

Notes on the State of the Union

Lisa C. Minnick, WMU-AAUP President

It is hard to believe that a year has passed since we rallied at Montague House on the morning of April 17, 2014, and accompanied our negotiation team to their first bargaining session for the 2014—17 Agreement. Although we had no way to predict at that time how things would play out, we went into the negotiations and contract campaign with confidence in our team and optimism about the new Agreement but also with some apprehension. We knew we would soon be facing the realities of Michigan's new so-called "right to work" laws, which would go into effect for faculty on our campus when our 2011-14 Agreement expired at midnight on September 5, 2014.

That date—September 5, 2014—should go down as noteworthy in our chapter's history. From the chapter meeting attended by more than 300 faculty members, where our colleagues made passionate and compelling cases for why our work matters, to our march afterwards through Bronco Bash, to our spirited but peaceful demonstration on the third floor of Seibert Hall, where we remained orderly and cooperative even when the campus police were called to remove us and threatened some of us with arrest, it was a five-star day for faculty strength and solidarity, with a nail-biter of an ending that was ultimately triumphant. Just before the midnight deadline, after a series of violent storms swept through and uprooted trees and downed powerlines all over town, members of the WMU-AAUP Executive Committee rushed to Walwood Hall so that our team could brief us on the tentative agreement reached at the bargaining table minutes earlier. As the clock struck midnight, the committee voted to present the tentative agreement to the faculty for a ratification vote.

Thanks to the hard work and tenacity of our bargaining team – Cynthia Klekar, Bilinda Straight, Tom Joyce, and Onaiwu Ogbomo – we won a number of victories in the 2014 negotiations. These include across-the-board salary increases and

additional to-base salary supplements, plus increases in overload rates and promotion increments. The 2014-17 Agreement also retains current employer-paid retirement contributions, holds the line on health care premiums through 2015, and freezes our copays, deductibles, and other out-of-pocket healthcare costs through 2017. Our team also won expanded rights to arbitration of grievances, improved Family and Medical Leave Act policies, and expanded partner benefits. The new Agreement also improves the language defining faculty workloads, preserves summer teaching preference, and strengthens shared governance and intellectual property rights. Thanks once again to our outstanding team, including the members of our bargaining team, the WMU-AAUP Executive Committee, Association Council, and chapter staff, and to all the faculty members, university staff, students, retired colleagues, alumni, national AAUP staff, and the many AFSCME, PIO, TAU, PSSO, and APA colleagues who stood with us during our contract campaign and helped with the extensive behind-the-scenes work that made possible the successful negotiations and campaign of support. This was a truly collaborative effort and a wonderful reminder of what we can accomplish when we work together.

We have many reasons to be pleased with the new contract, but I don't believe that it was (or is) time to rest on our laurels. Through our year-long contract campaign, beginning in the fall of 2013, we were able to build not only solidarity but also the kind of camaraderie among the faculty that makes a real difference in the quality of our professional lives. I am not willing to give that up, only to have to start all over again next time. We need a long game.

In two years, we will be at the bargaining table again. In the meantime, we face ongoing challenges, including uncertainty surrounding the academic program review, the aftermath of the faculty's recent no-confidence vote on the provost's leadership, unresolved salary inequities, including gender inequity as

well as widespread compression and inversion problems, and the evolving impact of the new “right to work” laws on our bargaining unit. The WMU-AAUP is fortunate thus far to have retained nearly all of our dues-paying members. But it must be our ongoing project to demonstrate the value of the union and to continue to build strength, retain our dues-paying members, encourage new hires to join us, and reinforce solidarity as we defend the contract and prepare for the next round of negotiations in 2017.

We need to keep making the case to our colleagues, especially new hires, that the dues payments that fund the work of the chapter provide an excellent return on investment. Our dues finance the negotiations that won us the benefits we all enjoy today as well as provide for the ongoing enforcement of the contract. Making this case is central to our work as an organized faculty. For decades, the WMU-AAUP bargaining unit, including term faculty as well as tenured and tenure-track faculty, has enjoyed a strong return on its investment in the chapter, including all the rights and

benefits articulated in the Agreement. However, we are only as strong as our collective commitment to preserving and expanding those rights and benefits.

As the 2014—15 academic year concludes, it is a good time not only to reflect on what we as a faculty have accomplished in the past year but also to look to the future, to think about and talk about what we want that future to look like and how we can make our shared vision a reality. It has been an honor to serve all of you as your chapter president, and I appreciate your vote of confidence last fall to re-elect me for another term. Along with my fellow chapter officers, the WMU-AAUP Executive Committee (college-level reps), and the Association Council (department reps), I am looking forward to continuing this work. But we can't do it without you. Your service to the chapter, your feedback, wise words, and activism, and especially your passion for the work you do, the students we serve, and the institution to which we have dedicated our professional lives are what make it possible for the WMU-AAUP to serve you most effectively and to make sure the diverse voices of the faculty continue to be heard.

Contract Administrator Update Marilyn S. Kritzman

As the WMU-AAUP Contract Administrator, I have been engaged in the following work on behalf of our members since January 1, 2015. Below is a representative summary of my efforts.

I have consulted and advised departments in the Haworth College of Business (HCOB), the College of Education and Human Development (CEHD) and the College of Arts and Sciences (CAS) regarding revising their department policy statement. I have also consulted with multiple CAS faculty regarding the Family and Medical Leave Act of 1993 (FMLA), necessity leave, sick leave, leave of absences, and early retirement. I have met with multiple faculty in multiple colleges to discuss strategies for dealing with academic bullying and workplace harassment from both colleagues and supervisors. Faculty members have been advised of their reporting options to the Office of Institutional Equity (OIE), the Equal Employment Opportunity Commission (EEOC) and the Michigan Department of Civil Rights (MDCR). Multiple faculty in CEHD and CAS have sought assistance with WMU-AAUP Contract Article 48: Permanent Transfer.

The promotion and tenure process is well underway with recommendations occurring at the college promotion committee and college dean levels. Faculty members from CAS, the College of Fine Arts (CFA), the College of Engineering and Applied Sciences (CEAS), and CEHD have requested assistance with promotion appeals to both their college deans and college promotion committees. Tenure appeals have been prepared and presented for faculty in their second, third, fourth, fifth, and final tenure reviews across the campus.

Faculty members in the CEHD have requested assistance with strategies to deal with staff conduct issues. Faculty members in both CEHD and CAS have sought counsel regarding concerns of academic freedom.

We are concluding an on-going Article 22: Professional Conduct case in the College of Health and Human Services (CHHS), with an additional Article 22: Professional Conduct case in CFA.

Review of the Principles of Academic Freedom
 Brian Tripp, WMU-AAUP Vice President

Do you understand academic freedom and its relevance to your faculty rights and responsibilities? It is possible that many faculty do not receive any formal training in academic freedom guidelines when starting their academic careers. The purpose of this article is to review the established definitions of academic freedom and also provide an update on some of the recent developments. This year marks the centennial of the founding of the American Association of University Professors (AAUP) and its 1915 *Declaration of Principles on Academic Freedom and Academic Tenure*, the first statement of its core principles. The first formal investigation of academic freedom violations by the AAUP also took place in 1915, at the University of Utah, after seventeen faculty members resigned in protest against the firing of several of their colleagues (“The First Investigation.” Walter P. Metzger. *AAUP Bulletin* 47.3, Academic freedom has been defined by the AAUP to comprise three key elements: freedom of inquiry and research, freedom of teaching within the institution, and freedom of extramural utterance and action. These professional principles were further defined by the AAUP Committee A on Academic Freedom and Academic Tenure in the *1940 Statement of Principles on Academic Freedom and Tenure*, as reviewed in reference [AAUP Policy Documents and Reports](#), 11th Edition (2015), often referred to as “The Redbook.” Three key statements of Academic Freedom were defined as:

1. Teachers are entitled to full freedom in research and in the publication of the results, subject to the adequate performance of their other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution.
2. Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject. Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment.
3. College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they

speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution.

The term “teacher,” in this context, also includes the investigator who is attached to an academic institution without teaching duties. As experts in their fields, faculty should be able to make decisions concerning the pedagogical methods and resources used in courses that they teach. The following statement was approved by the AAUP Committee A on Academic Freedom and Tenure in November 2013:

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 individual faculty members are individually responsible, without having their decisions subject to the veto of a department chair, dean, or other administrative officer.

In this context, academic freedom specifically means that neither administrators (nor faculty colleagues) can dictate to individual faculty what textbooks, computer software packages, lab experiments, artistic methods and content, or teaching approaches are used. However, a caveat is that in a team-taught course with other faculty, the group consensus may overrule one faculty’s individual preferences.

There are a number of other implications that follow from the original 1940 guidelines for academic freedom. A detailed discussion of some of the practical implications and limits of academic freedom was provided in a December 21, 2010 *Inside Higher Ed* article by former AAUP President,

Cary Nelson, available online.

Here are some of the points regarding the application of academic freedom:

- Academic freedom gives faculty members substantial latitude in deciding how to teach the courses for which they are responsible.
- Academic freedom protects a faculty member's authority to assign grades to students, so long as the grades are not capricious or unjustly punitive. More broadly, academic freedom encompasses both the individual and institutional right to maintain academic standards.
- Academic freedom means that both faculty members and students can engage in intellectual debate without fear of censorship or retaliation.
- Academic freedom establishes a faculty member's rights to remain true to his or her pedagogical philosophy and intellectual commitments. It preserves the intellectual integrity of our educational system and thus serves the public good.
- Academic freedom gives both students and faculty the right to study and do research on the topics they choose and to draw what conclusions they find consistent with their research, though it does not prevent others from judging whether their work is valuable and their conclusions sound. To protect academic freedom, universities should oppose efforts by corporate or government sponsors to block dissemination of any research findings.
- Academic freedom gives both students and faculty the right to express their views — in speech, writing, and through electronic communication, both on and off campus — without fear of sanction, unless the manner of expression substantially impairs the rights of others or, in the case of faculty members, those views demonstrate that they are professionally ignorant, incompetent, or dishonest with regard to their discipline or fields of expertise.
- Academic freedom protects faculty members and students from reprisals for disagreeing with administrative policies or proposals.
- Academic freedom guarantees that serious

charges against a faculty member will be heard before a committee of his or her peers. It provides faculty members the right to due process, including the assumption that the burden of proof lies with those who brought the charges, that faculty have the rights to present counter-evidence, to confront their accusers, and to be assisted by an attorney in serious cases if they choose.

There are also limitations on the application of academic freedom. Faculty should follow applicable federal, state, and local laws and university policies in the performance of their duties. For example, the guidelines of the Family Educational Rights and Privacy Act (FERPA) must be followed when posting student grades. Some points to be considered include the following:

- Student academic freedom does not deny faculty members the right to require students to master course material and the fundamentals of the disciplines that faculty teach.
- Academic freedom does not protect faculty members from colleague or student challenges to or disagreement with their educational philosophy and practices.
- Academic freedom does not mean a faculty member can harass, threaten, intimidate, ridicule, or impose his or her views on students.
- Academic freedom does not give students or faculty the right to ignore college or university regulations, though it does give faculty and students the right to criticize regulations they believe are unfair.
- Academic freedom does not protect students or faculty from disciplinary action, but it does require that they receive *fair treatment* and *due process*.
- Neither academic freedom nor tenure protects a faculty member who is repeatedly absent from class without justification or refuses to teach the classes or subject matter assigned.
- Neither academic freedom nor tenure protects an incompetent teacher from dismissal. Academic freedom thus does not grant an unqualified guarantee of lifetime employment.
- Neither academic freedom nor tenure protects

a faculty member from various sanctions — from denial of merit raises, to denial of sabbatical requests, to the loss of desirable teaching and committee assignments — for measurably poor performance, though such sanctions are regulated by local agreements and by faculty handbooks. If minor, sanctions should be grievable; if major, they must be subject to an appropriate hearing.

- Academic freedom does not protect faculty members from sanctions for professional misconduct, though sanctions require clear proof established through due process.
- Academic freedom does not protect a faculty member from investigations into allegations of scientific misconduct or violations of sound university policies, nor from appropriate penalties should such charges be sustained in a hearing of record before an elected faculty body.

Potential Impact of the Garcetti Decision on Academic Freedom

Brian Tripp, WMU-AAUP Vice President

The United States Supreme Court made an important ruling in 2006 on the *Garcetti vs. Ceballos* case, which has potential implications for academic freedom. In the original case, a Los Angeles district attorney's office was allowed to discipline a deputy district attorney for criticizing his supervisor's actions. The Supreme Court ruled that when public employees speak "*pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.*" A majority of the original Supreme Court left undefined whether this ruling applied to "speech related to scholarship and teaching" in public colleges and universities. Although this initial ruling did not specifically apply to university faculty, several lower courts later made rulings that applied this decision to institutions of higher education. It follows that any successive court rulings that restrict free speech in the context of an academic employer vs. faculty are not consistent with the principles of academic freedom.

In response to these encroachments, a 2009 AAUP Subcommittee on Academic Freedom and Tenure reiterated the importance of making the case for academic freedom at educational institutions, not as a matter of law, but as *principle* vital to the effective functioning of institutions of higher learning. A number of representative statements have been suggested for inclusion in faculty handbooks or other institutional regulations. An example of a model recent policy statement approved and circulated by the University of Minnesota Board of Regents (2009) follows:

Academic freedom is the freedom, without institutional discipline or restraint, to discuss all relevant matters in the classroom, to explore all avenues of scholarship, research, and creative expression, and to speak or write without institutional discipline or restraint on matters of public concern as well as on matters related to professional duties and the functioning of the University. Academic responsibility implies the faithful performance of professional duties and obligations, the recognition of the demands of the scholarly enterprise, and the candor to make it clear that when one is speaking on matters of public interest, one is not speaking for the institution.

For a more thorough analysis of how the Garcetti decision impacts on academic freedom, see Nugent, B. R. and Flood, J. T., "Rescuing Academic Freedom From Garcetti V. Ceballos: An Evaluation of Current Case Law and a Proposal For The Protection Of Core Academic, Administrative, And Advisory Speech," *Journal of College & University Law* (2014) Vol. 40, Issue 1, p. 115.

It should be noted that Article 13 of the 2014-2018 Western Michigan University and WMU-AAUP Agreement specifically discusses Academic Freedom and Academic Responsibility and affirms the principles of academic freedom, "*including freedom of research and publication, freedom of teaching, freedom of shared governance, and freedom of participation in public debate.*"

Academic Freedom and Electronic Communications

Brian Tripp, WMU-AAUP Vice President

Another aspect of academic freedom to consider is the use of electronic communications in university settings. Faculty and student access to the internet became commonplace in the 1990s. The availability of the internet has resulted in unprecedented of access to academic knowledge and opinion and has enabled the widespread academic use of electronic communications, including e-mail and web sites, in teaching, research, and artistic endeavors. The open-access movement has advocated for the free electronic distribution of peer-reviewed academic manuscripts and various peer-reviewed journals have been established that follow these precepts.

Many WMU faculty have adapted to using WMU's e-learning system in its various incarnations e.g., WebCT, Desire2Learn into their course curricula. Furthermore, some faculty teach online or hybrid online courses that rely heavily on internet access for instruction. More recently, additional forms of electronic communication, in the form of social media (such as Facebook, LinkedIn, Reddit, Tumblr, and Twitter), have emerged as methods for rapid electronic communication and are being used by some faculty in academic environments. One important consequence of the internet is that censorship has now become nearly impossible. Unlike traditional printed media, an electronic message, once posted, may never be retracted once it has been sent or posted, due to archiving by search engines and copies on "mirror" sites. Furthermore, an initial message can be continually altered over time.

The AAUP's Committee A on Academic Freedom and Tenure initially published a report on *Academic Freedom and Electronic Communications* in 1997, followed by revised and expanded reports in 2004 and 2013. These reports addressed the threats to academic freedom that can arise from a reliance on electronic media. The initial report's overriding principle was stated as follows:

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.

The 2004 report also 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." The latest 2013 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 recent AAUP Committee A report and an executive summary are available online at aaup.org/report/academic-freedom-and-electronic-communications-2014

The principles of academic freedom should apply to the use of social media by university faculty and students. However, social media have the potential for controversy. Many faculty have decided not to join Facebook or similar networking sites, or use an alternate identity to maintain their privacy. Others make it a policy not to connect with students on social media. Many, if not most, colleges and universities have yet to formulate specific 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.

As an example, a significant controversy developed in 2013 after a University of Kansas journalism professor "tweeted" an opinion about a politically-sensitive issue in response to national media coverage of an event involving workplace violence. Sub-

sequently, this faculty member received numerous hostile and sometimes threatening replies by other people who disagreed with his statement. The faculty member was then suspended from campus, ostensibly for his own safety. Consequently, the Kansas Board of Regents adopted new rules under which faculty members and other university employees may be suspended or dismissed for “improper use of social media.”

In response, the AAUP 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.” Following intense criticism, the Board of Regents agreed to work with campus leaders to revise the policy, but it was not withdrawn.

The 2013 AAUP 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 AAUP-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.”

At this point, you may be wondering if WMU has an official policy on the use of social media. In fact, WMU does have an official Social Media Policy, available online at: wmich.edu/web/policies/socialmedia. This web page indicates this policy was approved March 24, 2010, and amended May 31, 2011 by the Web Governance Council. It governs WMU social media that have been granted “official status”. This policy lists the following

statement on “Free expression”: “WMU encourages freedom of expression and recognizes the value of diverse opinions. Page administrators, however, have a responsibility to remove comments, images or other material deemed inflammatory, vulgar or otherwise inappropriate, especially when they appear to threaten the welfare or safety of the poster or others.” A later section under the heading of “Application and enforcement” states, “The standards are designed to protect the reputation of the University and the safety of alumni, students, prospective students and others. If absolutely necessary, the University, through various offices, has the physical ability to remove Web pages that do not comply.” Thus, it appears that Western’s social media policy for university-owned web pages follows the common trend described above of protecting the university’s reputation, along with safety considerations for students, alumni, and “others,” which might be construed to include faculty in the bargaining unit. This policy statement might raise questions concerning academic freedom of faculty; it is unclear who decides what is inflammatory or vulgar. Further, the Web Governance Council appears to be composed entirely of administrators and does not have any faculty representation.

On a final note, a new *interim* sexual misconduct policy has recently been proposed by Western’s administration. This interim policy is available at: wmich.edu/sexualmisconduct. As noted in a recent WMU-AAUP e-mail bulletin, a review of this new policy by the WMU-AAUP has raised a number of questions, including about due process and academic freedom, among others. For example, faculty in courses and disciplines that use images that could be perceived as controversial may want to know how “pedagogically appropriate” material, as it is referenced in the interim policy, will be defined and by whom. The WMU-AAUP will be closely monitoring developments concerning this new interim policy. It remains to be determined how the final implementation of this policy will be enforced under the current contract, and how closely it will adhere to the principles of academic freedom and due process.

Library Ethics

Sharon Carlson WMU-AAUP Secretary

Codes of ethics guide professionals in navigating a variety of situations that occur, establish standards, and prove an ethical framework to inform the profession and others. Librarians at the Western Michigan University Libraries adhere to the American Library Association's (ALA) code of ethics and those working in the archival field may also follow the Society of American Archivists (SAA) code of ethics. Librarians first adopted a code of ethics in 1939 and the archivists code of ethics was adopted later. There is overlap in some important areas.

In a rapidly changing information environment, revisiting and explaining some of these may be useful for librarians as well as the greater academic community using a variety of library resources in various formats. The ALA's code presents the strongest statement of support for intellectual freedom. Article 2 is clear "We uphold the principles of intellectual freedom and resist all efforts to censor library resources." An academic library acquires a wide array of materials to support programs. It may also build on existing collection strengths. While banned books conjure up images of school and public libraries reacting to community demands to restrict materials, especially to minor children, these issues come up in academic libraries. Sometimes librarians and other staff responsible for acquiring or making materials available for research find some of the materials to be personally repugnant. Nothing is more critical to intellectual freedom than the ability to acquire and make available a broad range of research materials supporting a variety of viewpoints.

Of equal importance is the concept of privacy. Both the ALA and SAA code of ethics are clear when it comes to privacy. The ALA code in Article

3 states, "We protect each library user's right to privacy and confidentiality with respect to information sought or received and resources consulted, borrowed, acquired or transmitted." The SAA code in Article 7 notes "Archivists . . . respect all users' right to privacy by maintaining the confidentiality of their research and protecting any personal information collected about them in accordance with the institution's security procedures." As libraries shift to electronic access or just-in-time securing of resources, librarians must continue to protect the confidentiality of patrons and the materials used for research. In the post—911 world, there has also been greater pressure to limit personal privacy in numerous areas. In 2003, the ALA passed a resolution opposing sections of the Patriot Act because of infringements to privacy. The SAA presented a statement supporting the ALA's stance on the Patriot Act in 2004.

These codes provide a framework to guide the profession and inform those outside the profession. They do not provide solutions to specific problems. For additional information, links to the actual codes are included below. For a fuller analysis of some of these issues, particularly in collection development, see Locke Morrissey's "Ethical Issues in Collection Development," *Journal of Library Administration* (47) pp. 3—4, 2008.

American Library Association Code of Ethics: ala.org/advocacy/proethics/codeofethics/codeethics, retrieved April 2, 2015.

Society of American Archivists: archivists.org/statements/saa-core-values-statement-and-code-of-ethics, retrieved April 3, 2015.