harkins (History), Harper College, 2017
Jeannette Kindred (Communications), Eastern Michigan University, 2016
Duane Storti (Mechanical Engineering), University of Washington, 2017
Katherine Morrison (Community Health and Wellness), Curry College, liaison from the AAUP-CBC, 2015
Brian Turner (Political Science), Randolph-Macon College, liaison from the ASC, 2015
Donna Young, staff

Committee on Community Colleges

Kimberley Reiser (Biology), Nassau Community College, chair, 2015
Ashlee Brand (English), Cuyahoga Community College, 2016
Paul Davis (Behavioral and Social Sciences), Cincinnati State Technical and Community College, 2015
Samuel Echevarria-Cruz (Sociology), Austin Community College, 2015
Anne Friedman (Developmental Skills), City University of New York Borough of Manhattan Community College, 2016
Caprice Lawless (English), Front Range Community College, 2017
Jason Elias, staff

Committee on Contingency and the Profession

David Kociemba (Visual and Media Arts), Emerson College, chair, 2016
Michael Batson (History), College of Staten Island, 2016
Joe Berry (Labor Studies and History), Berkeley, California, 2016
Richard Gomes (English as a Second Language), Rutgers University, 2017
Mary Ellen Goodwin (English as a Second Language), De Anza College, 2016
Suzanne Hudson (English), University of Colorado Boulder, 2017
Mary Ann Irwin (History), Diablo Valley Community College, 2017
Jeanette Jeneault (Writing), Syracuse University, 2015
Robert Rubin (English and ESL), Wright State University, 2016
Dawn Tefft, staff

Committee on the Economic Status of the Profession

Steve Shulman (Economics), Colorado State University, chair, 2017
 Barbara Hopkins (Economics), Wright State University, 2015
 Elaine McCrate (Economics), University of Vermont, 2017
 Sharon Mastracci (Public Administration), University of Illinois at Chicago, 2016
 Mehmet Yaya (Economics), Eastern Michigan University, 2017
 Ronald Ehrenberg (Industrial and Labor Relations, Economics), Cornell University, consultant, 2015
 Samuel Dunitz, staff

Committee on Government Relations

Steven London (Political Science), City University of New York Brooklyn College, chair, 2015
 Kim Geron (Political Science), California State University, East Bay, 2017
 Sara Kilpatrick, Executive Director, Ohio AAUP conference, 2017
 Geoff Kurtz (Political Science), City University of New York Borough of Manhattan Community College, 2017
 Edward C. Marth (Labor Education), University of Connecticut, 2015
 Linda Rouillard (French), University of Toledo, 2016
 Beulah Woodfin (Biochemistry), University of New Mexico, 2015
 Howard Bunsis (Accounting), Eastern Michigan University, ex officio as chair of the AAUP-CBC, 2015
 Hans-Joerg Tiede (Computer Science), Illinois Wesleyan University, ex officio as chair of the ASC, 2015
 Samuel Dunitz, staff

Committee on Graduate and Professional Students

Danielle Dirocco (Political Science), University of Rhode Island, 2015
 Kira Schuman, staff

Committee on Historically Black Institutions and Scholars of Color

Cecil Canton (Criminal Justice), California State University, Sacramento, chair, 2017
 Femi I. Ajanaku (African & African American Studies), Lemoyne-Owen College, 2017

Jimmy Bell (Criminal Justice & Sociology), Jackson State University, 2017
 Doris Johnson (Teacher Education), Wright State University, 2015
 Jason Elias, staff

Committee on the History of the Association

Hans-Joerg Tiede (Computer Science), Illinois Wesleyan University, chair, 2016
 Mary W. Gray (Mathematics), American University, 2016
 Irwin Yellowitz (History), City University of New York City College, 2016
 Jordan E. Kurland, staff

Committee on Membership

Irene T. Mulvey (Mathematics), Fairfield University, chair, 2016
 John McNay (History), University of Cincinnati—Blue Ash College, 2016
 Katherine Parkin (History), Monmouth University, 2017
 David Robinson (History) Truman State University, 2016
 Howard Bunsis (Accounting), Eastern Michigan University, ex officio as chair of the AAUP-CBC, 2015
 Hans-Joerg Tiede (Computer Science), Illinois Wesleyan University, ex officio as chair of the ASC, 2015
 Rebecca Lewis, staff
 Christopher Simeone, staff

Committee on the Organization of the Association

Kerry E. Grant (Mathematics), Southern Connecticut State University, chair, 2016
 Dan O'Connor (Library), Rutgers University, 2017
 Jonathan Rees (History), Colorado State University-Pueblo, 2017
 Risa L. Lieberwitz (Law), Cornell University, ex officio as general counsel, 2016
 Jordan E. Kurland, staff

Committee on Professional Ethics

Linda Farmer (Philosophy), Wright State University, chair, 2015
 Arthur Greenberg (Chemistry), University of New Hampshire, 2015
 Craig Vasey (Philosophy), University of Mary Washington, 2016
 Donna Young, staff

Committee on Sexual Diversity and Gender Identity

Steven (Stacey) Harris (Mathematics and Computer Science), Saint Louis University, chair, 2016
Sine Anahita (Sociology), University of Alaska, 2015
Jeanne Laurel (English), Niagara University, 2015
Tracey Steele (Sociology), Wright State University, 2017
Jamie Owen Daniel, staff

Committee on Teaching, Research, and Publication

Craig Vasey (Philosophy), University of Mary Washington, chair, 2016
Martin Kich (English), Wright State University, 2016
Ann McGlashan (German), Baylor University, 2016
Susan Michalczyk (Arts and Sciences Honors Program), Boston College, 2015
Gwendolyn Bradley, staff

Committee on Women in the Academic Profession

Anne Sisson Runyan (Women's, Gender, and Sexuality Studies), University of Cincinnati, chair, 2015
Joan Chrisler (Psychology), Connecticut College, 2016
Lori Dobbins (Music), University of New Hampshire, 2016
Kelly Hay (Communication and Journalism), Oakland University, 2016
Tina Kelleher (English), Towson University, 2017
Marian Meyers (Communication), Georgia State University, 2016
Wendy W. Roworth (Art History), University of Rhode Island, 2015
Paula A. Treichler (Communication and Media Studies), University of Illinois at Urbana-Champaign, 2016
Anita Levy, staff
Emily McCann, staff

Advisory Board for *Academe: Magazine of the AAUP*

Aaron Barlow (English), City University of New York New York City College of Technology, editor, 2015
Marc Bousquet (English), Emory University, 2015
Martin Kich (English), Wright State University, 2015
Victor Navasky, publisher emeritus of *The Nation*, 2015
Christopher Newfield (English), University of California, Santa Barbara, 2017
Cat Warren (English), North Carolina State University, 2015

Gwendolyn Bradley, staff
Michael Ferguson, staff

Advisory Board for the *Bulletin of the American Association of University Professors*

Stephen H. Aby (Bibliography), University of Akron, 2015
Aaron Barlow (English), City University of New York New York City College of Technology, 2015
Henry Reichman (History), California State University, East Bay, 2015
Deanna D. Wood (Library), University of New Hampshire, 2017
Michael Ferguson, staff
Gregory F. Scholtz, staff

Audit Committee

Michele Ganon (Accounting), Western Connecticut State University, chair, 2017
Howard Bunsis (Accounting), Eastern Michigan University, 2016
Pat Poli (Accounting) Fairfield University, 2016
Carlton Briscoe, staff

Grievance Committee

Maria T. Bacigalupo (Administration, Planning, and Social Policy), Curry College, chair, 2016
David Jackson (Political Science), Bowling Green State University, 2017
Duane Storti (Mechanical Engineering), University of Washington, 2015
Michael Mauer, staff

Litigation Committee

Risa L. Lieberwitz (Law), Cornell University, chair, 2016
Alan E. Brownstein (Law), University of California, Davis, 2015
James J. Brudney (Law), Ohio State University, 2017
Martha E. Chamallas (Law), Ohio State University, 2015
Theresa Chmara, Esq., Washington, DC, 2017
Rebecca S. Eisenberg (Law), University of Michigan, 2015
Cynthia Estlund (Law), New York University, 2015
Amy Gajda (Law), Tulane University, 2015
Osamudia James (Law), University of Miami, 2017
Jay P. Kesan (Law), University of Illinois at Urbana-Champaign, 2015
Peter Lee (Law), University of California, Davis, 2017

Deborah C. Malamud (Law), New York University, 2017
Martha McCluskey, (Law), State University of New York at Buffalo, 2017
Michael A. Olivas (Law), University of Houston, 2015
David M. Rabban (Law), University of Texas at Austin, 2015
R. Anthony Reese (Law), University of California, Irvine, 2015
Steve Sanders (Law), Indiana University, 2017
Steven H. Shiffrin (Law), Cornell University, 2017
Nancy Long, staff
Aaron Nisenson, staff

Panel on Chapter and Conference Sanctions

Dennis Mazzocco (Radio, Television, and Film), Hofstra University, chair, 2015
Philip Cole (Physics), Idaho State University, 2015
Irene T. Mulvey (Mathematics), Fairfield University, 2015
Linda Rouillard (French), University of Toledo, 2015
Joel Russell (Chemistry), Oakland University, 2015
Michael Mauer, staff

Officers and Executive Committee of the Assembly of State Conferences

Hans-Joerg Tiede (Computer Science), Illinois Wesleyan University, chair, 2015
Brian Turner (Political Science), Randolph Macon College, vice chair, 2015
John Hinshaw (History), Lebanon Valley College, treasurer, 2016
Josie McQuail (English), Tennessee Technological University, secretary, 2016
Leila Pazargadi (English), Nevada State College, member at large, 2016
Irene T. Mulvey (Mathematics), Fairfield University, member at large, 2015
Donna L. Potts (English), Washington State University, past chair, 2015
Kira Schuman, staff ■

Institutions Sanctioned for Infringement of Governance Standards

REPORTS OF an Association investigation at the institutions listed below have revealed serious infringements of generally accepted standards of college and university governance endorsed by this Association, as set forth in the *Statement on Government of Colleges and Universities* and derivative governance documents. Institutions are placed on or removed from this sanction list by vote of the Association's annual meeting.

The publication of these sanctions is for the purpose of informing Association members, the profession at large, and

the public that unsatisfactory conditions of academic governance exist at the institutions in question.

The sanctioned institutions and the date of sanctioning are listed, along with the citation of the report that formed the basis for the sanction. Beginning in 2011, reports were published online on the AAUP website in the indicated month and year, with printed publication following in the annual *Bulletin of the American Association of University Professors*.

Lindenwood University (Missouri) (<i>Academe</i> , May–June 1994, 60–69)	1994
Elmira College (New York) (<i>Academe</i> , September–October 1993, 42–52)	1995
Miami-Dade College (<i>Academe</i> , May–June 2000, 73–88)	2000
Antioch University (<i>Academe</i> , November–December 2009, 41–63)	2010
Rensselaer Polytechnic Institute (New York) (January 2011)	2011
Idaho State University (May 2011)	2011

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Censured Administrations

INVESTIGATIONS by the American Association of University Professors of the administrations of the institutions listed to the right show that, as evidenced by a past violation, they are not observing the generally recognized principles of academic freedom and tenure endorsed by this Association, the Association of American Colleges and Universities, and more than 210 other professional and educational organizations. The 1940 *Statement of Principles on Academic Freedom and Tenure* can be found on the AAUP website at www.aaup.org.

This list is published for the purpose of informing Association members, the profession at large, and the public that unsatisfactory conditions of academic freedom and tenure have been found to prevail at these institutions. Names are placed on or removed from this censure list by vote of the Association's annual meeting.

Placing an institution on this list does not mean that censure is visited either upon the whole of the institution or upon the faculty but specifically upon its present administration. The term "administration" includes the administrative officers and the governing board.

Members of the Association have often shown their support of the principles violated by not accepting appointment to an institution on the censure list. Since circumstances differ widely from case to case, the Association does not assert that such an unqualified obligation exists for its members; it does urge that, before accepting appointments, they seek information on present conditions of academic freedom and tenure from the Association's Washington office and prospective departmental colleagues. The Association leaves it to the discretion of the individual to make the proper decision.

The censured administrations, with dates of censoring, are listed to the right. Reports through 2009 were published as indicated by the *AAUP Bulletin* or *Academe* citations in parentheses following each listing. Beginning in 2010, reports were published online on the AAUP website in the indicated month and year, with printed publication following in the annual *Bulletin of the American Association of University Professors*. Reference should also be made to "Developments Relating to Association Censure and Sanction" and to the "Report of Committee A," which annually appear respectively in *Academe* and in the *Bulletin of the American Association of University Professors*.

Grove City College (Pennsylvania) (March 1963, 15–24)	1963
Frank Phillips College (Texas) (December 1968, 433–38)	1969
Concordia Seminary (Missouri) (April 1975, 49–59)	1975
Murray State University (Kentucky) (December 1975, 322–28)	1976
State University of New York (August 1977, 237–60)	1978
Phillips Community College of the University of Arkansas (May 1978, 93–98)	1978
Nichols College (Massachusetts) (May 1980, 207–12)	1980
Yeshiva University (New York) (August 1981, 186–95)	1982
American International College (Massachusetts) (May–June 1983, 42–46)	1983
Metropolitan Community College (Missouri) (March–April 1984, 23a–32a)	1984
Talladega College (Alabama) (May–June 1986, 6a–14a)	1986
Pontifical Catholic University of Puerto Rico (May–June 1987, 33–38)	1987
Husson University (Maine) (May–June 1987, 45–50)	1987
Hillsdale College (Michigan) (May–June 1988, 29–33)	1988
Southeastern Baptist Theological Seminary (North Carolina) (May–June 1989, 35–45)	1989
The Catholic University of America (September–October 1989, 27–40)	1990
Dean College (Massachusetts) (May–June 1991, 27–32)	1992
Baltimore City Community College (May–June 1992, 37–41)	1992
Loma Linda University (California) (May–June 1992, 42–49)	1992
Clarkson College (Nebraska) (May–June 1993, 46–53)	1993
North Greenville College (South Carolina) (May–June 1993, 54–64)	1993
Savannah College of Art and Design (May–June 1993, 65–70)	1993
University of Bridgeport (November–December 1993, 37–45)	1994
Benedict College (South Carolina) (May–June 1994, 37–46)	1994
Bennington College (March–April 1995, 91–103)	1995
Alaska Pacific University (May–June 1995, 32–39)	1995
National Park Community College (Arkansas) (May–June 1996, 41–46)	1996
Saint Meinrad School of Theology (Indiana) (July–August 1996, 51–60)	1997
Minneapolis College of Art and Design (May–June 1997, 53–58)	1997
Brigham Young University (September–October 1997, 52–71)	1998
University of the District of Columbia (May–June 1998, 46–55)	1998
Lawrence Technological University (Michigan) (May–June 1998, 56–62)	1998
Johnson & Wales University (Rhode Island) (May–June 1999, 46–50)	1999
Alburtus Magnus College (Connecticut) (January–February 2000, 54–62)	2000
Charleston Southern University (South Carolina) (January–February 2001, 63–77)	2001
University of Dubuque (September–October 2001, 62–73)	2002
Meharry Medical College (Tennessee) (November–December 2004, 56–78)	2005
University of the Cumberlands (Kentucky) (March–April 2005, 99–113)	2005
Virginia State University (May–June 2005, 47–62)	2005
Bastyr University (Washington) (March–April 2007, 106–20)	2007
Nicholls State University (Louisiana) (November–December 2008, 60–69)	2009
Cedarville University (Ohio) (January–February 2009, 58–84)	2009
North Idaho College (January–February 2009, 85–92)	2009
Stillman College (Alabama) (March–April 2009, 94–101)	2009
Clark Atlanta University (January 2010)	2010
University of Texas Medical Branch at Galveston (April 2010)	2010
Bethune-Cookman University (Florida) (October 2010)	2011
Louisiana State University, Baton Rouge (July 2011)	2012
Northwestern State University (Louisiana) (April 2012)	2012
Southeastern Louisiana University (April 2012)	2012
National Louis University (Illinois) (April 2013)	2013
Southern University, Baton Rouge (April 2013)	2013
Northeastern Illinois University (December 2013)	2014

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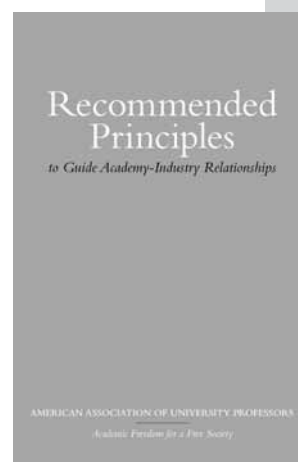
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ANNOUNCING

Student Essay and Art Contests

*in celebration of the centennial of the
American Association of University Professors
on the theme of*

“Academic Freedom:
Its Concept, Its History, Its Successes, and Its Failures”

\$1,000 prizes in each of four categories:

- undergraduate student essay
- graduate student essay
- undergraduate student artwork
- graduate student artwork

Deadline for submissions:
January 15, 2015

Contest sponsored by
the AAUP Foundation.

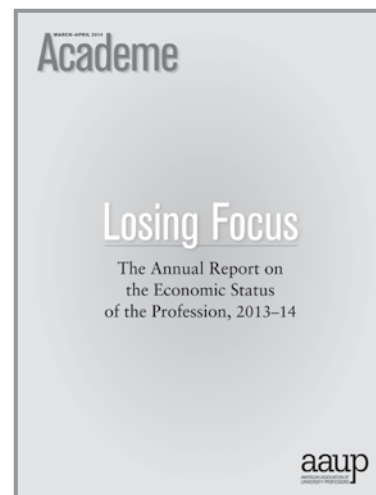
Visit www.aaupfoundation.org/centennial/contest for complete rules.



Ordering Data from the Faculty Compensation Survey

Data from the AAUP Faculty Compensation Survey are available in three formats:

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- Complete copies of the *Annual Report on the Economic Status of the Profession* in print. AAUP members and subscribers receive one copy as part of their subscription to *Academe*. Additional copies may be ordered through the AAUP online store at <http://www.aaup.org/store>.

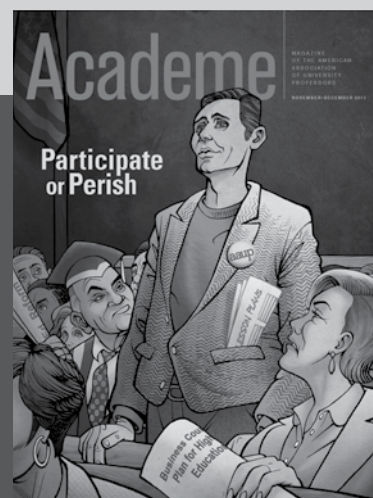


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The AAUP's
Assembly of State
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amended its constitution
at its annual meeting
in June.

The amended constitution
is available online at

[http://www.aaup.org/about/elected-leaders/
ASC/constitution](http://www.aaup.org/about/elected-leaders/ASC/constitution).

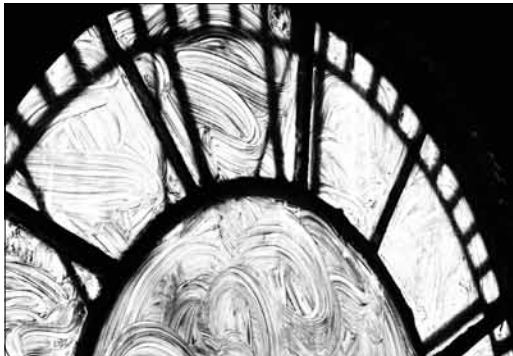
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AAUP COUNCIL RECORD

The record of the June 2014 AAUP Council
meeting is available on the AAUP website at

[http://www.aaup.org/about/elected-leaders
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The centennial edition of *Policy Documents and Reports* (also known as the Redbook) is forthcoming in early 2015 from Johns Hopkins University Press.

2015 COUNCIL NOMINATIONS INVITED

The Association's 2014 Nominating Committee seeks nominations for candidates for election to the AAUP's governing Council in spring 2015.

All members of the Association in good standing, with the exception of associate members, are eligible to be elected to Council positions and to nominate other eligible members. The committee seeks a diverse group of candidates with experience in the AAUP at the local, state, or national level.

Nine three-year positions are open for election:

- > Two at-large Council positions
- > One Council position in each of these geographical districts: I, II, IV, V, VII, VIII, and X*

To nominate themselves for the Council or to nominate another eligible member, individuals must submit the following information to the Nominating Committee by December 14, 2014,

1. The position for which the individual is being nominated.
2. The name, institution, and e-mail address of the individual being nominated.
3. The name, institution, and e-mail address of the individual making the nomination (if not self-nominating)

In addition, endorsements by letter and/or e-mail from six AAUP members (one of whom may be the nominee) must also be presented to the Nominating Committee by December 14. Endorsements must cite the specific position for which the individual is being endorsed and the name, institutional affiliation, and e-mail address of the endorser. [Note: Nominees to a district Council position must be endorsed by at least six eligible members employed in that district.] To ensure that all six endorsements arrive by the December 14 deadline, we encourage potential candidates (or those acting on their behalf) to collect and submit them together in one letter or e-mail.

An alternative nomination-by-petition process is set forth in the AAUP Constitution (online at <http://www.aaup.org/AAUP/about/bus/constitution.htm>). Nominating petitions must be received in the AAUP's national office by December 14.

The Nominating Committee shall submit its final report to the Council by December 21. All proposed nominees who meet the eligibility requirements will have their names included on the ballot for the national Council elections in spring 2015.

Please send nominations by e-mail to nominations@aaup.org or by surface mail to AAUP Nominating Committee, 1133 Nineteenth Street NW, Suite 200, Washington, DC 20036.

*Council districts open for election are I (Arizona, California, Colorado, Hawaii, Nevada, New Mexico, Utah); II (Alaska, Idaho, Kansas, Minnesota, Montana, Nebraska, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Washington, Wisconsin, Wyoming); IV (Arkansas, District of Columbia, Illinois, Indiana, Iowa, Kentucky, Missouri, Tennessee, Virginia); V (Alabama, Canada, Florida, Foreign, Georgia, Guam, Louisiana, Maryland, Mississippi, North Carolina, Puerto Rico, South Carolina, Virgin Islands, West Virginia); VII (New Jersey); VIII (New York); and X (Delaware, Maine, Massachusetts, Pennsylvania, Rhode Island).

SUPPORT

THE AAUP FOUNDATION

THE AAUP FOUNDATION supports the principles of academic freedom and the quality of higher education in a free and democratic society.

Threats to higher education are numerous, severe, and increasing daily — driven by the pervasive corporatization of higher education, attacks on academic freedom and shared governance, exploitation of contingent faculty labor, and erosion of faculty intellectual property rights.

Your gift helps the Foundation respond to these attacks by supporting research, publications, and workshops and by enabling the Foundation to provide direct financial assistance to faculty involved in litigation that implicates AAUP policies.

The AAUP Foundation has supported faculty involved in litigation to protect their intellectual property rights and in litigation against institutions that unilaterally terminated tenured faculty appointments in violation of AAUP policies and procedures.

The Foundation also funded the publication of *Recommended Principles to Guide Academy-Industry Relationships*. This book will help faculty and administrators manage academy-industry collaborations in a manner consistent with the long-term interests of both universities and the broader public.

The AAUP Foundation needs your support in order to continue its important work. You can demonstrate your personal commitment to the AAUP Foundation's mission and goals by making a tax-deductible donation today.*

There are two easy ways to give to the AAUP Foundation — by donating through our website at <http://www.aaupfoundation.org/donate> or by returning this gift form to the listed address.

“Academic freedom is not a luxury or a special privilege. It is the necessary foundation of our educational system, one of the essential building blocks of our free society.”

—JOAN WALLACH SCOTT

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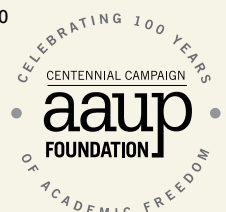
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(2014Q3A4)

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