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One last time from the President

By James Matthews

I step down as President of our local chapter of AAUP at a time of considerable turmoil in the profession and uncertainty of its future. While I believe our chapter has strengthened over the past four years here at IWU, it remains a fact that tenured positions are fewer around the country. Departments have been eliminated, their tenured faculty replaced with contingent instructors (often the same individuals), and life has gone on, the damage invisible to a distracted public. The University of Virginia's Board of Visitors was hijacked by its president and a Foundation Board member, nearly costing the University's well-respected president her job. As I think about these events and many others like them, I am reminded of a well-known video clip of Coach Vince Lombardi flapping his arms and shouting at his players, "What the hell is going on out here?"

(<http://www.youtube.com/watch?v=IbNidYYGjic>)

This professional angst has affected my family directly. My daughter, Courtney, a stellar PhD candidate at the University of Minnesota in Medieval French literature is now training to work in title insurance because she sees no good road ahead of her as a professor. This is not the entire reason, but it is significant. She believes that in the increasingly rarified air of tomorrow's profession, she would have to give up too much to compete her dissertation and achieve tenure: her marriage, maternity, her personal life, and her financial independence. This is a lot to sacrifice for a profession increasingly disdained by public and government alike. School districts around the country cut music, art, and language programs because they don't generate the standardized test scores No Child Left Behind demands. The Higher Learning Commission has increased its presence on campus and in campus decision making by effectively shortening the length of time between reaccreditation visits while requiring more frequent reports. Meanwhile the Labor Department scrutinizes the academic records of our students from grade K-20 to determine if they have learned marketable skills. It suggests rating professors and administrators, in effect, by the employability of college graduates. I am not opposed to reasonable accountability, but this much intrusion is insanity. It is also contains an implicit denial of the value of the liberal arts.

So where are we, the AAUP, in all of this? Coach Lombardi offers us an answer in the continuation of this famous clip. This part is not so well known. He shouts the answer to his own question: "Arm tacking, that's what's going on out here. Arm tackling." Fundamentals. You can't tackle by using your arms alone. That way may spare your body, but it won't win games. Similarly, those of us committed to defending the best interests of higher education can't sit on the bench protecting ourselves. We have constantly to remember the fundamentals and stay in the game. Academic freedom is the core value that makes American higher education great. It is the essential fundamental. Tenure is the best means we have developed to ensure that academic freedom. Participation in university governance is a third fundamental. No one is more invested in the future of a particular institution than the tenured faculty. We must continue to make our voice heard, while we develop and protect the curriculum. Finally, I would suggest a fourth fundamental, related to all of the first three: protect the integrity of the institution. In a country where increasingly everything is for sale, is it too much of a stretch to envision a future replete with Amoco Schools of Business and Caterpillar Schools of Engineering? The AAUP is our profession's best means of providing and

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protecting pathways to truth. It stands to defend these core values of our profession. I am proud to be a member of an organization that works hard to fight against the erosion of those values that make our profession and its institutions great, and it has been an honor to serve as President of the IWU Chapter of the AAUP these past two years. Let's remain alert, committed, and outspoken when required. At this point in the evolution of our profession, we can't afford any arm tackling.

A New Category of Offenses on Campus

By Michael B. Young

In the January 14, 2013 meeting of the IWU faculty, an overwhelming majority approved a new Proposed Bias Incident Reporting Protocol. I would like to call attention to a few troubling features of that Protocol, not in an effort to undo what has already been done but, rather, to highlight some dilemmas that we might want to think about navigating safely as we proceed to implementing the Protocol.

First, the purview of the Protocol is exceedingly broad. The document begins carefully enough by defining a bias incident as an "activity . . . that is motivated, in whole or in part, by the offender's bias against a race, color, ethnicity, national origin, sex, gender identity or expression, sexual orientation, disability, age or religion." That is reasonably specific. But the scope of the Protocol is not limited to these commonly recognized identity groups in law. Instead, the Protocol proceeds later to enlarge the definition of a targeted identity group to include "any other unprotected class that is, or has been, marginalized or that has encountered social bias and discrimination in any form." Consequently, despite assurances that the Protocol was intended to ferret out only discrimination against well-known protected classes of people, the actual language of the Protocol extends its reach to bias against unspecified and previously unprotected classes of people who have experienced marginalization, bias, or discrimination "in any form." The Protocol thus creates a new category of offenses on campus that is dangerously sweeping.

Creating a new class of offenses means inevitably creating a new class of potential offenders. This may seem an unnecessary concern since the Protocol clearly states that it is intended only for "data collection and community education purposes." It is not supposed to be punitive. Overt punitive action is supposed to be limited to discriminatory conduct and hate crimes, and perhaps it will be. Nevertheless, the faculty have established a procedure that is intentionally designed to operate outside federal, state, and local law because, as the rationale explained, "bias related incidents often fall beyond the scope and protection of existing laws and regulations." How comfortable should we be with a system of reporting and investigating that falls outside existing laws and the attendant safeguards, especially when the offense has been defined so broadly?

Consider the regime for investigation and reporting that we have created. These duties will be carried out by a Bias Response Team consisting of the Provost, Dean of Students, and Associate Vice President for Human Resources. Each report will be sent to appropriate University officials. In a case involving a faculty member, the Provost and Associate Vice President for Human Resources will be submitting their reports to themselves in addition to the Director of Security and the Office of Institutional Research.

If not punitive, this kind of inquisition will almost certainly be intimidating. Picture that process in action. Can a person refuse to cooperate with the investigation? Can a person invoke the constitutional guarantee against self-incrimination? Can a person insist on having a lawyer present? Is there a presumption of innocence? What constitutes due process under these circumstances? Since the procedure for investigating and reporting incidents is extra-legal, it is not clear whether any of these usual legal safeguards apply. A senior, tenured faculty member might not feel intimidated by this kind of inquisition, but what about a junior faculty member, a member of the staff, or

a student summoned before the Provost, the Dean of Students, and the head of Human Resources to respond to charges made by an anonymous accuser? What pressure would these individuals be under to try to explain themselves, at the risk of somehow incriminating themselves, with the certainty that a copy of the report will be filed with their superiors on campus?

It is true that the aggregated Provost's report sent each year to the President, the Cabinet, and the University Council for Diversity will contain no names. But the Protocol neglected to mention whether the individual reports filed with respect to specific cases during the course of the year by the Bias Response Team would also contain no names. The Bias Response Team could allay apprehensions on this score if they would proceed promptly to develop and publish their own protocol for investigating and reporting cases with more attention to due process and the rights of the accused than is evident in the Bias Incident Reporting Protocol.

The accuser is guaranteed anonymity and freedom from retaliation. What is the accused person guaranteed? Not much, so far as I can see. Look at the way the word "alleged" is used in the Protocol. It appears in this phrase: "When the perpetrator(s) are believed or alleged to be" members of the student body, faculty, or staff. Isn't the word "alleged" misplaced in that phrase? Do we already know for a fact that they are perpetrators; are we only trying to determine which constituency they belong to? It is typical of the bias underlying this document that it does not refer to alleged perpetrators (or alleged bias incidents).

I have no doubt whatsoever that the Bias Incident Reporting Protocol was motivated by the best of intentions, and its defenders can certainly appeal to its ethereal goal—a campus that is, in its own words, "free of all forms of bias." However, as a constitutional historian, I read documents like this with a critical eye. Language matters to me. No matter how sincere and laudable the intentions behind the Protocol were, I am concerned about the dangers lurking in the actual language of the document.

Nevertheless, it is a plain fact that the Protocol is now in force. We will have to hope that the people who are charged with its execution will proceed with more caution than zeal. Meanwhile, there are not only dangers but also important safeguards built into the language of the Protocol. In addition to the claim that the purpose is merely for data collection and education, there is the significant stipulation quoted above that the offending act "must be motivated, in whole or in part, by the offender's bias against a race, color, ethnicity, national origin, sex, gender identity or expression, sexual orientation, disability, age or religion." Fortunately for people who find themselves accused under this Protocol, motive is devilishly difficult to establish. Furthermore, since motive is limited to the familiar, legally protected classes, this should effectively nullify the later, sweeping inclusion of "any other unprotected class." At least let's hope that is the interpretation of future Bias Response Teams.

The most important safeguard built into the Protocol is an exception for academic freedom. Particularly noteworthy is this ringing declaration: "The fact that speech or a particular expression is offensive is not, standing alone, sufficient basis to establish a violation of this policy." Amen. The language in the paragraph guaranteeing academic freedom is heavily indebted to AAUP policy and demonstrates once more the critical importance of that organization. It deserves to be mentioned, however, that this language about academic freedom affords most protection to faculty, less to students, and least to staff. So, we have the least to fear, though that seems like cold comfort to me.

Response on Bias Incident Reporting Protocol

By Meghan Burke

While this essay will highlight some important exceptions I take to Mike Young's essay, I want to begin by saying that the careful scrutiny that he has given this document is yet another reason why he's held in such high esteem

not only by our chapter, as evidenced by his Jim Dougan award, but also by our colleagues as a whole. I'm myself guilty, when things get busy, of assuming someone else will review the documents that come up for a vote at the faculty meeting, or, as someone with only a few years as faculty, to even ask the right questions. Mike Young is a role model for us in these ways and many more. So thank you, Mike, for your careful scrutiny of the Protocol, even if after the vote, and for raising these concerns.

I want to begin by stating, as I did at the February faculty meeting, that although I've served on the UCD in various capacities for three years now, I was not on the subcommittee that drafted the Bias Incident Protocol. Because it was not creating any new policy, I trusted those on the committee with more experience and familiarity with institutional documents, especially the scrutiny that Joerg Tiede provided to ensure its adherence with AAUP policies and principles. The word "bias" can certainly evoke many connotations, which is of course where Mike's concern about definitions is relevant, but it was better than the alternatives we'd considered.

As Mike's essay notes, a bias incident is defined as one that is motivated by a list of specific identities that have associated social consequences. Later, as Mike notes, the Protocol also makes mention of a broader definition that "is, or has been, marginalized or that has encountered social bias and discrimination in any form". The reason that this more expansive description is included is so that the Protocol can also capture and inform the UCD about incidents that may change with respect to specific and socially contingent realities. For example, the definition of bias incident in the Protocol currently includes gender identity, which is an emerging area of awareness and activism. The definition and Protocol as it likely would have been written 10 years ago would not have been able to capture the experiences of transgender students, faculty, or staff without the addition of this inclusive language.

Hearing about such incidents is, of course, crucial to our ability to meaningfully respond. There are some faculty and staff offices on campus, including my own, where students regularly and informally come to process their experiences related to racism, sexism, homophobia, and the like. We can and should react to those situations as necessary and appropriate –that is why the Protocol reflects those already-established channels. But the targets of these acts, be they a microaggression or an act of violence, also need the ability to simply share what's happened through formal institutional channels so that we can proactively work to make needed changes. These changes are particularly important in the context of retention efforts and our changing campus demographics.

The central concern of Mike's essay reflects his assertion that new "regimes" for investigation and reporting have been created by this Protocol, and that is simply untrue. All that is new is that there is now a channel for the UCD to hear, on an annual basis, about the incidents that have occurred in anonymous, aggregate form, so that we can be better informed in our educational and support work around diversity initiatives on this campus. This Protocol may have made some already-standing linkages *visible*, but that does not thereby create new hearing processes or penalties.

Perhaps visibility is cause for concern. We must, after all, see a tool before we're able to use, or misuse, it. If that's the case, we need that same scrutiny that Mike and others regularly give our institutional documents at all times. After all, the Protocol allows the UCD to learn about the kinds of things that happen, but beyond that only affirms already-standing policies and procedures. We need a faculty ever-cognizant of how these institutional rules and procedures might impact academic freedom, student freedom of speech, etc. Where Mike sees cause for concern, I see motivation to further invest ourselves in our attention to institutional policies. That said, and with an active and attentive AAUP chapter in place, I do not share his fear that this Protocol will alter the impact of these transgressions on any student, faculty, or staff.