



# Prof Notes

## The Newsletter of the Kansas Conference

American Association of University Professors

### FALL MEETING WELCOMES NEW OTTAWA CHAPTER

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President Rob Catlett and Governing Council representative Donna Potts report on the national AAUP meeting

The fall meeting of the AAUP Kansas conference was held on the campus of Ottawa University where the newest AAUP chapter in Kansas was welcomed.

Much of the discussion centered on recommendations for keeping the chapter active and relevant on campus. Donna Potts led a presentation on chapter

building and suggestions were offered by members from chapters around Kansas. Among the items mentioned:

- ◆ It is helpful for a new chapter to host a Kansas Conference meeting to help conjure up interest.
- ◆ It is also useful to get a list-serve so that you can readily communicate with the member and potential members.
- ◆ It is best to get faculty from various departments/colleges around the campus to serve as chapter officers and to serve on the executive committee.
- ◆ It is good to find a way to tell new faculty members about your organization. This might be through new faculty orientation, with letters, special meetings etc.
- ◆ It helps to strengthen your local chapter if some of your officers get involved at state and national level activities.
- ◆ The item above would also, and especially, include Kansas Conference activities Higher Education Day with the state legislature.

#### UPCOMING EVENTS

Check our website:  
<http://www.aaup-in-ks.org/>  
 For details about the spring 2008 conference meeting

#### CONFERENCE OFFICERS

- President: Rob Catlett
- Past-President: Brigitte Roussel
- Secretary-Treasurer: Rich Hughen
- Conference Committee A Chair: Elmer Hoyer
- Newsletter Editor: Joe Yanik



# ACADEMIC FREEDOM IN KANSAS

BY JOE YANIK

A recent editorial in the Kansas City Star noted that “An undercurrent of hostility toward higher education runs through the Missouri General Assembly. It shows up annually in stingy budget appropriations, attempts to limit research, and unfair, knee-jerk criticisms of universities as bastions of liberal elitism.”

While the criticism was directed at the Missouri General Assembly, I am sure that many of us in Kansas would express similar sentiments about our own legislature. Moreover, in conversations with colleagues from around the country, it seems as though a climate of respect for higher education within a state is more the exception than the rule.

**Academic Freedom**

What is the source of this hostility towards the academy? Why is it

that, at a time when access to a good college education is so vital to our national interest, the attitude of the public towards those institutions that provide it is so negative?

One theory is that the image of higher education began to deteriorate in the turbulent sixties and early seventies, when college campuses were often viewed as centers of civil disobedience, radicalism, and drug use. Is it possible that events that took place more than 30 years ago could be the sole source of the current discontent?

While I suspect that those stories of protesting students and burning buildings still influence the perception of college campuses today, I don't think that this negative image could have been kept alive for so long without some help.

In a book with the provocative title of *The Republican War on Science*, Chris Mooney describes something that might provide a further explanation for the unfavorable impression that the general public has about higher education and, more broadly, about intellectualism as whole.

Mooney describes a pattern that has been repeated a number of times over the last half century. It begins with a policy proposal that is a response to a scientific finding. A group with a vested interest in preventing the policy from being enacted responds by attacking the science that inspired the policy. They do this by “manufacturing” uncertainty.

One of the earliest examples of this was the effort of the tobacco industry during the 1960's to respond to the nu-

merous studies that showed the risks of cigarette smoking. Mooney quotes a 1969 Brown and Williamson document: “Doubt is our product, since it is the best means of competing with the ‘body of fact’ that exists in the mind of the general public.”

These tactics of competing with the “body of fact” by manufacturing uncertainty have been repeated and refined over the years. They have been applied to environmental findings, nutritional recommendations, evolutionary theory, stem cell research, and global climate studies. Think tanks are created to generate competing evidence. These think tanks turn the normal process of scientific inquiry on its head. Instead of gathering evidence before arriving at a conclusion, they start with a desired conclusion and seek out evidence to support it. The science that contradicts that conclusion is labeled as “junk science”, while any science that supports it is deemed “sound science”.

Since most of the research that is being attacked originates in the academic arena, all of this has the effect of undermining the image of higher education. Scientists are portrayed as “having an agenda” or of intentionally generating controversy in order to get grants.

Faculty in the natural or physical science disciplines are sometimes less likely to get involved in AAUP, perhaps under the mistaken impression that the preservation of academic freedom is not an issue that is relevant to them. It is true that, for example, the proponents of the so-called Academic Bill of Rights seem to focus much of their attention on the humanities and on the social sciences. (In his testimony here in Kansas David Horowitz leveled most of his attacks on Women's Studies programs.) However, the attacks on science that are described above illustrate that the principle of academic freedom is important to all disciplines and, in fact, to our society.

It was interesting to me that, in Mooney's book there was no mention of academic freedom in general. The offenses that he described were those of interfering with established methods of scientific inquiry. We must continue to make the point that the strength of higher education lies in the conviction that the faculty in every discipline should be allowed the freedom to pursue knowledge without interference from outside interests.



**“... all of this has the effect of undermining the image of higher education..”**

# AAUP KANSAS CONFERENCE COMMITTEE A (KCCA)

BY ELMER HOYER

Since the spring 2007 newsletter was published, the KCCA has been involved with two different faculty situations. One situation came to the KCCA Chair in January of 2007 and involved a complaint by a student against a faculty member. The KCCA Chair went to meet with the faculty member on the issues involved. This situation does not involve sexual harassment but does involve issues of Academic Freedom. This issue was poorly handled by the college dean and the graduate dean and didn't follow the policy for student complaints against a faculty member. This means that the

**"... the instructor of record is the professional who decides what is taught ..."**

faculty member's due process was also violated. This matter went to a grievance hearing in May and the KCCA Chair appeared as a witness for the faculty member and also presented written *Amicus curiae* state-

ment. The following is an excerpt from that statement:

Academic freedom and tenure are two most central tenets of AAUP. In their 1940 statement on academic freedom and tenure, they start with the following statement: "The purpose of this statement is to promote public understanding and support of academic freedom and tenure and agreement upon procedures to ensure them in colleges and universities."<sup>1</sup> It goes on to say, "Teachers are entitled to freedom in the classroom in discussing their subject." In another report, AAUP states: "A central dimension of academic freedom and tenure is the exercise of professional judgment in such matters as the selection of research projects, teaching methods and course curricula, and evaluations of student performance."<sup>2</sup>

The common thread in all these statements is that the instructor of record is the professional that decides what is taught, how it is taught, what is required of the student, how it is graded and the standards for the grades. This is not the purview of the student, the department chair, the dean or other administrator or any other faculty member. This is academic freedom.

AAUP further states:

"There are at least three reasons why the faculty's voice should be authoritative across the entire range of decision making that bears, whether directly or indirectly, on its responsibilities. For each of these reasons it is also essential that faculty members have the academic freedom to express their professional opinions without fear of reprisal.

"In the first place, this allocation of authority is the most efficient means to the accomplishment of the institution's objectives.

"The second reason issues from the centrality of teaching and research within the array of tasks carried out by an academic institution: teaching and research are the very purpose of an academic institution and the reason why the public values and

supports it.

"The third reason is the most important in the present context: allocation of authority to the faculty in the areas of its responsibility is a necessary condition for the protection of academic freedom within the institution."<sup>3</sup>



The fact that the College Dean called the faculty member into a meeting with the Graduate Dean, another faculty member and the graduate student without informing him of the nature of the problem or including his Department Chair was, in my opinion, a violation of the above AAUP statement. This was, apparently, a very confrontational meeting. In addition, the graduate student dictated the criteria that should be used to evaluate her final report. Since the dean took the side of the student in this matter, this is a violation of the faculty member's academic freedom.

There were other issues involved in this case which were brought to the grievance committee but were not academic freedom issues and therefore are not reported here. The grievance committee reported unanimously that the faculty member's academic freedom was violated by the College Dean and that due process was violated. This unanimous decision was overturned by the university Provost. This was appealed to the President but the Provost's decision was sustained.

Another situation came to the KCCA Chair just prior to the fall Conference meeting. Several emails have been exchanged with the local Chapter President and the faculty member. A meeting was held with the faculty member at the Conference meeting and a second meeting at the faculty member's institution. This situation is probably going to a grievance.

The assistance provided by the KCCA comes in various ways and extent. Sometimes it is just a matter of listening to the real or perceived problem and offering encouragement or simply directing the individual to the internal process that can assist them in finding a solution. Other times it may mean that I meet with the faculty member to better assess the situation or that I go with the faculty member as a colleague when meeting with a committee or an administrator. It sometimes means that I appear at a hearing as an AAUP Observer or to give an *Amicus curiae* statement. This assistance always works best if the KCCA is made aware of the problem as soon as possible after the faculty member becomes aware that the problem exists.

<sup>1</sup>"1940 Statement of Principles on Academic Freedom and Tenure with 1970 Interpretive Comments," AAUP Policy Documents & Reports, Ninth Edition, 2001, page 3.

<sup>2</sup>"Post Tenure Review: An AAUP Response," AAUP Policy Documents & Reports, Ninth Edition, 2001, page 53.

<sup>3</sup>"On the Relationship of Faculty Governance to Academic Freedom," AAUP Policy Documents & Reports, Ninth Edition, 2001, pages 225-226.

## SPRING CONFERENCE MEETING FOCUSES ON MEDICAL SCHOOL ISSUES



George Holmes, Patricia Brodsky, Dolores Furtado, and Jon Scheinman discuss medical school issues

The Spring meeting of the Kansas Conference was held on the campus of the University of Kansas Medical School.

The meeting featured a panel discussion on the issues of academic freedom that are faced at medical schools. Panelists were George Holmes, from Howard University, Jon Scheinman from the KU Medical Center, Patricia Brodsky from UMKC, and Dolores Furtado, KUMC-Emerita.

They discussed the particular difficulties faced by medical schools, because of their dual role as an academic institution and as a corporate enterprise.

They warned of the trend toward a dwindling number of tenure track positions on medical campuses.

## CHAPTER REPORTS: OTTAWA FALL MEETING

BY ANDY HAZUCHA

The Ottawa University chapter of AAUP met over lunch on Monday, November 19 in an open meeting to discuss business and to confirm intent for new memberships. We are currently 7 members strong with 3 or 4 more intending to enroll soon. We hope to have at least a 10-member chapter by the first of the new year and the beginning of spring semester. At the meeting Shannon Dyer, Andy Hazucha, and Karen Ohnesorge summarized some of the discussion that took place at the fall business meeting and explained the advantages of our association with other Kansas chapters.

We also elected a secretary and treasurer for our new chapter, so all of our officers are now confirmed. They are the following:

President: Shannon Dyer

Vice-President: Andy Hazucha

Secretary: Jeanne Haggard (will be applying for membership soon)

Treasurer: Karen Ohnesorge

OU's chapter nominated and confirmed two representatives that the Kansas Conference has voted to send to the national AAUP summer institute. The Ottawa Chapter

named Shannon Dyer and Andy Hazucha as the representatives, with Karen Ohnesorge as the alternate if one of the two selected representatives cannot attend.

Finally, the OU chapter members brainstormed agenda items and priorities for the chapter. Each member was asked to rank these items for priority (1-5) and urgency (1-5) so that we can have an idea for an initial agenda for our final fall meeting after Thanksgiving break. The items for immediate consideration are the following (they represent an on-going collection of goals and concerns):

1. commitment to integrity regarding adjunct policies
2. faculty loads should be at recommended, standardized levels
3. case of summarily dismissed faculty member at our Jeffersonville, IN campus
4. Substandard salary levels at Ottawa
5. Presidential search/faculty representation in process
6. Chain of command/process of complaints/anonymity
7. Academic hiring standards, policies, authority to hire faculty
8. Case of student access to records/assigning scholarships
9. High demand of athletic time affecting academics
10. Shared governance/effective communication with Board

## CHAPTER REPORTS: FHSU UPDATE

BY RICH HUGHEN

Things have been going fairly well for our chapter. Last May we negotiated another three-year contract with the university administration, and it was a good agreement. We strengthened the provisions for procedural due-process, improved the promotion and tenure requirements regarding faculty tenure and promotion files, and a number of other minor improvements.

The only problem that we continue to have is that our Administration seems to have no respect for the intellectual property rights of faculty regarding the production of on-line courses. This issue is presently before the Public Employee Relations Board (PERB) as a result of a complaint filed by PSU in 1998. The issue has gone up to the Kansas Supreme Court and back down - meanwhile our Administration acts as if they already know the outcome. This battle, for us, is not over yet.

## NEW DUES OFFER FOR NEW AAUP MEMBERS

BY CARY NELSON

(From Donn Potts) If you'd like to start a new AAUP chapter or increase the membership of an existing one, please consider launching a membership drive on February 19th, when the national AAUP will launch the membership drive described by AAUP president Cary Nelson in the article below. Membership benefits are perhaps greater than ever before, as threats to academic freedom rise and the ratio of professors to non-tenure track faculty continues to fall. If you need any help convincing faculty members to join, AAUP general secretary Ernest Benjamin offers these words: "When the New York Times needed dependable information for a front-page article on the status of contingent faculty, whom did it ask? When the American Civil Liberties Union sought a partner in its suit on behalf of excluded South African scholar Adam Habib, where did it turn? When faculty members at Tulane University and other institutions affected by Hurricane Katrina found their positions and livelihoods in jeopardy, who was there to help? We all know the answer—the AAUP. Day in, day out for the past ninety-three years, your Association has been the guardian of academic freedom, shared governance, and academic due process. It has published policy statements and research in critical areas like freedom in the classroom and gender equity. It has made the excessive dependence on contingent faculty a matter of public debate. In short, it has been and continues to be the voice and the conscience of the professoriate."

Over the years the AAUP staff has regularly designed special introductory dues offers for new advocacy (non-CB) members. We would like to do so again in February 2008. This time we will set it up as an experiment to see if we can learn something solid about a question many of you have posed: can we attract more traditional members if we lower dues? We now have the best target audience for new member recruitment we have ever had--the 60,000 NON-members who are regularly opening our general interest emails. And email gives us an inexpensive way to approach them. Though staff members ordinarily design introductory dues offers on their own, this time we wanted wider input. Thus I have discussed this plan extensively with staff, the Membership Committee, the ASC and CBC Executive Committees, the Executive Committee of Council, and with the National Council itself. The plan embodies their suggestions. Here are the steps:

1. We have already divided our email list by institution.
2. We will send offers (with a letter from me) to non-members BOTH at schools where we have a chapter and where we do not have a chapter.
3. Nonmembers at 2/3rds of the schools will receive an introductory reduced dues offer, while nonmembers at 1/3 of the schools will receive a full dues offer. All nonmembers at any given institution will receive the same offer. All nonmembers at existing advocacy chapters will receive the reduced dues offer. If chapter leaders confirm their interest in participating in this program by December 20, we will make certain we have collected nonmember email addresses at your

institution. Please contact Katherine Isaac at [kisaac@aaup.org](mailto:kisaac@aaup.org) or by phone at 202-737-5900 x128.

4. The introductory reduced dues offer will work this way: we will offer introductory \$60 annual dues to nonmembers earning \$60,000 or less; we will offer introductory \$120 annual dues to people earning more than \$60,000. This salary-based offer embodies the same principle that is behind our special dues rates for part-time faculty and grad students.

5. People offered the reduced introductory dues rate will be directed to a special place on the national web site. There they will click on whatever salary status applies to them, and they will then be directed to a join mechanism. They will have multiple options to pay, including monthly bank debit or credit card payment. They will be asked "Is academic freedom worth \$ 5 (or \$10) a month?"

6. We very much want to coordinate this effort with our local chapters. In addition to my letter, the national office would like at the same time to send out an email recruitment letter written by your local chapter. Please let us know by December 20 if you want us to send out a recruitment letter for you. Please email us the recruitment letter by January 15, 2008.

7. We will pay mandatory state conference dues out of the money we receive, though we expect to discuss special arrangements with key conference leaders.

Does this experiment have any implications for the future? We will not know until we have the results. Perhaps the results will be decisive. Perhaps we will have to do one or two more experiments before we know for certain whether lower dues would bring in more members and more revenue. In any case, we'll share the results with all of you and then talk about what to do next. Any permanent change in national dues would have to be approved at an annual meeting.

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We're on the web!

<http://www.aaup-in-ks.org/>

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## FACULTY INTELLECTUAL PROPERTY

BY RICH HUGHEN

In an opinion recognizing the importance of faculty members' ownership of their own intellectual property, the Kansas Supreme Court ruled in November, 2005 that intellectual property is not simply assumed to be work-for-hire belonging to the university. Faculty intellectual property can be a subject of collective bargaining.

The case, PSU-KNEA faculty v. PSU & KBOR (1998), involved a challenge to the KBOR policy giving ownership of faculty members' intellectual property to their universities.

The AAUP filed an amicus brief in the case that addressed the issue of faculty scholarship as work-for-hire. The brief argued that the work-for-hire doctrine does not include faculty intellectual property and noted that federal appellate court decisions, traditional academic practices, and notions of academic freedom all point to faculty members' retaining ownership of their scholarly work as original authors. The Kansas Supreme Court recognized this concern, citing the AAUP's arguments and noting that to assume universities' blanket ownership of faculty intellectual property was "too big a leap." Rather, the court concluded, the question of ownership of faculty work is a complex one, depending on a careful analysis of the employment relationship and the reason for and method of creation of the work itself. The court cited the AAUP's Statement on Copyright, and recognized that faculty intellectual property ownership cannot be treated simply as the work of an employee belonging to an employer, but rather "will necessarily involve not just a case-by-case evaluation, but potentially a task-by-task evaluation." The Kansas Supreme Court concluded that neither state nor federal law preempts the subject of ownership of intellectual property from being included within the scope of a memorandum of understanding. In order to fully resolve the issue, two additional issues, must be decided: (1) whether the subject of ownership of intellectual property rights is a condition of employment and, therefore, mandatorily negotiable under PEERA and (2) whether the subject of ownership of intellectual property falls within the management prerogative exception of K.S.A. 75-4330(a)(3) and, therefore, is not mandatorily negotiable under PEERA. Since the PERB did not resolve these issues earlier, resting its decision solely upon the conclusion that the subject of the ownership of intellectual property was preempted from negotiation by state and federal law. The Kansas Supreme Court remanded the case back to PERB for findings regarding the above two issues. This is where the case stands – November 2007.

