



Representing Wayne State Faculty and Academic Staff

# NEWSBRIEFS

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## The Unconstitutional University: The Absence of Due Process in Equal Opportunity Complaints

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*[Editor's note: The absence of due-process indicated in the following case is a serious issue that has led to repeated problems in recent years. In this as in many other issues of concern to faculty and academic staff, negotiated guidelines incorporated into the collective bargaining agreement would help members and administrators avoid the kind of unfortunate outcome described here. AAUP-AFT officers represented the two Professors involved in the case (both of whom have faculty tenure), and we anticipate negotiating the needed due-process procedures in the next contract negotiations.]*

On July 26, 2004, the Interim Dean of the College of Urban, Labor and Metropolitan Affairs (CULMA), accompanied by a uniformed police officer, came to my office in the Center for Chicano-Boricua Studies (CBS). They delivered a formal "Equal Opportunity" (EO) complaint alleging "gender discrimination and workplace harassment" on my part against a person who works in the Center. Also named in the complaint was the Director of CBS. The Interim Dean ordered us both to vacate our CBS offices and not to contact any member of the CBS staff. He announced that he was suspending the CBS Director from his post. While we were meeting in the

Interim Dean's office, he had the locks changed on all of the CBS offices, including our own.

After the meeting, we were given 90 minutes to remove personal belongings from our offices under police supervision. The Interim Dean told us this drastic measure was necessary to insure that we did not destroy University property (our own computers and offices).

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The Interim Dean directed his staff to send out hundreds of e-mails and dozens of letters to the Latino community, the University community, and many persons nationwide announcing our suspension and removal from the Center.

### The Absence of Due Process

The system for resolving formal EO complaints at Wayne State University lacks consistent application of policy and procedure, creating an unacceptable irregularity of standards that cannot guard against error, incompetence, personal bias, or institutional political agendas.

In our case, the Interim Dean violated our right to confidentiality, due process, and the preservation of our reputations earned over decades of

con't on page 2

work. He punished us before there was an investigation, and established an administrative structure that favored the complainant, who was left in place with an opportunity to influence witnesses at the Center. His public actions broadcast and validated the allegations against us. He misrepresented "gender discrimination and workplace harassment" as "harassment and inappropriate behavior." He thus provoked widespread speculation that we had molested female students.

At our meeting on July 26, the Interim Dean told us that he was incensed by our activities in defense of the Center for Chicano-Boricua Studies. He felt betrayed because the CBS Director expressed a preference for a standard six-year charter for the Center in the Academic Senate when the Interim Dean had agreed to a three-year term. He referred to my efforts to document what I saw as gross irregularities in the Senate evaluation of the Center as an example, in his eyes, of a self-serving political agitation. The Interim Dean evidently thought that I had provoked hostile and unjustified community interference in the Administration's internal decision-making process. Although there is no evidence he was given direct orders for the specific actions that he took, he apparently believed he was doing the will of his superiors.

Charles Parrish, President of the AAUP-AFT, wrote to the Provost that it appeared the Administration had pre-judged our case, and that appropriate procedures should be followed in handling the matter. After some time, the Upper Administration concluded that it could no longer support the Interim Dean's handling of the situation and he was forced to resign.

The Upper Administration accepted the Interim Dean's resignation, but did not disown his actions or move to undo them. The Administration, in fact, prolonged our un-warranted punishment by, first, continuing to treat us as guilty of what was eventually shown to be a groundless complaint, and, second, by authorizing an open-ended investigation and hiring an outside counsel to conduct it.

This investigator blatantly violated our rights with persistent questioning that asked us to confess to activities that had nothing to do with the formal com-

plaint. She rejected my right to suspend the questioning and have my lawyer present. She refused to state specifically the EO policies that I was accused of violating or to explain how the allegations in the formal complaint were believed to violate the policies.

AAUP-AFT representatives Charles Parrish and Jan Thompson (the union's Executive Director) sat with me through six hours of this inquisitorial process. Both voiced their disapproval of the sloppy methods of the investigation and the flimsy nature of the charges, first to the investigator and subsequently to the Administration. Nothing was done to correct the situation.

Despite the obvious attempt to find something to discredit us, the external investigator was finally forced to exonerate us of the complaint of gender discrimination and workplace harassment on November 12, 2004. Even then, the Administration dragged its feet. Citing the possibility that the complainant might file a retaliation suit against us and the University, the Administration discouraged us from returning to the Center until the second week of January, 2005—two months after we were cleared.

We are negotiating with the Administration about how to best restore our damaged reputations, professions and lives. While the Administration is willing to settle with us, it is apparently unable to recognize either the scale or the implications of its gross violations of due process and is leaving it up to the Director and me to define the issue and its multiple dimensions.

### **Due Process Defined**

My understanding of "due process" is that it is both procedural and substantive.

*Procedural Due Process* assures that clearly identified specific steps are followed to insure that the investigation and adjudication of the formal complaint is fair and confidential to both sides.

con't from page 2

In my case, due process should have allowed me the right of any accused to know: a) the substance and specifics of the accusations; b) the policies or laws I allegedly violated; c) the standards of measurement and evaluation being applied; d) the penalties for the alleged violations; and e) the rights, obligations, resources and options I had to respond to the charges.

Due process includes an investigation that focuses on the specific allegations of the complaint and does not wander into irrelevant areas. It guarantees all parties involved an accurate record—transcribed, audio/video—of all substantive meetings, while also maintaining strict confidentiality.

Above all, due process includes the obligation of Wayne State University to avoid pre-judging the case.

*Substantive Due Process* is a principle that instructs its bearer to recognize and correct results that may be unfair and unjust even when established policies and procedures are followed.

The Administration seems to believe that the Interim Dean's actions against the CBS Director and me were a short-lived aberration for which the Upper Administration bears no responsibility. It does not acknowledge that the management of our case both before and after the Interim Dean resigned also violated our right to due process.

Marjorie Powell, the lawyer who heads the Office of Equal Opportunity, should have known that the majority of the allegations were not covered by the very policy that she oversees on a daily basis. She could have isolated the allegations relevant to the complaint and carried out a timely and efficient investigation as to their

veracity and significance. The investigation could have been concluded in a matter of days, at most, two weeks. There would have been no basis for removing us from the Center for six months.

Instead, Marjorie Powell redrafted the complainant's disjointed collection of allegations into a semblance of accusatory logic, and recommended an open-ended investigation that went far

beyond the specific complaints of gender discrimination and workplace harassment. Louis Lessem, University General Counsel, reviewed her recommendation, declined to dismiss the transparently questionable charges, and endorsed the external investigation by a hired attorney.

Above all, the Administration declined to fully investigate the possibility that

the complainant might have had ulterior motives for the allegations made.

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## Conclusion

The almost total absence of policies and procedures to govern the investigation and resolution of formal EO complaints at Wayne State University creates a situation in which due process and fair treatment cannot be guaranteed for either complainants or respondents. The outcome of any case depends directly on the personal choices made by the investigators and adjudicators. The decision-makers in the latter category are deans and administrators who have not been professionally trained to evaluate and implement the handling of EO cases. The EO and University officers may be fair-minded or not. The Administration leaves that

con't on page 4

con't from page 3

up to chance, unchecked or unchanneled by any mechanisms to guide the administrative and legal managers of the system.

As a national institution of higher learning, Wayne State University has an implied obligation to meet the highest standards of administrative ethics and processes. For two faculty, however, Wayne State has become the Unconstitutional University, devoid of respect for our human dignity and for our right to due process.

It is my hope that the union can negotiate provisions in the collective bargaining agreement that will insure that faculty and academic staff will be protected in the future against arbitrary and discriminatory treatment in EO cases.

## Contract Ratification

The one-year extension of the contract has been ratified by over 93% of those voting:

YES	336
NO	23
Other	1
Spoiled ballots	5

## Election of Officers

We thank all of the candidates for their participation in the process. Results of the voting for Executive Board officers are as follows:

### President

Charles Parrish	176
Ira Firestone	133
Other	2
Spoiled ballots	8

### Secretary

Sue LaLiberté	193
Pynthia Caffee	104
Other	14
Spoiled ballots	8

### Member-at-Large

M. L. Liebler	156
Carrolyn Davis	144
Other	11
Spoiled ballots	8

## Wayne State University Chapter

### AAUP-AFT

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### AAUP-AFT Executive Board

#### *President*

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#### *Vice President*

Naida Simon

#### *Secretary*

Susan LaLiberté

#### *Treasurer*

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#### *Member-at-Large*

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#### *Member-at-Large*

Allen Goodman

#### *Board Member*

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#### *Contract Implementation*

Anca Vlasopolos - Faculty

Barbara Jones - Academic Staff

#### *Grievance Coordinator*

Mary Cay Sengstock - Faculty

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#### *Information Coordinator*

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#### *Academic Staff Chair*

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