

ACADEMIC FREEDOM AND INSTRUCTOR TENURE:  
YOU CAN'T HAVE ONE WITHOUT THE OTHER

Suzanne Hudson  
April 19, 2007

Good evening, and thank you all for taking time out from your busy schedules to attend this meeting. And thank you to the AAUP for dedicating its April meeting to the crucially important issue of instructor tenure. I'd like to introduce Marki LeCompte, a tenured professor in the School of Education and president of the CU chapter of the American Association of University Professors, Vijay Gupta, a tenured professor in the College of Engineering and vice president of the local AAUP, Ken Bonetti, an advisor in the Economics Department and member of the AAUP's local executive committee, and Don Eron, senior instructor in the Program for Writing and Rhetoric, treasurer of the local AAUP, and my partner in this effort to persuade the University of Colorado to implement a tenure system for instructors.

I'm Suzanne Hudson. I've been teaching composition at the University of Colorado for seventeen years. So far, I've lost my job at CU eleven times. As a lecturer, I lost my job every year and as an instructor, I've lost it twice. Each time, I've been successful in persuading administrators to enter into a new contract with me. But, frankly, I'm getting a little bit tired of the process. I think it's time CU gave me tenure.

Instructor tenure, as we've envisioned it, would be completely distinct from professor tenure. This new system requires no change in our job titles, our pay scales, or our responsibilities. Nothing would change except that after a

suitable probationary period, instructors could forego the reappointment ritual and simply keep their jobs.

I've recently joined the American Association of University Professors, and gotten myself elected secretary of the local chapter, primarily because I'm enamored of the principles that have made America and American universities great—principles such as democracy, transparency in government, and free speech—principles that must be ardently protected, especially at a university, the primary purpose of which is to provide a forum for the free exchange of ideas.

And here's another principle I'm enamored of—one that is less known, less acknowledged, and somewhat counterintuitive—that faculty at universities do not work for bosses. We do not work for our chairs or directors, or our deans, or our president, or our Board of Regents. According to both the AAUP and the University of Colorado's very own Laws of the Regents, these administrators are not our bosses. We work for the good of society, not for anyone or anything else. This must always be our guiding principle.

It may not be necessary, but I'll remind you here that non-tenure track faculty are, in every sense of the word, faculty.

## **PART A: DEFINITIONS AND TITLES**

### **5.A.1 General Faculty**

**(A)** Members of the general faculty shall be those individuals who hold the title or acting title of dean, associate or assistant dean, professor, associate professor, assistant professor, senior instructor, instructor, lecturer, artist in residence, scholar in residence, professor adjoint, associate professor adjoint, assistant professor adjoint, visiting and part-time appointments in the above-named titles, professional librarian, curator, and any other such title identified as a faculty title under applicable policies of the Board of Regents.

The only differences between non-tenure-track and tenure-track faculty are their workload formulas and the length of their employment contract. Tenured faculty have teaching, service, and research responsibilities and lifetime contracts. Non-tenure-track teaching faculty have teaching and service responsibilities, plus one-to four-year contracts, usually. Otherwise, just to emphasize the point, we have all the same rights and responsibilities, including and especially every right to academic freedom, if not every opportunity to exercise it.

The idea of academic freedom did not materialize out of thin air. It was largely configured by the AAUP in the early part of the 20th century. In 1940, the AAUP said this: "Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole. The common good depends upon the free search for truth and its free exposition."

"Academic freedom," the statement goes on to say, "is essential to these purposes and applies to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning." The University of Colorado's Laws of the Regents endorse these principles:

## **PART D: PRINCIPLES OF ACADEMIC FREEDOM**

### **5.D.1 Intent and Definition**

**(A)** The University of Colorado was created and is maintained to afford men and women a liberal education in the several branches of literature, arts, sciences, and the professions. These aims can be achieved only in that atmosphere of free

inquiry and discussion, which has become a tradition of universities and is called “academic freedom.”

**(B)** For this purpose, “academic freedom” is defined as the freedom to inquire, discover, publish and teach truth as the faculty member sees it, subject to no control or authority save the control and authority of the rational methods by which truth is established.

**(C)** Within the bounds of this definition, academic freedom requires that members of the faculty must have complete freedom to study, to learn, to do research, and to communicate the results of these pursuits to others. The students likewise must have freedom of study and discussion. The fullest exposure to conflicting opinions is the best insurance against error.

The point is that CU has followed the AAUP's lead and built AAUP principles into its policies, recognizing the AAUP's authority in these matters.

Academic freedom is ensured at universities by three principles: shared governance, due process, and tenure. I'll talk about the first two briefly, and then on to the third, since it is the principle in question at the moment.

Shared Governance. A lot of people think academic freedom is something that happens only in the classroom. But shared governance relates to how the university conducts the business of the university.

There are three overarching assumptions that guide development of principles related to shared governance: (1) governance should result from interdependence and cooperation among the various governance components; (2) shared governance and academic freedom are inextricably linked, and (3) faculty participation in governance is an ethical obligation.

In governance, the faculty—not chairs, directors, provosts, chancellors, presidents, or Regents, who are all administrators—has primary responsibilities for "fundamental areas such as curriculum, subject matter, methods of instruction, research, faculty status, and those aspects of student life that relate to

the educational process" (AAUP 1995, 183). Decisions in these areas are made not in the classroom but in faculty meetings.

The University of Colorado has endorsed this principle:

#### **5.E.5. Principles of Participation**

It is a guiding principle of the shared governance recognized by the Board of Regents that the faculty and the administration shall collaborate in major decisions affecting the academic welfare of the university.

The faculty takes the lead in decisions concerning selection of faculty, educational policy related to teaching, curriculum, research, academic ethics, and other academic matters. The administration takes the lead in matters of internal operations and external relations of the university.

I'm well aware, by the way, that many instructors and lecturers have an extremely limited voice in these matters in their own departments. Far be it from me to be the one to say that when departments exclude faculty members from the decision-making process, they violate CU's Laws of the Regents 5E5.

Instructors really should complain when we're left out of the decision-making process, but, of course, we're not in a position to complain about anything when we're perpetually up for reappointment. But let's press on.

Due process. When a faculty member is faced with the prospect of dismissal, the university must assure the faculty member of a fair decision-making process. For non-tenured faculty, the AAUP recommends a variety of measures, including written terms and conditions of appointments; a written statement of reasons and an opportunity to be heard before a duly constituted committee prior to involuntary termination; access to a duly elected faculty grievance committee; and a statement of reasons and a hearing before a duly constituted faculty committee for non-reappointment, if the faculty member makes a prima facie case of an academic freedom violation or improper

discrimination ("Contingent Appointments and the Academic Profession," AAUP, 2003) While the Laws of the Regents heartily and enthusiastically endorse the AAUP's principles of academic freedom and shared governance, they are somewhat tepid in this area. There is one Law, however, that is of special interest to non-tenure-track faculty:

### **5.C.3 Faculty Senate Grievance Process**

#### **(A) Nature of Grievances**

(1) Any member of the Faculty Senate who is denied reappointment, with or without tenure, or who is denied promotion and who believes that such action is unjustified and constitutes a specific encroachment upon his or her rights may file a grievance with the Faculty Senate Committee on Privilege and Tenure.

Very nice. If we are dismissed, or simply not reappointed, we have the right to appeal to P&T. Now, if a person has tenure, he or she will continue to be paid during the grievance process, which can take many months, or even years. Non-tenured faculty, however, are simply out of a job and a paycheck while P&T deliberates.

Some of you are no doubt familiar with Adrienne Anderson's case. Adrienne was an instructor in Environmental Studies who, after eleven years with a stellar teaching record, was not reappointed, in violation of most of the principles of due process. Adrienne appealed to P&T, and P&T unanimously agreed that Adrienne's right to a fair and unbiased appeal over the non-renewal of her contract had been violated. But here's where the process at CU goes haywire. The acting chancellor rejected P&T's findings because he wanted to defend the authority "of the departments on this campus to make decisions about

instructors" (as cited in Pant, 2006). In other words, while instructors have the right to appeal their terminations, the right of departments to terminate instructors without being second-guessed by an appeal process is a greater right. From an AAUP perspective, this attitude toward due process for non-tenure-track faculty at CU defines the concept of meaninglessness.

Now, finally, we come to the third leg of the tripod on which academic freedom rests: tenure.

What does tenure have to do with academic freedom? "Tenure is a means to certain ends; specifically: (1) freedom of teaching and research and extramural activities, and (2) a sufficient degree of economic security to make the profession attractive to men and women of ability. Freedom and economic security, hence, tenure, are indispensable to the success of an institution in fulfilling its obligations to its students and to society."

Since 1940, the AAUP has been saying that there should only be two kinds of employment at American colleges and universities: probationary and tenured. It has consistently recommended that the probationary period not exceed seven years. After that the university should make an employment commitment.

Here are the numbers at CU. Seventeen percent of CU's faculty is on a tenure line. That leaves a whopping 83% of us not on the tenure track. Take away 27% of us who have research-only positions, and you have a picture of CU's teaching faculty. Take away 37% of CU's teaching faculty who are graduate students and therefore in temporary, not tenurable positions, and you have a picture of CU's professional teaching faculty, 54% of whom teach the majority of classes at CU and offer most of the credit hours with a very limited voice, if any,

in their own governance, realistically without due process, utterly without tenure, and therefore, by definition, without academic freedom.

Colorado state law says that faculty at CU will be either at-will or tenured. We know this because the Provost, Phil DiStefano, very kindly offered to consult University Counsel on our behalf, and here is what he wrote to us:

Dear Suzanne and Don:

Colorado Revised Statute, Section 24-19-104, provides that all employment relations with a governmental entity such as the University are employee at will appointments. Section 24-19-108, then provides that these provisions do not apply to classified service employees or tenured or tenure track faculty.

Under Regents Policies, instructors are expressly stated to be employees at will who are "not tenure-eligible and their service as Instructor does not count toward the award of tenure." Because instructors are at-will employees who are not tenured or tenure-track, they do not fall under the exception provided by Section 24-19-108.

The only way instructors can become tenure-track faculty is if the Board of Regents changes its policies to convert instructor positions to tenure-eligible appointments.

Phil DiStefano  
Monday, 19 Feb. 2007

So there you have it. Faculty must be either at-will or tenured. There is no third option, unless we want to change Colorado state law and create a third option, which seems an unnecessarily arduous task and one that will result in something less than tenure.

So let's choose. What do we want? Tenure? Or at least the possibility of it someday? Or to remain at-will in perpetuity?

Here's what we get with tenure:

- Academic freedom

- Job security
- Dignity
- Self-respect

Here's what we get as at-will employees:

- Loss of employment at the end of every contract period
- No recourse, practically speaking, if we're not reappointed
- Impositions on our right to express an opinion
- Self-censorship
- Pressure to ingratiate ourselves with those in positions of power
- The choice, often, between professional integrity and reappointment

Tough choice.

Now, I know that you know that this at-will state that we live in compromises both our professionalism and our dignity. We didn't go to graduate school and dedicate our careers to molding young minds only to have to skulk about the campus like criminals waiting for the axe to fall. More people than I care to count have explained to me that they have to lay low and clam up about this or any issue because they're up for reappointment. We really have to work up a healthy sense of outrage that grown ups like us, with graduate degrees such as we have, who teach at a major research university in the United States of America in a profession where we have an ethical obligation to work for the good of society, as we do, are made to fear the consequences of expressing an opinion. This is outrageous.

On the other hand, to be fair, not every non-tenure track faculty member feels this way, or is made to feel this way. There are many happy and fulfilled

instructors and lecturers on CU's campus. But even they can't enjoy losing their jobs every one to four years.

Tenure, as you know, will not protect you from dismissal for cause or for bona fide financial exigency, which is as it should be. If you've done something terribly wrong, or if there is no money for the department or program you teach for, then, it's a tough break, but you may not get to keep your job. But if you teach well, and if the university sees fit to offer its students an education in your field of expertise, then why on earth shouldn't you expect at least as much job security as you could have as a member of a union, or as a civil servant, or as a member of the classified staff at CU? Even in the private sector, at some point most corporations will declare you a permanent employee. Right now, instructors at CU have about as much job security, as Michael Berube said at our last meeting, as the guy who flips hamburgers at Burger King.

Again, to return to what I started to say earlier, I know that you know that job security is preferable to job insecurity. You need no convincing of that. But some of you are afraid of repercussions. What will happen if CU implements an instructor tenure system?

Most fears center upon job loss—either your own or others'.

First, let's talk about those of you who have been here for at least seven years. The AAUP says that you've exceeded the probationary period. If this plan becomes college policy, you will have tenure. If you've been working full-time, you'll have a full-time tenured position; if you've been working part-time, you'll have a part-time tenured position. At this point, the only way you can be dismissed is for cause (meaning you're guilty of professional misconduct or

moral turpitude) or for bona fide financial exigency. So, for all practical purposes you're set.

However, many of you don't feel right abandoning your fellow lecturers and instructors, who haven't exceeded the probationary period. It's true that the newer faculty members will remain the people who provide the department with the work-force flexibility it needs in lean times.

It would seem an act of solidarity, then, to reject instructor tenure on these grounds, but this rejection would be an act of futility. The new people are no more vulnerable with a tenure system in place than they are without one. However, if there is a tenure system in place, the newer instructors stand a chance of someday having some job security. If some instructors have tenure, then the people who are working toward it will have powerful allies who will be in a position to protect them and pave the way for them. If there is no system in place, no instructor has any power, and this cycle of hopelessness and insecurity continues for everyone.

Some of you fear that an instructor tenure system will result in increased scrutiny of your teaching. There is a perception out there that Departments just hire warm bodies to teach their classes without much regard for their qualifications or abilities. If that's true, then shame on those departments and shame on the University for their sloth and laziness.

Unfortunately, some of us seem to think we're not good enough to be here. We really have to lose that view of ourselves. Chances are really really good that it's not true. Your Department hired you because you're the best they could find. If you've ever been reappointed, then you've undergone all the

scrutiny your Department has decided to subject you to. You have passed muster, and probably for good reason.

One of the tenets of this resolution is that departments can't "up the ante" as you approach tenure. They have to establish the criteria for reappointment, and the criteria for reappointment must be the same as those for tenure. So if you've been reappointed, your department has effectively said that you're good enough to teach at CU. If you have been reappointed more than once, your department has said you're good enough more than once. And if you've been teaching for seven years at CU, according to the AAUP, you're good enough to stop having to reapply for your own job every one to four years!

There is a widespread fear that some departments will simply set a cut-off period at, for example, six years. Instructors will be used up and spit out at the six-year mark. And this fear has been fueled by two tenured professors in particular, so let's not pretend the threat does not exist. But let's do confront it instead giving in to paroxysms of fear.

For one thing, we've built into the resolution the following clause:

LET IT BE FURTHER RESOLVED

- (1) That this tenure system shall not be subverted by academic units' systematic dismissal of teaching faculty with records of teaching excellence in order to avoid making an employment commitment to them;

If our resolution becomes university policy, any department that does this will be in violation of university policy.

There are lots of other reasons why it will not behoove departments to fire instructors as they approach the tenure mark.

- a. Given the emphasis that this proposed system places on mentoring, instructors will have become invaluable to the University by the time their probationary period is expired.
- b. If an academic unit routinely denies instructors tenure after six years of teaching its courses, it would be an acknowledgment of failure on the part of that unit. In essence, the message would be that:
  - the unit has hired an instructor who did not have the potential to reach the expected level of excellence;
  - the unit has not provided the instructor with the support necessary to achieve the desired level of excellence; and
  - the unit has been subjecting students to inferior teaching for six years.

These are not messages that the unit wants to send to administrators or to the public. Your department should want tenured people because

- tenure stabilizes the work force
- more tenured employees broaden the department's economic base

Furthermore, there are reasons why it will not behoove the University more at large to embark upon a policy of denying instructors tenure as they approach the tenure mark:

- c. The University would seriously damage its own reputation if it acquired a habit of firing excellent teachers, simply to avoid a commitment to its teaching faculty. Such a habit would also

constitute a regular and public, though false, admission that CU's teachers are inferior. This reputation would discourage the best candidates from applying for instructorships at CU; on the other hand, once CU establishes instructor tenure, the best teaching candidates in the country will be attracted to CU for reasons beyond the scenery.

- d. Also, it just isn't practical to fire us. They're offering all these courses, and someone has to teach them. Contingent faculty constitute the majority of the teaching faculty now, and we teach most of the core courses. It is possible, of course, that the administration will choose to undertake the time and expense of firing most of CU's faculty, restructuring the University, weathering the public relations nightmare, watching CU's ratings plummet, risking AAUP censure, and jeopardizing relationships with current and potential donors who are unlikely to want their names associated with controversy. Or, as another possibility, they can implement instructor tenure and formalize the system already in place, at no additional personnel cost to the University.

While rumors exist of steps taken by administrations at other institutions to subvert tenure for instructors, these rumors—typically of wholesale firings—are the academic equivalent of urban myths. The example of Rutgers often comes up. Rutgers has a deplorable policy that contingent faculty cannot be employed full-time for more than 4 years, then they're either dismissed or demoted to less than full-time, losing health care. But this policy didn't happen as a result of contingent faculty's quest for tenure. They have never been eligible

for tenure. It happened before they ever got organized enough to seek tenure. We need a tenure plan to prevent Rutgers from happening here. By the way, Rutgers' contingent faculty have recently organized, they have presented a resolution to end this policy to Rutgers' administration, and who have they turned to for help? The AAUP. The people who back in the 40s recognized that you can't have academic freedom without tenure.

There are precedents, *in fiction*, of colleges and universities that have engaged in wholesale firing of their contingent faculty for having the nerve to ask for a little bit of job security, once if they've established a record of teaching excellence over a period of several years. But these stories will dissipate every time you try to track one down. In fact, if CU implements a plan for instructor tenure, it will be the first to do so.

Still talking about fears: It's entirely possible that there will be the occasional tenured faculty member in a department who will have it so "in" for instructors that he'll be determined to fire them before they reach the tenure mark. And telling him that he can't do it because it violates university policy won't stop him from trying. He's just that mean. The truth is, he can't do it alone. The faculty makes these decisions, so the entire faculty will have to agree that they all hate instructors so much that they're willing to risk all of the consequences I've just listed for you. Maybe that will happen. But it doesn't seem likely. Most tenured faculty really are very nice people and do not want to hurt you and do value your contributions to the university.

Please, please don't let the grumblings of a few grumpy professors scare you into submission, unless you really want to perpetuate their disdain for you.

If we want respect, we'll have to stand up for ourselves. Let's say it out loud, that this system of contingency and exploitation—our at-will state—is no longer tolerable.

Tenured faculty, we need your help. I've heard several well meaning tenured faculty express fear and caution on instructors' behalf. "I'm afraid," they say, "that if CU tries to implement a system of instructor tenure, you'll all be dismissed before you reach the tenure mark." And I don't doubt your sincerity. You truly fear for us.

But you know what we need from you? We need you to stand up for us. Rather than advise us to go back, slow down, don't ask for anything or lest we get fired, we need you to turn around, face those people who threaten us, and tell them to stop it. Commit yourselves to seeing to it that the instructor tenure system works. Rather than encourage us to fear for our livelihoods, see to it that no instructor who is an asset to your department will be executed the moment he or she reaches the tenure mark. Say out loud and publicly that you will not stand for it. I believe that this attitude is the one shared by the majority of tenured faculty. And it's the one that, publicly expressed, will do us the most good.

Next week, April 23 through 27, contingent faculty at CU will be given the opportunity to vote on a resolution. This referendum is being sponsored by the AAUP. The ballot is online, through a company called Votenet Solutions. This is the same company ITS uses for BFA and student elections. It is entirely confidential, and anonymous. This referendum is entirely separate from CU's website, absolutely beyond CU's purview, and not subject to the Colorado Open Records Act, so you can vote your conscience without fear of being monitored.

Over the next three days, I'll be sending non-tenure-track faculty members a username and password and a link to the website where they can vote.

It's a Yes/No vote in answer to the question: Shall the University of Colorado adopt the resolution to implement an instructor tenure system?

If instructors vote to approve the resolution, the next step is to convince the BFA to approve it, then Faculty Council, then the Board of Regents. If instructors approve the resolution, it will probably be at the very least two years before we'll see it as university policy. But I'm willing, and so is Don and many others, to spend the next year convincing the BFA if we have to, and the next year convincing Faculty Council, and the next year or however many years it takes to convince the Board of Regents to make instructor tenure a reality.

So what if instructor tenure reaches the Board of Regents and they want to water down the resolution, leaving out some of the passages, especially the one that prohibits subversion of the instructor tenure plan by dismissing instructors before they reach the tenure mark? Here's what we'll do: we'll meet and discuss it. We're organized now. We are the Association of Teaching Faculty at CU. If we don't like the changes they've made to our policy, we'll say no. Adamantly. We are too big to be ignored. We are 54% of the professional teaching faculty. If they try to institute an instructor tenure system that does not protect us from systematic and capricious dismissal, we will protest.

But first we vote. If instructors say yes, we're on our way to tenure. However, if instructors say no, it's over. We're dead. There is no way we can proceed without instructor approval, and our hope of someday having the freedom and economic security to do our jobs to the best of our ability and to fulfill our professional and ethical obligations disappears.

As you're deciding how to vote, consider this AAUP statement:

Employment-at-will contracts are by definition inimical to academic freedom and academic due process, because their contractual provisions permit infringements on what academic freedom is designed to protect. Since faculty members under at-will contracts serve at the administration's pleasure, their services can be terminated at any point because an administrator objects to any aspect of their academic performance, communications as a citizen, or positions on academic governance—or simply to their personalities. Should this happen, these faculty members have no recourse, since the conditions of their appointment leave them without the procedural safeguards of academic due process. Moreover, the mere presence of at-will conditions has a chilling effect on the exercise of academic freedom. Faculty members placed at constant risk of losing their position by incurring the displeasure of the administration must always be on guard against doing so. (AAUP, "Academic Freedom and Tenure: University of the Cumberlands (Kentucky)")

In conclusion: three things.

- Most tenured faculty do not want to hurt you.
- You deserve tenure.
- Consider the logic: If you vote no, it will be because you're afraid there may be unintended consequences—namely even less job security than you have now, if such a thing is even possible. But a "no" vote is a vote to keep yourself in your current at-will,

powerless state. It is as good as an admission that you do not care about academic freedom or your professional and ethical responsibilities. It will validate negative attitudes toward instructors.

If you vote yes, you're taking the first step toward implementation of a university policy that values teaching and undergraduate education.

So vote. Vote yes. Tell your friends to vote yes. Write and call every lecturer and instructor you know and tell them to vote yes. Do not let this opportunity slip away. It may not come again for a very long time. Say yes.

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