

THE PROBLEM AND SOLUTION TO CONTINGENCY  
AT THE UNIVERSITY OF COLORADO

THE AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS  
CU CHAPTER

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- Don Eron and Suzanne Hudson. (2006, December 17). University excellence at risk. [Boulder] *Daily Camera*. <<http://www.dailycamera.com/news/2006/dec/17/university-excellence-at-risk/>>

## INTRODUCTION

Reliable information regarding the numbers and professional circumstances of contingent faculty at the University of Colorado has, over the past thirty years, been obscured by a proliferation of titles—lecturers, adjuncts, instructors, senior instructors, and visiting assistant professors—with varying corresponding lengths of contracted employment, and varying responsibilities. One thing they have in common is that all of them serve as at-will employees whose contracts can be terminated at any time without cause. The purposes and strategies of hiring contingent faculty, while well intended to meet evolving challenges to the University administration, have resulted in a shell game that has often kept the public, prospective students and their parents, administrators, and contingent faculty themselves in the dark about the quality of the ultimate product our university claims to offer—an education that provides our students with the skills and knowledge to become viable actors in our civic discourse.

Recent reports from the American Association of University Professors (AAUP) identify the circumstances of contingent faculty as one of the most significant problems facing higher education today. This proposal describes the impact of this circumstance on the quality of education offered at the University of Colorado. It also offers a solution, accompanied by justifications for the necessity of implementing this solution.

We recognize a seemingly inherent contradiction throughout this proposal: on one hand, we claim that instructors at CU are excellent and therefore deserve tenure; on the other hand, we claim that instructors at CU are prevented from achieving excellence because of their contingent status. We submit here that both assertions are true. Instructors have both the desire and potential for excellence but lack the institutional support needed to deliver it consistently in the classroom and at faculty meetings.

While this proposal leans heavily on recent AAUP findings, these findings are validated by the experiences and observations of the authors over a combined thirty-five years of teaching as contingent faculty at CU, discussions with colleagues confronting the same obstacles and prohibitions, and the weight of common sense.

### THE PROBLEM WITH CONTINGENCY AT THE UNIVERSITY OF COLORADO

#### *The Rise of Contingent Faculty*

Hiring contingent rather than tenure-track faculty must have seemed a reasonable solution to a pressing problem. According to the AAUP's 2003 report, "Contingent Appointments and the Academic Profession," full-time appointments off the tenure track were almost unknown a generation ago. In 1969 they amounted to 3.3% of all full-time faculty positions (Appendix A, p. 3). However, as the "greatest generation" began retiring in the 1980s, state governments were cutting back appropriations to higher education as the production costs of higher education were rising. Attracting students while charging

higher tuitions to offset reduced appropriations posed a crucial, continuous challenge to university administrations. As a measure to combat this challenge, according to the 2003 report, "[M]any universities chose to allocate proportionately less to their instructional budgets, and instead to increase spending on physical plant, new technologies and technology upgrades, and administrative costs" (p. 5). In other words, universities were required by market forces to produce new recreational facilities, the latest in dormitory comforts, and dazzling new technologies in the classroom to attract out-of-state students. In many instances, these measures were afforded by replacing retiring tenured faculty with contingent faculty who would teach more courses for far less money and for whom no long-term commitment on the part of the university was necessary. This trend continues today. According to the AAUP's "Contingent Faculty Index 2006," between 1975 and 2003, the number of full-time tenured faculty positions declined at degree-granting universities from 37% to 24%. In terms of raw numbers, full-time tenured faculty positions declined by 2,000 between 1995 and 2003 alone. Startlingly, the proportion of full-time tenure-track faculty positions declined from 20% to 11% during this same eight-year period (Appendix B, p. 6). While the AAUP provides no data for chronicling the decline of tenure-track positions at CU, it would require an active imagination to fathom that CU has swum against this national tide.

The AAUP, in its 2006 report, has compiled comprehensive data that brings the situation of contingent faculty into high relief. These faculty comprise 73.3% of the CU faculty. When faculty with research-only appointments are subtracted from the data, and graduate students with teaching responsibilities added, we discover that 71% of those who teach at CU meet the AAUP definition for contingent faculty: faculty not on a tenure track. (Appendix B, Appendix 1, pp. 22-23). All these faculty transmit knowledge without the assurance of academic freedom protected by due process—the staple of viable inquiry.

Under the stipulations of our proposal, 54% of CU's professional teaching faculty—the percentage of all teaching faculty who are contingent minus graduate students with teaching responsibilities—would be eligible, after a suitable probationary period involving comprehensive reviews of their teaching and service, for the protections of instructor tenure.

### *The Potential Harm to Undergraduate Education*

The AAUP's 2003 report generalizes the impact of this situation on higher education: "Contingent faculty may be less likely to take risks in the classroom or in scholarly and service work. The free exchange of ideas may be hampered by the specter of potential dismissal or non-renewal for unpopular utterances. In this chilling atmosphere, students may be deprived of the robust debate essential to citizenship. They may be deprived of rigorous and honest evaluations of their work" (Appendix A, p. 9). "Perhaps most important," the 2003 report goes on to say, "institutions may lose the opportunity to receive constructive criticism of academic policies and practices from a significant portion of the academic community" (pp. 9-10). In order to advance conditions where such essential criticism might be welcomed rather than discouraged, the 2003 report

stipulates that "it is incumbent upon all faculty to protect the exercise of academic freedom by their colleagues in faculty governing processes" (p. 12-13).

This last consideration is significant at CU, where, as most contingent faculty are aware, and as this proposal will show, many of the hostilities toward the academic freedom of contingent faculty come not directly from the administration, but from tenured colleagues who take umbrage when the status quo is challenged by non-tenured colleagues. If not overtly hostile, many tenured faculty are oblivious to or simply uninterested in the rights of non-tenured faculty to academic freedom and shared governance, even after they have been apprised of those rights by reference to the Laws of the Regents. It is especially troubling that when abuses are brought to the attention of the administration via grievance procedures, almost invariably the administrator supports the tenured faculty, with whom he or she is likely to have interacted more frequently, thus perpetuating this threat to the diminishment of undergraduate education at CU.

*Problem 1: Ignoring research contributed by contingent faculty diminishes their professionalism and the university they serve.*

Given that at CU, few if any contingent teaching faculty have a scholarship component in their workload formula (typically 75% teaching / 25% service for instructors; 100% teaching for lecturers), they are not regarded as fully professional contributors to academia, and therefore don't warrant—it's possible to surmise—a corresponding commitment from the university. Leaving aside what this rationale suggests is an institutional attitude toward the importance of classroom instruction, the premise is largely a fallacy. Most contingent faculty at CU have PhD's or other terminal degrees. What's more, according to data provided by the CU Office of Faculty Affairs, about 2/3 of instructors with at-will contracts reported research and creative work on their 2004 FRPAs (Appendix C). To highlight this reality, in CU's Program for Writing and Rhetoric (PWR), two instructors have published four and five books apiece with major publishers. Another was a finalist for the National Book Award in non-fiction. Yet another contributed the lead article in the most prominent journal in the field of composition and rhetoric. Yet another is currently serving as president of a professional organization. Nearly every resume in the PWR lists publications and presentations at professional conferences. All were accomplished outside the parameters of the workload formula. Because these contributions do not officially exist, the administration does not regard contingent faculty as "real" professionals, particularly within the context of a research university. Nonetheless, CU reaps the prestige of these contributions. When a book is published, the qualifier "contingent—therefore disregard" does not appear beside the author's name and institutional affiliation.

As an ethical consideration, this institutional posture may well demean the university, but its practical implications are equally corrosive from multiple perspectives. Ultimately, to diminish the professionalism of CU's teaching faculty acts as a disincentive to pursue scholarly work: If you are not expected to pursue scholarship, and not acknowledged when you do, eventually you may well stop pursuing it. To imagine that this state of

affairs bears little impact on classroom instruction runs contrary to the imperatives of excellent teaching. According to the 2005 AAUP report,

The relative emphasis placed on teaching, scholarship, and service by a faculty member varies according to the terms of his or her appointment and academic discipline and the type of institution at which he or she works. But although emphases vary, these functions are not completely divisible. Faculty work can not be sliced cleanly into component parts without losing the important connections that make up the whole. For example, while teaching may be the primary mission of certain types of institutions or programs, teaching faculty recognize the need to engage in scholarly work in order to remain current and effective as teachers in their respective disciplines. (p. 8)

On another level, the eventual impact of diminishing the professionalism of CU's teaching faculty, and the consequent disincentive, is the loss to CU and society of contributions to human knowledge that might enlarge our reputation as a Research-1 university.

*Problem 2: Lack of tenure renders CU's faculty hesitant to provide the classroom challenges required for a rigorous education.*

Low results on their Faculty Course Questionnaires (FCQs) can result in the termination of instructors' contracts. The fear of low FCQs may affect the instructor's performance in the classroom in ways that rob students of a rigorous education. Students who are not getting the grades they have grown to expect often are aware that if they serve the cause with sufficient energy, they can persuade their fellow students to evaluate an instructor harshly. Because the instructor understands the necessity of pleasing students in order to maintain employment, the temptation to over-praise them may be overwhelming. When their performance is praised, naturally, students believe in their own excellence. While self-esteem may be a productive quality, it quickly reaches a point of diminishing returns in competitive professional environments. Even if advised of this reality, however, most students will consider themselves exceptions to the rule. Most students really believe they are excellent because we tell them so, and by extension tell their parents so. In all likelihood, by the time they confront those diminishing returns and learn they lack the skills and knowledge to cope, the instructor who told them they were excellent—as the bargain he cut with himself to maintain employment—will be forgotten, unlike those fearless, memorable, transfiguring teachers who long ago inspired us to follow a calling to higher education.

Other students at CU are diligent, worthy, capable of embracing in good faith the fundamental challenges required for an education of lasting value. These students also pay the price of faculty contingency. When the instructor fears challenging this top tier of students in the classroom, for fear that students of lesser abilities and resentful attitudes will rebel, our highest caliber students never experience the exhilaration of accommodating a perspective different from the mindset they brought to the

classroom—that status quo that once-upon-a-time students attended college in the good hope of broadening.

*Problem 3: Lack of tenure deprives most of the university's teaching faculty of meaningful shared governance and due process.*

The long-term deterioration of the undergraduate experience at CU, generated by the constraints on academic freedom for faculty in contingent positions, is not confined to student-teacher interactions in the classroom. While full professors teaching their two classes, at most, per semester, primarily to interested majors, have teaching expertise, the record suggests that legitimate expertise also lies with those who teach most of the classes, particularly the core classes that CU deems essential to a college education. However, at CU, contingent faculty are typically excluded or ignored when pedagogical decisions are made. When contingent faculty are included, they would have to be naive indeed not to understand the jeopardy into which they might place themselves by offering candid advice or suggestions if such counsel runs contrary to the orthodoxy of administrators or tenured faculty, who can arrange to have them fired. While it may be tempting to dismiss the above scenario as merely hypothetical, examples abound. The under-representation of contingent faculty from the "Flagship 2030" task force (one senior instructor in a 56-member group) is but one relatively benign example. A more malignant incident is the recent Internal Review Report of the PWR, wherein the three tenured authors of the report recommended that contingent faculty "dissatisfied" with the leadership, bylaws, and/or pedagogical direction of the program—many of whom have established records of teaching excellence at CU for over fifteen years, with no commitment from the University in return—be fired if their dissatisfaction continues, before the end of their contracts if necessary (Appendix D). This recommendation remains unchallenged by CU's administration.

A third example of the ways in which contingent faculty are excluded from meaningful participation in the University community is more insidious, for it illustrates the exclusion of contingent faculty from the very processes designed to protect them. According to the September 20, 2006, issue of the *Colorado Daily*, CU's Faculty Senate Committee on Privilege and Tenure (P&T) unanimously agreed that the CU administration violated former instructor Adrienne Anderson's right to a "fair and unbiased appeal" over the non-renewal of her contract. The *Daily* reports that then-interim Chancellor Phil DiStefano decided to formally reject the P&T finding, in good part because, DiStefano said, 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, it could be said that this institutional attitude toward due process for contingent faculty at CU defines the concept of meaninglessness.

*Why should contingent university teachers get tenure when the private sector doesn't?*

The ultimate irony of replacing the tenured positions of the "greatest generation" with contingent faculty is that the teaching faculty at CU is thus deprived of the very protections that empowered the greatest generation to achieve its postwar potential. Why these protections are essential, and the related perspective of the AAUP, requires a few paragraphs of background.

The rationale that provided the basis for the 1925 Supreme Court decision (*Gitlow v. New York*), that free speech is one of the liberties protected by the Fourteenth Amendment's due process clause, as well as academic freedom as envisaged by the AAUP, is that *knowledge is imperfect*. Certainty does not exist, although—as formulated by Louis Menand (2001) in *The Metaphysical Club*, which won the 2002 Pulitzer Prize for nonfiction and which culminates in the founding of the AAUP—there are countless people who claim certainty. What's more, history demonstrates that the fundamental characteristic of modern life is social change. That said, there are no guarantees that society will move onward and upward, only that it will move.

Ideas, or at least any ideas potent enough to acquire social currency, are fundamentally social expressions, according to the instrumentalist John Dewey, one of the founders of the AAUP. As expressions of social conditions, ideas are essentially tools—or strategies—that people use to solve their problems. Within a social group most people have the same problems—how to live humanely with each other in a civil society, how to conduct our affairs with the dignity and integrity we would wish to find in others, how to improve the quality of human life within our reach. Differing ideas, then, while perhaps defined by their opposition to each other, are, pragmatically speaking, competing strategies toward the attainment of a mutual goal.

For this reason, unpopular ideas, which express social conditions that are inconvenient to think about, must nonetheless be expressed, understood, confronted, and accommodated to ensure the survival of the group. Likewise, students must have access to unpopular ideas, posited by faculty as strategies of education, because the articulation of such ideas and their confrontation and accommodation by competing ideas are the best assurance we have for the survival of democracy.

As the pursuers and transmitters of knowledge, university teachers play a central role in the survival of democracy. They carry responsibilities and require protections necessary in few other professions. While this unique status has always infuriated segments of the population, society as a whole has tolerated this arrangement because, as Menand notes, it is in the self-interest of society to do so. Indeed, this self-interest has been borne out by America's ubiquitous contributions to 20th century knowledge. It is paramount that university teachers not be beholden to the ephemeral interests of the state, the trustees of the university, or taxpayers. It is similarly paramount that university teachers not fear reprisals from students or dismissal from the university for challenging students' worldviews or "comfort zones" within the classroom or those of administrators or colleagues outside of it who may have little tolerance for unpopular ideas, even as educational gambits, or for the occasional complaints of students uncomfortable with the character of a viable education.

As advanced by the AAUP in the early 20th century, so unique is the role of university teachers to the survival of the group that their only obligation is to serve the good of society, within parameters determined not by their employers but by others within their profession. Thus tenure, as the workable protection for the expression of ideas within and outside the classroom, empowered the "greatest generation" to construct a more humane world.

These fundamental assumptions are at the core of the only protection university teachers have when they are threatened for their ideas either directly or through administrator or student retaliation—the protection of due process. If knowledge is imperfect, then due process cannot attain legitimacy on the basis of whether we believe a teacher's opinions are right or wrong, or whether they correspond to a metaphysical truth. In order to obtain legitimacy, decisions or outcomes must derive from processes and procedures that are themselves legitimate. To be legitimate, these processes must be a matter of continuous, demonstrable practice, and not mere theory.

The above examples and other accumulated documentation suggest that at Colorado the published protections of due process for contingent faculty—the only safeguards they have to support their consistent delivery of excellence both in the classroom and at faculty meetings—fail this obligation.

## THE SOLUTION TO CONTINGENCY AT THE UNIVERSITY OF COLORADO

### *Adopt the AAUP Plan*

The AAUP solution to the predicament of contingent faculty, and the one we endorse, is tenure for instructors, in accordance with the AAUP's "Recommended Institutional Regulations on Academic Freedom & Tenure" (Appendix E). This document articulates in thorough detail procedures for appointment, sanctions, and termination of faculty members, both for cause and in cases of financial exigency. In many ways this plan formalizes procedures already in place at CU. The essential difference is that qualified contingent faculty will lose their contingency and teach with the plausible assurances of academic freedom necessary for classroom excellence.

As the AAUP's 2003 report says, "It is important to note that tenure can be granted at any professional rank (or without rank); the Association does not link tenure with a particular faculty status. The professor in a research university, whose appointment includes a significant responsibility for original research, should not be the sole or primary model for tenurable academic work. A faculty member whose position focuses primarily on teaching, supported by sufficient opportunity for scholarship and service, is also engaged in tenurable academic work" (Appendix A, p. 11).

In essence, at CU, there should be two tenure tracks: one for professors and one for instructors, each with distinct ladders. In either case, tenure will be considered after a probationary period not to exceed seven years, as stipulated by the AAUP. In further accordance with AAUP recommendations, we ask that instructors who have already served the University full-time for seven years, or have taught an equivalent number of courses, and thus established a record of commitment to undergraduate education at the University, be "grandfathered" into instructor tenure (Appendix A, p. 17). For contingent faculty who have not yet completed an equivalent probationary period, their tenure clocks will have begun retroactively at their time of hiring.

### *The Current System*

Currently, contingent faculty at CU are hired either as lecturers or instructors. Lecturers' contracts are semester-to-semester or year-to-year. After three years, according to the Instructor's Bill of Rights (IBOR), which is Arts and Sciences College published policy, the program or department has the option of promoting the lecturer to instructor.

Instructors' contracts span one to four years. After seven years at instructor rank, the department or program has the option of promoting the instructor to senior instructor. After seven years at the senior instructor rank, the faculty member is entitled to a reduced course load for one semester.

At the end of every contract period, the contingent faculty member must apply for reappointment. The procedure for reappointment includes a comprehensive review of the faculty member's teaching and, for instructors, service.

### *The Proposed System*

The proposed system would involve very little change in procedure during the first seven years of employment beyond—in some instances—intensified efforts on the part of departments and programs to provide the training, mentoring, and supervision necessary for probationary faculty to succeed on the path to instructor tenure. Most of the AAUP's guidelines for that probationary period, such as that contracts must be in writing and delivered to the faculty member within a certain time frame, are already in place at CU. It is also already University published policy that faculty members must be evaluated and their reappointments based upon "the individual's ability in teaching, research/creative work, and service and should not be influenced by such extrinsic considerations as political, social, or religious views, or views concerning departmental or university operation or administration" (Laws of the Regents 5.D.2(B)).

The only substantive change in procedure would be that after a suitable probationary period and one final comprehensive review similar to previous reviews, an instructor would be offered instructor tenure. He or she would no longer be required to apply for reappointment every one to four years.

At the end of the seven probationary years, if the faculty member is not considered worthy of instructor tenure, his or her employment must be discontinued. The University cannot continue to reap the advantages of that person's inexpensive labor without making a commitment to him or her. Nor should the University continue to subject students to inferior teaching.

Every seven years after receiving tenure, the instructor must undergo a tenure review, in accordance with University and unit policies.

### *Scenarios*

Following are two of numerous possible scenarios for a contingent faculty member's progression to instructor tenure.

Scenario 1: Dr. Spencer is hired to a probationary appointment as a lecturer with a one-year contract. Every year for three years, she must apply for reappointment and undergo a review of her teaching. (Service is not required of lecturers.) During that time, the program or department has an obligation to provide her with the training, mentoring, and supervision necessary to succeed on the path to tenure. After three years and a comprehensive review of her teaching, in accordance with IBOR, Dr. Spencer is promoted to instructor. She receives a two-year contract, at the end of which she must apply for reappointment and undergo a comprehensive evaluation of her teaching and service. Her department is responsible for determining criteria for her reappointment that correspond to the AAUP's and the University of Colorado's principles of academic freedom. Dr. Spencer is reappointed for two more years, at the end of which she must undergo a comprehensive review similar to previous reviews. Her colleagues deem her worthy, and she is granted instructor tenure. After seven years as an instructor, she may apply for the rank of senior instructor. Dr. Spencer will undergo a post-tenure review every seven years after receiving tenure.

Scenario 2: Dr. Cohen is hired to a probationary appointment as an instructor with a two-year contract. During those first years, the program or department has an obligation to provide him with the training, mentoring, and supervision necessary to succeed on the path to tenure. After two years, Dr. Cohen must undergo a comprehensive evaluation of his teaching and service, which he passes, and is granted another two-year contract. He undergoes another comprehensive evaluation of his teaching and service, which he passes, and is granted a three-year contract. At the end of his three-year contract, Dr. Cohen applies for both senior instructor rank and instructor tenure, which he is granted. After receiving tenure, Dr. Cohen will undergo a post-tenure review every seven years.

### *Disadvantages of This Solution*

1. There will always be segments of the population who are outraged that university teachers are protected by tenure. On the most innocuous level, some of these citizens do not understand the necessity of such safeguards when they themselves function perfectly well in the workplace without them. Others are uncomfortable

with their children's exposure to ideas that they do not endorse, whereas still others do not recognize or value the relationship between a viable university education and the survival of democracy. What's more, there will always be those, some with loud voices and political influence, who mock, ridicule, or otherwise fear the pretensions of anybody unlike them, who possibly, in the privacy of their own hearts, desire first and foremost that their children be replicas of themselves (if richer and better looking), and who—if the truth be told—are similarly uncomfortable with the free exchange of ideas being the central component of democracy. Though these citizens are unlikely to admit it, many may wish instead for a theocracy where everybody prays at the altar of identical ideas, which are theirs. Of course, such a monolith, which by definition deprives the group of access to all survival strategies, is doomed. Finally, there will always be those with political agendas who sincerely—or cynically—see political agendas everywhere, and will predictably condemn additional tenure for university teachers as one more giant step in the radical/liberal/reactionary indoctrination of our students.

While as university teachers we may disagree with many of these ideas, we recognize that, if honestly held, they strengthen all ideas. That said, because these ideas seek to prohibit the expression of other ideas, or social conditions, or strategies for the survival of the group, we find them incompatible with the purpose of a university.

2. Some people, including instructors, will fear that in order to avoid granting them tenure, the University will simply terminate their employment after seven years. This fear is certainly understandable, given instructors' tradition of unsettled employment circumstances. However, the University is unlikely to establish a custom of firing instructors after seven years for several reasons:
  - 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 seven 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, contrary to AAUP recommendations;
    - 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 seven years.

Under the proposed system, when a unit decides not to grant tenure, it will be a testament to the integrity of the institution and not an admission of reluctance to commit to the quality of undergraduate education.

- 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. It would cause applicants capable of acquiring tenure to be unlikely to apply for instructorships at CU; conversely, once CU establishes instructor tenure, the best candidates in the country will apply for instructorships at CU.
3. Some will object to a system of tenure for contingent faculty, on the grounds that it would hamstring CU's flexibility in adjusting the work force according to budgetary constraints or curricular necessity. These circumstances existed prior to the thirty-year trend toward hiring contingent faculty, and they will always exist. In the early 20th century the AAUP, when formulating the practice of tenure as institutionalized in American universities ever since, addressed financial exigency and the occasional need to disband a department or program as legitimate prerogatives of the university. For these reasons, the employment of tenured professors can be discontinued, just as it could be for tenured instructors.

However, while the desire of the administration to maintain maximum flexibility in the face of an uncertain future is understandable, when the ones whose jobs are always on the chopping block are also the ones who teach most of the classes at CU, the unintended consequence of this flexibility is the deterioration of undergraduate education. The damage done by the need to maintain workforce flexibility dwarfs any advantages.

Additionally, according to the AAUP's 2003 report, "the assertion that non-tenure-track faculty appointments were needed for flexibility to meet changing student demand, [a 1986] subcommittee reported, was belied by the extensive (and, we could say now, continuing and long-term) use of such appointments in core academic courses, especially in the humanities" (Appendix A, p. 22).

4. As a matter of practicality, institution of a system of tenure for instructors will require some alterations to the Laws of the Regents, as well as University and college policies. For example, article 5.B.4(B) of the Laws of the Regents says, "Tenure may be awarded only to faculty members with demonstrated meritorious performance in each of the three areas of teaching, research or creative work, and service, and demonstrated excellence in either teaching, or research or creative work." This law would need to be amended to include tenure for instructors, which entails meritorious performance in teaching and service, but not research or creative work. (While most instructors do engage in research and creative work, it cannot become a requirement for tenure at the instructor level.)

5. Another argument we anticipate is the claim that, at CU, tenure for instructors is a non-issue. Most instructors at CU are thrilled to have their jobs, especially when they compare their paychecks and benefits to those of adjunct faculty at, say, Front Range Community College. However, even when they've been mistreated, most will publicly maintain that they get along swimmingly in their departments, they have no complaints about their treatment, etc. Under the circumstances of contingency, one would have to be reckless indeed to proclaim anything other than that one adores the status quo, and the louder, the better. The claim that one is satisfied, when one can be fired simply for being dissatisfied, is prima facie evidence for skepticism.
6. We anticipate at least one argument against tenure for contingent faculty that we view as specious: Tenured professors and administrators will lose control over instructors, in that their option of threatening an instructor's job, in the event that she has uttered something unorthodox, will be removed. Tenured professors and administrators will be compelled to engage ideas and perspectives they were previously free to dismiss summarily.

That is as it should be, again, because the university's primary purpose is to provide a forum for the free exchange of ideas.

#### *Advantages of This Solution*

1. *Dedicated training, mentoring and supervision in order to prepare instructors for tenure will result in an increasingly effective faculty.* Already, some programs and departments may be providing these oversights and quality controls, but there is little incentive to do so. Knowing that the University must make a long-term commitment to the instructor, or terminate his employment, provides programs and departments with the incentive to pay attention to the quality of that instructor's work, rather than string him along indefinitely simply because students haven't complained. What constitutes "good teaching" is notoriously difficult to measure. However, this solution of tenure for instructors will inspire programs and departments to articulate what "good teaching" means within the parameters of their disciplines.
2. *Tenure will provide instructors with the job security they need in order to become effective teachers and sharers in the governance of their programs and departments.* Would that it were otherwise, but instructors, who can be fired at any time without cause, are not likely to upset apple carts. They will teach what they are told to teach, in the way they are told to teach it. They will endorse any policy that the administration and their tenured colleagues mandate as appropriate, not because they are unimaginative, unintelligent, or weak-willed, but because they, like most of us, have financial obligations, children, elderly parents, and the need for health insurance. While this may seem the ideal situation to many—instructors who leave the thinking to their betters—it is in fact anathema to undergraduate education. As the AAUP says, "A college or

university is a marketplace of ideas, and it cannot fulfill its purposes of transmitting, evaluating, and extending knowledge if it requires conformity with any orthodoxy of content and method" (Appendix E, p.1). This conformity is inevitable in the current system. With regard to the tendency toward conformity, an investigating committee of the AAUP wrote the following:

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 Cumberland (Kentucky)")

3. *Tenure for contingent faculty recognizes that contingent faculty are a distinct demographic whose views are central to the vitality of undergraduate education at CU and cannot be represented by tenured faculty who may themselves be unaware that such distinctions in perspective may exist or are significant.* When contingent faculty find themselves in disagreement with tenured faculty, the tension is likely to remain beneath the surface, unrecognized yet destructive. Regardless of this reality, few are the tenured faculty who perceive themselves as having anything but the most congenial reciprocal relationships with their contingent colleagues.
4. *Students will have access to superior educations.* As we wrote in our editorial of December 17, 2006, "[I]f our students are to be exposed to and participate in the civic discourse essential to the survival of democracy, they must be taught by teachers who are not afraid of upsetting their students' worldviews in the classroom or those of administrators outside the classroom" (Eron & Hudson, p. 4B).
5. *There are no foreseeable costs for instructor tenure.* Instructor tenure does not require raises, promotions, or access to the professor tenure track. On the other hand, once the new system is in place, the University will no longer have to expend the energy that currently goes into reappointing instructors every three or four years.

6. *The University of Colorado will enhance its reputation as a leader in undergraduate education.* What tenure for contingent faculty with a demonstrated commitment to excellence says is that CU demonstrates a level of institutional support for undergraduate education that is unprecedented among our peer institutions. If packaged properly, such an institutional commitment will generate a considerable, enduring public relations windfall. How advantageous to be able to say to parents and potential donors that, while all universities boast of their commitment to undergraduate education, at CU we go beyond platitudes. From a national perspective, given the recently issued AAUP report as well as the increasing willingness of instructors to speak publicly about the consequences of contingency, tenure for contingent faculty is inevitable. In a fiercely competitive environment, no university creates an "edge" that is not soon adopted by other colleges. But there will only ever be one first domino, with the distinction, credibility, and other spoils that accompany visionary accomplishment.

## CONCLUSION

Instructor tenure is the natural correction to the trend that began thirty years ago of replacing retiring tenured faculty with less expensive contingent faculty in order to achieve a more flexible work force in times of budgetary constraints and curricular change. The unintended consequence of employing faculty who specialize in teaching but do so without academic freedom protected by due process, plausible avenues for participating in shared governance, or an appreciable commitment to their professionalism from the university has been the deterioration of undergraduate education.

Everyone in a position of responsibility at CU—faculty, staff, administrators—shares a mutual goal: to deliver a Colorado education that vitalizes our graduates with the knowledge and skills necessary to better shape our collective futures across the spectrum of American life. If success, as defined by George Will, implies an "enterprise in which benefits exceed cost" (p. 72), then the experiment of contingency for university teachers is an abject failure. Yet the mutual goal we all share remains attainable. It is never too late to replace failed strategies with better ideas.

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