

# AAUP Alert!

*A Newsletter of the American Association of University Professors- Colorado Conference*

## **ABOUT AAUP**

*The AAUP's purpose is to advance academic freedom and shared governance, define fundamental professional values and standards for higher education, and ensure higher education's contribution to the common good.*



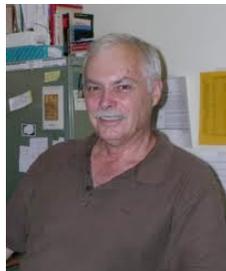
## **Message from the AAUP-CO Co-Presidents**

We're pleased to announce that **Steve Mumme** of Colorado State University-Ft. Collins has joined **Dean Saitta** of Denver University as Co-President of the Colorado Conference. Steve is a longtime member of the AAUP. Steve has vast experience and knowledge about shared governance and academic freedom, and will expertly serve the interests of Colorado faculty in this regard. Steve succeeds **Laura Connolly** of UNC. Laura has been a compassionate and tireless champion of the AAUP cause in Colorado. Newly retired from UNC, Laura will be a tough act to follow but she'll remain active as Past Co-President of the Conference.

We also welcome to the Executive Committee **Jonathan Rees** of CSU-Pueblo, who will serve as the new Vice President for Administrative Matters. Jonathan has been a driving force in mobilizing faculty on the Pueblo campus to take a more active role in shared governance. His passion and commitment are highly valued by all of us on the Committee.

The past year was a productive one for the AAUP in Colorado. Conference leaders worked with faculty at the Iliff School of Theology to help create a campus chapter (see item on page 3). **Jack Temkin** of UNC, with help from Laura and Dean, spearheaded a training session on shared governance for faculty at Naropa University. Led by **Suzanne Hudson** and **Don Eron** of CU-Boulder, the Colorado Committee for the Protection of Faculty Rights completed a detailed investigation of the dismissal of two faculty members at CU-Boulder (see page 3).

This edition of *AAUP Alert!* contains news of other Conference and campus chapter activities, as well as a summary of the remarks that National AAUP president **Cary Nelson** delivered at our 2010 annual meeting. As Cary notes, shared governance is the great flashpoint of conflict in the contemporary American university. Colorado's faculty must be more vigilant than ever in protecting their shared governance and due process rights.



**Steve Mumme, CSU**



**Dean Saitta, DU**

## CONTINGENT FACULTY AND COLLECTIVE BARGAINING REDUX

by Ray Hogler, Colorado State University

The political climate for unionization is not favorable, particularly in the public sector. The National Labor Relations Board recently proposed rules to streamline their election processes, and the business community was outraged. I wrote an opinion piece for The Hill (online at <http://thehill.com/blogs/congress-blog/labor/169081-new-nlrp-union-election-rules-do-no-harm?page=1#comments>) noting that the NLRB did not change any substantive rules but merely tried to make the agency more efficient. I added that if it did encourage workers to unionize, it might actually go some way toward reducing the high levels of inequality in this country. Here's a comment that expresses one citizen's views of what I said: "Has this professor ever worked in the private sector or created any jobs? Somehow I doubt it, as he is likely counting his taxpayer-funded retirement credits while he pushes nonsensical theories." The part about a "taxpayer funded retirement" is the linchpin of conservative hostility to public sector collective bargaining. As the economy continues to deteriorate, the Tea Party pushback against all forms of collective action by public workers will continue as part of the deficit reduction movement.

Back home in Colorado, any attempt to unionize an institution of higher education in this state is likely to fail. I've explained before that Colorado law does protect collective action by any group presenting a grievance to the Colorado Department of Labor and requesting arbitration. Since the 1992 state Supreme Court decision upholding this law, not one group of public workers has tried to use it for purposes of unionizing and bargaining. It's possible that faculty at some campus would try this route to extract concessions from administrators, but it hasn't happened yet and there doesn't appear to be any momentum for it. The General Counsel at CSU – Fort Collins is an expert in labor law, and he would never concede to union recognition and bargaining, even if a faculty group managed to get a favorable ruling on an issue from the Department of Labor.

The statutory route under the 1915 law is similar to what happened at Metro. The faculty organization sued the board of trustees for making unilateral changes in the handbook and won. Did that mean union recognition? No. Did it mean collective bargaining? No. Here's how *The Denver Post* reported the outcome:

*During legal proceedings that led to the recent ruling, Altherr [a philosophy prof and union member] said, "the administration has acted as though the union doesn't exist." The faculty union is affiliated with the Colorado Federation of Teachers and with the American Federation of Teachers, AFL-CIO.*

*"We recognize that the union exists," said [Metro] President Jordan. "But it's not a bargaining agent for the faculty. And I don't think the faculty would want to substitute the shared governance they now have for a collective bargaining process."*

In short, somebody may think there's a union at Metro, but it's not the administration.

Regarding contingents, this leaves us where we were last year. Rep. Randy Fischer has indicated he would try to reintroduce the job security language to protect contingents' contract rights. That is, if a contingent is given a multi-year contract from the institution, it actually is an enforceable agreement. Right now the promises of employment for more than a year are meaningless under existing Colorado law. Fischer's bill also provides for a statement of reasons if a contract is not renewed. Personally, I think this would be a big step forward in protecting this group of employees and almost as good as tenure. Last year when Fischer brought his bill to committee, the higher education lobbyists kicked the crap out of it. This time around, we will need a lot of support to deflect the pressure from those lobbyists, particularly the community college administrators; otherwise it's death in committee redux.

If you'd like any background materials on all of this, please let me know. I'll keep you informed if I have any conversations with Randy about the contingents' legislation.

## **NEW AAUP CHAPTER FORMED AT ILIFF SCHOOL OF THEOLOGY**

With mentoring from Laura Connolly, a new campus chapter of AAUP was formed at the Iliff School of Theology, Denver, on May 2, 2011. The chapter has been approved by the National AAUP. There are twelve founding members. Chapter goals include:

- (1) provide for “collective memory:” an institutional record available to Iliff full time and contingent faculty and Joint PhD students of the national and Iliff chapter activities of the AAUP;
- (2) heighten awareness of the teaching rights and responsibilities of Teaching Assistants;
- (3) enhance the development of contingent faculty and the integration of contingent and full-time faculty;
- (4) compare Iliff’s policies for governance with the guidelines from the AAUP; and
- (5) explore national and international developments in the teaching profession and inspire current and future faculty members with the teaching profession’s goals and best practices.

The chapter is planning an inaugural event in the Fall to celebrate the establishment of the chapter and to inform campus faculty about current issues in pedagogy.

The Colorado Conference congratulates the Iliff faculty on their accomplishment!



## **Conference Launches New Website**

Please go to <http://aaupcolorado.org/> for news and information about Conference events, activities, and publications.

## **Colorado Committee For the Protection of Faculty Rights (CCPFR) Update**

The CCPFR investigates violations of faculty rights and AAUP principles of shared governance and due process on Colorado campuses. The committee’s first investigation has been completed. A report (co-authored by Suzanne Hudson and Don Eron) documenting inappropriate treatment of two faculty members at CU-Boulder—Ward Churchill and Phil Mitchell—has been sent off to the National AAUP for review and legal vetting. When it is finalized the report will be posted to the Conference website and disseminated widely.

The Colorado Conference Executive Committee has just approved a second investigation, this one at the University of Denver.

**CCPFR policies and procedures may be found at the Conference website at: <http://aaupcolorado.org/ccpfr/>**

If you have a case that warrants consideration by CCPFR please contact Myron Hulen, CCPFR Chair ([mhulen@webaccess.net](mailto:mhulen@webaccess.net)), Steve Mumme ([stephen.mumme@ColoState.edu](mailto:stephen.mumme@ColoState.edu)), or Dean Saitta ([dsaitta@du.edu](mailto:dsaitta@du.edu)).

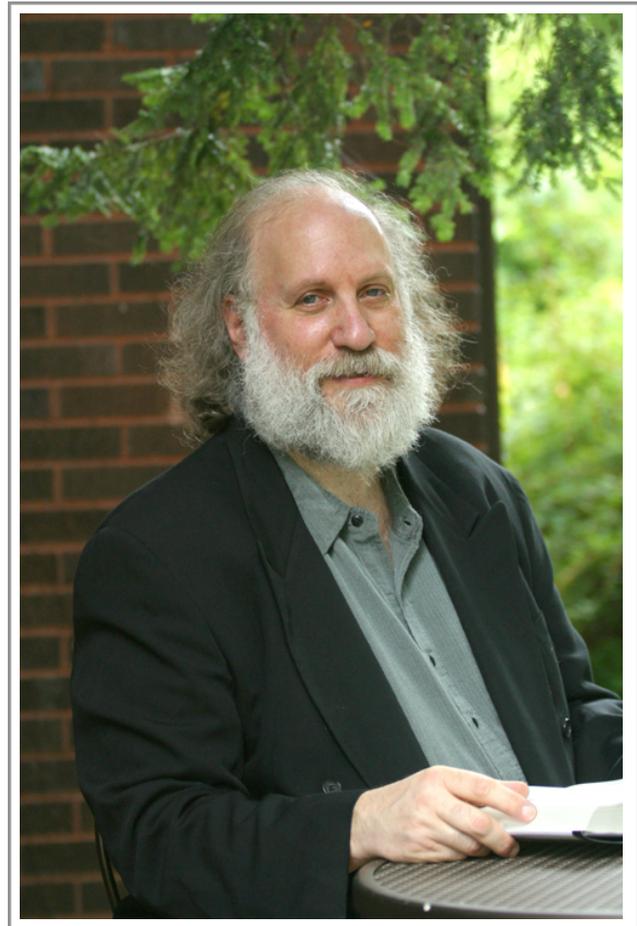


## **Cary Nelson's Speech to the Annual Meeting of the AAUP Colorado Conference, 4 December 2010**

*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.



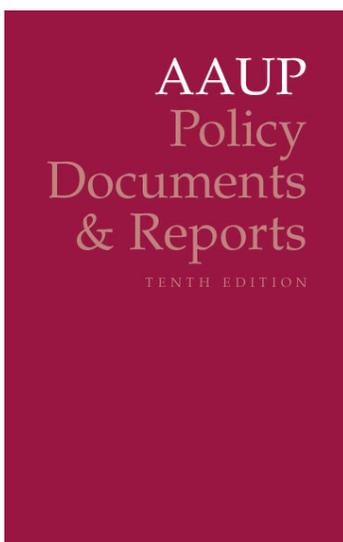
**Still Timely:** Issue of *Academe* devoted to shared governance. Available at <http://www.aaup.org/AAUP/pubsres/academe/2009/ND/>

## **CHAPTER NEWS BRIEFS**

**Colorado State University, Fort Collins:** The chapter may take partial credit for several recent Faculty Council developments: 1) revisions to the Faculty Manual that eliminated the term “guidelines” for promotion and tenure and separated referral language from the main body of the Manual’s procedural language; 2) recommended adoption of language in the Manual that strengthens academic freedom and shared governance protections in the wake of the recent *Garcetti* decision; 3) renewed attention to issues affecting adjunct and contingent academic faculty issue on campus. AAUP members also took new positions on Faculty Council: Tim Gallagher was elected President of Faculty Council; Bill Timpson was elected to the Grievance Committee; Mary Vogl was elected At-Large representative from the College of Liberal Arts.

**University of Denver** – Chapter members helped put the finishing touches on a revised Faculty Grievance Policy that was approved by the DU Faculty Senate in April, 2011. It offered recommendations to the Senate for revising the Faculty Handbook in an effort to (1) better protect academic freedom in a post-*Garcetti* world, (2) provide job security for contingent faculty, and (3) ensure better adherence to rules governing the processing of grievances and appeals to the all-campus Faculty Review Committee. The chapter is currently working to develop clearer guidelines regulating the participation of full-time administrators in the business of their home departments. The chapter also urged the administration to endorse the right of campus food service workers to unionize, a right that was being infringed by managers of the Sodexo Corporation.

**University of Northern Colorado**– The chapter held elections in April and has a new set of officers:  
Anne Toewe, Theatre - President  
Jack Temkin, Philosophy - Vice President  
Annie Epperson, University Libraries - Secretary/Treasurer  
Alison Merrill, Nursing - At-large member of Executive Committee  
Greg Heald, University Libraries- At-large member of Executive Committee  
The chapter is planning a Fall Social to encourage membership.



**The AAUP’s *Policy Documents and Reports* (aka the Redbook) contains the Association’s major policy statements. Order your copy at [www.aaup.org](http://www.aaup.org).**



**OFFICERS OF THE COLORADO CONFERENCE**

Co-Presidents: Steve Mumme (CSU)

Dean Saitta (DU)

VP for Administrative Matters: Jonathan Rees (CSU-Pueblo)

VP for Legislative Matters: Ray Hogler (CSU-Ft. Collins)

Secretary/Treasurer: Suzanne Hudson (CU, ret.)

*The office of VP for Community College Matters (from Colo campuses without AAUP chapter) is currently vacant. If you have an interest in serving in this position please contact Dean Saitta ([dsaitta@du.edu](mailto:dsaitta@du.edu)).*

You can become a member of AAUP by visiting [www.aaup.org](http://www.aaup.org) and clicking on “Get Involved” or by contacting one of these **AAUP Colorado Chapter representatives**:

<b>Chapter</b>	<b>Contact</b>	<b>Email</b>
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CSU-Pueblo	Jonathan Rees	<a href="mailto:jonathan.rees@colostate-pueblo.edu">jonathan.rees@colostate-pueblo.edu</a>
CU-Boulder	Marki LeCompte	<a href="mailto:margaret.lecompte@colorado.edu">margaret.lecompte@colorado.edu</a>
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Mesa State College	Tom Acker	<a href="mailto:tacker@mesastate.edu">tacker@mesastate.edu</a>
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