Cary Nelson's Speech to the Annual Meeting of the AAUP Colorado Conference, 4 December 2010

Summarized (with some additions and links to provide context) by Dean Saitta, DU Chapter President and Colorado Conference Co-President

National AAUP President Cary Nelson was Keynote Speaker for the annual meeting of the AAUP Colorado Conference in Boulder on December 4, 2010. He began by informing us that a new AAUP policy document is forthcoming regarding personnel decisions and politically controversial faculty members. Although the document is "haunted" by the Ward Churchill case at CU-Boulder the document mentions Churchill only once by name. There are other cases out there (including others at CU) that warrant AAUP taking an explicit policy stand on this issue. Nelson suggested that, at the end of the day, the standard for terminating a tenured faculty member for any violation of AAUP principles should be "beyond a reasonable doubt."

Nelson noted a couple of impending AAUP investigations into bad administrative behavior that erodes shared governance. The AAUP has already approved an investigation into the abolishment of the Faculty Senate at Rensselaer Polytechnic Institute. The Senate was abolished when it endeavored to grant voting rights to "clinical" faculty members (RPI's term for full-time, non-tenure track faculty members who focus almost entirely on teaching). Approval is pending for an AAUP investigation of the State University of New York at Albany for closing its departments of French, Italian, Russian, Classics and Theater. The AAUP has already written to George M. Philip, president of SUNY-Albany, urging him to reconsider plans to end all admissions to these programs. The letter acknowledges the deep budget cuts faced at Albany and other SUNY campuses, but questions whether these cuts are necessary and whether faculty members were appropriately involved in the process to plan budget reductions. The letter endorses a view already expressed by faculty members at SUNY-Albany that eliminating these departments will erode the "core academic mission" of the university. The AAUP letter notes that the SUNY system is already on the Association's censure list for faculty layoffs made in 1977. Those layoffs included an earlier round of language program eliminations at Albany.

Nelson underscored that shared governance is the primary challenge facing faculty for at least the next decade. As evidence he noted that the AAUP's recent Shared Governance Conference was filled to overflowing, with some people having to be turned away because of a shortage of hotel rooms. This is striking because the previous shared governance conference scheduled by the AAUP had to be cancelled for lack of interest.

Nelson noted that the biggest obstacle to faculty empowerment is fear. SUNY-Albany faculty have been unwilling to speak out against department closures for fear that their unit will be next on the chopping block. Nelson emphasized that we must guard against succumbing to the kind of fear that gives way to the protection of narrow self-

interest. Numerous times Nelson mentioned that *faculty solidarity* is key to protecting the values that we hold dear.

The US Supreme Court's 2006 *Garcetti v. Ceballos* decision came up frequently in this context. In *Garcetti*, a Los Angeles deputy district attorney named Richard Ceballos claimed that he had been passed up for promotion because he had criticized the legitimacy of a warrant. He argued that the district attorney's denial of his promotion violated his constitutional right to free speech. The Court, in a 5-4 decision, rejected his claim on grounds that his criticisms were not protected speech because Ceballos made them as a public employee, not as a private citizen. The Court ruled that statements made in pursuit of official duties have no constitutional protection against employer discipline. Although the Court did not extend this ruling to faculty at public universities, federal courts have applied the Garcetti ruling to speech directly related to faculty governance at public institutions. It is becoming clear that, under the Garcetti progeny, the reduction of faculty to "employees" poses a serious threat to faculty governance. Nelson urged that faculty take the initiative to strengthen protections for shared governance speech in faculty handbooks. Penn State is a recent example. Using language akin to that used by faculty at the University of Minnesota in what has become a model for post-*Garcetti* handbook revision (http://www.aaup.org/AAUP/newsroom/highlightsarchive/2009/Minn.htm), Penn State's Faculty Senate has proposed a policy stipulating that "*Faculty members are free to discuss governance issues of their respective departments, colleges, units, libraries, and of the University as a whole, and are free to speak and write on all matters related to their professional duties without institutional discipline or restraint*" (see http://www.insidehighered.com/news/2010/12/14/pennstate). Nelson mentioned that AAUP staff are happy to look at faculty handbooks and offer advice on how they might be revised to better reflect AAUP guiding principles (see also http://www.aaup.org/AAUP/protectvoice/overview.htm).

Nelson gave special attention to the need for faculty to take a bigger role in campus financial planning. Instead of complaining about how little money we have we need to press administrations for details about the money we do have and how it is being spent. As an example Nelson described how faculty and students successfully exerted pressure at his campus, the University of Illinois at Urbana-Champaign, to dissuade their administration from spending $1.7 million to hire a consultant to help promote "teamwork" on campus. Nelson noted that expertise for thinking about how to work in teams can be found, for free, among the faculty. This is the challenge for today's faculty: how to get into the decision loop regarding the distribution of already existing resources.

The question and answer period following Nelson's formal remarks raised many issues. The ones that stuck with me were questions about the National AAUP's position on (1) mandated arbitration in grievance procedures, (2) assessment of student learning, and (3) state-level "Committee A" investigations into violations of academic freedom and due process. Audience members urged the National AAUP to explicitly support including an arbitration step in faculty grievance procedures akin to those that already protect NCAA athletes and workers who stuff Doritos into bags on Frito-Lay assembly lines. These folks

have arbitration procedures written into their contracts and thus are better protected than faculty at institutions of higher learning.

Nelson's response (offered rather tongue-in-cheek) to a question about the burgeoning assessment bureaucracy was that faculty should "just say no." In Nelson's view, structures and approaches for evaluating student learning are not broken and some fields (like his specialty of modern American poetry) just don't lend themselves to the kind of assessment that is being pushed at many institutions. Others noted that assessment in the form of standardized testing enables the dumbing down and instrumentalization of higher education and "breaks the heart of the teaching enterprise." One audience member who I understood to be broadly sympathetic to the assessment movement offered a sobering message about the challenge it poses. He noted that it took 20 years of collaboration among physics professors at 10 different institutions working under Nobel Laureate Carl Weiman to produce an assessment rubric for evaluating student learning in that "hardest" of sciences…and that this accomplishment required participating faculty to sacrifice other aspects of their careers.

Finally, Nelson applauded the effort that we're making in Colorado to conduct a Committee A-style investigation of the Churchill termination and the termination of two non-tenure track Instructors at CU-Boulder. He noted that the Colorado AAUP's forthcoming report will serve as a model or "wedge" that can be used nationally for investigating administrative violations of academic freedom and due process for faculty members.