Academic Freedom and Tenure: Louisiana State University, Baton Rouge

A Supplementary Report on a Censured Administration[1]

(SEPTEMBER 2015)

This supplementary report concerns actions taken by the administration of Louisiana State University to dismiss for cause a specialist in early childhood education with a consistently positive eighteen-year performance record during the period in which she was a candidate for promotion to full professor.

Committee A on Academic Freedom and Tenure informed the Association's 2014 annual meeting that only one significant policy matter (affording the protections of academic due process to senior full-time faculty members serving outside the tenure system) remained unresolved with respect to the censure it had imposed two years earlier and that prospects for a prompt resolution seemed good. The annual meeting accordingly delegated to the committee authority to remove the censure if LSU adopted the desired new policy by the time of the committee's next meeting in the fall. By October, however, it had become apparent that the LSU administration was not going to act on the matter. In a February 2015 letter, Dr. F. King Alexander, who holds the dual positions of president of the LSU system and chancellor of the system's flagship university in Baton Rouge, thanked the Association for "its time and interest in working with LSU" but stated that "at this time, LSU does not plan to pursue any further action regarding removal of censure." In response, the AAUP's staff wrote, "Please . . . do get back to us once you see fit to resume discussion." Communication promptly resumed—not about the censure directly, however, but rather about the case of Dr. Teresa K. Buchanan described in this report.

Professor Buchanan earned bachelor's and master's degrees at LSU and, in 1993, a doctorate at Purdue University. Her faculty experience began at LSU, where she worked as a teaching assistant for two years, and Purdue, where she was a research assistant for three. Four years at the University of Central Arkansas followed, the first three as an instructor and the fourth as an assistant professor. She returned to LSU as an assistant professor in 1995 and was promoted to the rank of associate professor with tenure in 2001.

As a member of the College of Human Sciences and Education in the School of Education, Professor Buchanan focused her scholarship on what she calls developmentally appropriate practice in early childhood education. For her teaching she was assigned the task of creating a new teacher education program (the

1. The text of this report was written in the first instance by the AAUP's staff on the basis of available documentation. In accordance with Association practice, the text was submitted to Committee A on Academic Freedom and Tenure. With the approval of Committee A, it was then sent to the professor whose case is reported, to the Louisiana State University administration, to the officers of the Association's local chapter and of the faculty senate, and to other persons concerned in the report. In the light of the responses received, this final report has been prepared for publication.

LSU PK-3) encompassing prekindergarten through grade three. She was highly productive, both as a scholar and as a teacher. While still an assistant professor, she published eleven refereed articles, two of them in top-tier journals, and her years as an associate professor witnessed thirteen additional peer-reviewed articles, six in leading journals. During the seven years that she spearheaded the Early Childhood Program, as it was called at the time, several graduates of the program received various honors, such as "teacher of the year," from their schools during their first year of teaching. Professor Buchanan's evaluations agreed that, in addition to her outstanding performance in scholarship and teaching, her record of participation in university service was excellent.

The candidacy of Associate Professor Buchanan for a full professorship, which would have been effective with the start of academic year 2015–16, began with her formulating a "statement for promotion" in spring 2013. The director of the School of Education, Dr. Earl H. Cheek, solicited outside reviews during the summer, and all responses were favorable. The members of the school's Promotion and Tenure Committee eligible to vote on her candidacy were its seven full professors. Following an October 7 meeting, chair Petra Munro Hendry reported a favorable committee vote. On November 1 the eligible members of the Dean's Advisory Committee in the College of Human Sciences and Education met to review her case and submitted a favorable vote. The dean, Dr. Damon P. S. Andrew, met with his committee on November 26 and followed with his own recommendation in support of the Buchanan promotion, embellishing comments in the recommendations from others with praise for the $1.2 million in research funding Professor Buchanan had acquired and the teaching awards she had received. Dean Andrew wrote that "after thoroughly reviewing her application materials," he concurred with the recommendations already received. On December 9 the graduate school dean signed a final favorable recommendation, based on positive evaluations from the four eligible members of the Graduate Council, adding the comment "very good scholar, strong funding."

On December 20, 2013, Professor Buchanan's situation at LSU underwent drastic change when she received an e-mail message from Dean Andrew titled "Unacceptable Performance." This message from the same dean who had only a month earlier praised her performance began as follows: "There have been multiple serious concerns brought to my attention regarding your performance both in the classroom and in the field." The concerns, he wrote, "center around inappropriate statements you made to students, teachers, and education administrators." As she knew, he added, most recently a school superintendent had banned her from the locations in his district. (This was the only concrete accusation in the e-mail. Professor Buchanan was known for having occasionally used profanity in her speech, but any complaints were apparently not deemed serious enough to have become part of her performance record.) As a result of these concerns, the dean stated, he was removing her from teaching during the spring 2014 semester while the Office of Human Resource Management (HRM) investigated whether she had violated any LSU policies, including policies on sexual harassment. During the investigation, the time she normally would have applied toward teaching was to be applied toward research. Regarding her application for promotion, the dean informed her that he was sending this new information to the provost for consideration in his review, but that if she wished to withdraw her candidacy, she could do so. Dean Andrew concluded by telling Professor Buchanan that her behavior as now revealed would be reflected in her annual review and considered unsatisfactory.

No one from the HRM office was to meet with Professor Buchanan until January 15, in a meeting that she and the AAUP chapter officer who accompanied her characterized as a hostile interrogation. No one from within her college spoke with her about her situation until June 12; she assumes that the administrators there had been instructed not to do so. On February 13 she received a memorandum stating that Provost Stuart Bell was not recommending her for promotion. Early in March she learned from Vice Provost Jane Cassidy that the university-level faculty committee had recommended her for promotion but that the provost did not concur because of the allegations under investigation.

On May 26 Professor Buchanan received a memorandum from the HRM director, Mr. Gaston Reinoso, stating that the investigation had found her guilty of sexual harassment and of violating the federal Americans with Disabilities Act (ADA), the first she had heard of the latter charge, with no details provided. The existence, finally, of charges led to a meeting on June 12 with Dean Andrew and the assistant dean of finance and administration, who took notes. During this meeting the dean invited Professor Buchanan to provide her side of the story.

On June 20 the dean notified Professor Buchanan that he was "considering" pursuing her dismissal through LSU dismissal procedures because she had admitted to having used profanity, which he was unable to condone, especially when teachers of young children were involved. He gave her "an opportunity to respond in writing," with a response due by July 3. Two weeks later her case appears to have been moved to the office of Provost Bell, who notified her on August 5 that a hearing committee was being selected and on August 12 that her "faculty responsibilities [would] remain the same as spring 2014 semester."

On October 13 Professor Buchanan, accompanied by the attorney she had by then retained, Mr. Floyd Falcon of the Avant & Falcon firm in Baton Rouge, attended a prehearing meeting. Other participants were a professor who had been designated chair of the hearing panel, a professor who would be presenting the administration's case, the LSU attorney, and an HRM representative. Professor Buchanan and Mr. Falcon submitted a list of objections to the procedures thus far followed by the administration and requested documents that described specific charges against her.

Unaccountably, nearly four months went by before a second prehearing meeting was held, on February 2, 2015. Participating this time was the person who in fact was to chair the faculty hearing committee when it actually convened, Professor William B. Stickle from the Department of Biological Sciences. (In accordance with LSU's stated procedures, Dr. Alexander appointed the hearing committee from a list of possibilities submitted by the officers of the faculty senate and of LSU's AAUP chapter.)

On March 9 the formal proceeding took place, consuming twelve hours, from 8:30 a.m. to 8:30 p.m. The five-member hearing committee stated at the outset of its subsequent report that its findings were based on written correspondence collected in connection with the HRM investigation, documents in the LSU administration's record of the case, and testimony given during the March 9 hearing. The committee found unanimously that Professor Buchanan's "removal with cause" should *not* be contemplated.

The hearing committee did convey its opinion that Professor Buchanan had violated two LSU policy statements, "Sexual Harassment" and "Sexual Harassment of Students," by "her use of profanity, poorly worded jokes, and sometimes sexually explicit 'jokes' in her teaching methodologies." The committee, however, found no evidence that this behavior, which was in the category of "creating a hostile working environment," was "systematically directed at any particular individual," only evidence that "some individuals observing the behaviors were disturbed."

Regarding the charge of Professor Buchanan's having violated the ADA, the hearing committee's report simply stated that it was "not substantiated by testimony." As to the conclusions reached by the HRM investigation, the faculty hearing committee recommended that a written reprimand and Professor Buchanan's statement that she would modify her teaching methodology to eliminate potentially offensive material be deemed sufficient. Because of "the nature of the violations" and "the failure of the university to follow its own guidelines for response to behaviors of this nature," the hearing committee recommended no additional sanctions. Its report ended with a statement that the "stress already inflicted on Dr. Buchanan" through the "hearing process itself is seen as an adequate punishment given the nature and apparent infrequency of the noted behaviors."

On March 23 Dr. Alexander sent Professor Buchanan a copy of the faculty hearing committee's report, and on April 2 she received an e-mail message from Mr. Jason Droddy, the director of external affairs, with an attached letter of that date from Dr. Alexander to her, copies of which also went to Provost Bell and to LSU's general counsel, Thomas Skinner. The letter notified her of Dr. Alexander's recommendation to the LSU board of supervisors that she be dismissed for cause. He stated that he based his decision on the conclusions by the HRM investigation that she had violated LSU's sexual harassment policies, in which the faculty committee concurred, and the additional conclusion of the HRM that she had violated the ADA. In his letter Dr. Alexander did not mention that the faculty hearing committee had unanimously recommended against dismissal for cause and had found no substantiation for the charge of violating the ADA. He advised Professor Buchanan that he would consider a written appeal delivered to his office by April 15 before he transmitted his recommendation to the governing board. She submitted an appeal, written by attorney Falcon, on April 12, and on May 6, by way of Mr. Droddy, she received a memorandum from Dr. Alexander stating that he had considered her attorney's appeal but was nevertheless going to forward his recommendation for dismissal to the board. On May 29 she submitted an appeal for the board to consider at its next meeting on June 19, and on June 12 she wrote to request national AAUP assistance, providing documentation.

The board of supervisors on June 19 discussed its business during a morning executive session and acted on personnel matters at a public afternoon session, following public presentations, limited to a maximum of three minutes each, by others who wished to speak. Professor Buchanan reports that the administration had offered her a deal under which she could retire and have "dismissal for cause" removed from her LSU records but that she promptly rejected it because it would have provided her with few benefits (aside from some sick leave) to which she was not already entitled and would have required her to agree not to litigate or to pursue any other claims.

The Buchanan dismissal quickly received considerable national media coverage, most of it quite favorable to her. For some time LSU's office of media relations refrained from substantive comment, citing alternately the privacy of personnel matters and the pendency of litigation. The AAUP staff weighed in officially on June 30 with a letter introducing Dr. Alexander, plus assorted administration and faculty officers who received copies, to key Association concerns posed by Professor Buchanan's case.

The staff's June 30 letter reminded Dr. Alexander and the others that Professor Buchanan had an eighteen-year record of positive academic performance at LSU with no mention of any misconduct and that she was sailing through an evaluation for promotion to a full professorship when vaguely worded complaints from a district school superintendent and a student teacher brought about her immediate suspension from teaching that ended a year and a half later with her dismissal for cause. The letter pointed out that the administration, rather than involve the faculty in the case from the outset, allowed it to remain for several months under investigation by the HRM office, commencing faculty dismissal proceedings only after the HRM investigation had concluded that Professor Buchanan was guilty of having violated the university's policies on sexual harassment and the ADA.

The AAUP staff ended its comments on the substance of the case by stating that it would resist making further remarks "on how distant the LSU administration has placed itself from the mainstream of our secular research universities by dismissing a professor for misconduct simply for having used language that is not only run-of-the-mill these days for much of the academic community but is also protected conduct under principles of academic freedom."

If Dr. Alexander should be amenable to modifying his position, the staff wrote, it would appreciate a response by July 6. Nothing came back directly from Dr. Alexander, but on July 1 the director of LSU's office of media relations, Mr. Ernest G. Ballard, issued a statement regarding Professor Buchanan. The statement asserted that the news reports had "not been entirely factual" and that her dismissal was not "due to isolated incidents." It referred to "documented evidence of a history of inappropriate behavior that included verbal abuse, intimidation, and harassment of our students." A member of the AAUP staff, asked by a reporter from a leading Louisiana newspaper to comment on the foregoing, replied that the staff had examined the stenographic transcript of the faculty hearing and the accompanying documents and had found nothing in the materials that differed from the findings in the hearing body's unanimous report that, while Professor Buchanan used "profanity, poorly worded jokes, and occasionally sexually explicit jokes in her teaching methodologies," no evidence indicated that she had directed this behavior "against any particular individual, only that some individuals who observed the behavior were disturbed by it."

On July 9, with Mr. Ballard's July 1 public statement having made Dr. Alexander's lack of interest in modifying his position on the Buchanan dismissal clear, AAUP executive director Julie Schmid reviewed the issues in the case with the Association's senior program officers and authorized this supplementary report on a censured administration. AAUP associate general secretary Jordan Kurland, who has served as chief staff officer for the steady stream of major troubling issues for Louisiana higher education since the onset of Hurricane Katrina in 2005, notified Dr. Alexander by letter on the same date of the report's authorization, sending copies to various administrative and faculty officers. The letter explained that a draft of the report would go to the AAUP's Committee A for approval of its release as a confidential draft to the principal parties in the case for corrections and comments, with initial publication of the final text to follow through its posting on the AAUP's website.

The staff's July 9 letter also informed Dr. Alexander and its other recipients that the governing board of the AAUP Foundation's Academic Freedom Fund had approved a grant for assistance in litigation initiated by Teresa Buchanan in the judicial determination of professional issues central to AAUP concerns.

Had an investigation been authorized, rather than a supplement to an existing investigation-based report, an investigating committee during its site

visit would have posed questions about three issues. Committee A had hoped that in its response to its draft the LSU administration would have addressed these issues. As will be seen in the report's final footnote, however, the administration has taken the position that imminent litigation by Professor Buchanan prevented it from responding adequately to the report's concerns. This report will close with selective comments on the three issues.

The first relates to the administration's immediate action in December 2013, upon learning that a school superintendent and a student teacher were accusing Professor Buchanan of making "inappropriate statements," to suspend her from any further teaching while the complaints were investigated. Policy recommended by the AAUP and the Association of American Colleges and Universities since 1958, as included in LSU's official dismissal procedures (PS-104, "Dismissal for Cause for Faculty"), reads as follows: "If the Executive Vice Chancellor and Provost determines that the faculty member poses a threat to himself/herself or others, a suspension with pay may be necessary." The official Buchanan record at LSU for eighteen years was devoid of any mention of misconduct, and her application for promotion to full professor was on its way to the provost's desk after it had gained approval along the line. Few would assume, nor would Professor Buchanan expect anyone to assume, that everything she had said previous to the accusations was prim and proper, but what could possibly be adduced from the allegations that suddenly made her a threat? PS-104 also states that the "provost may wish to schedule a personal conference with the faculty member to discuss the charges." Did Provost Bell decide not to become involved at the time? Did it not occur to him? Professor Buchanan was informed in February that the provost had rejected her candidacy for promotion, reportedly on the basis of allegations and accusations being investigated by HRM. If so, why did he not also wait for the outcome of the dismissal proceeding? If, as it seems, the administration's handling of the December accusations was left to Professor Buchanan's dean, why did Dean Andrew not arrange for a preliminary conference rather than simply announce a series of drastic actions?

The second issue, not entirely distinct from the first, relates to having charges against Professor Buchanan and her potential dismissal investigated by HRM personnel instead of proceeding from the outset in accordance with LSU's applicable PS-104 document. A year ago, when Committee A was discussing the possibility of achieving censure removal and its staff was reviewing various recommended improvements in LSU policies, the university's vice provost, Dr. Gilmour Reeve, took pains to point out that "Dismissal for Cause for Faculty," as by then revised, provided stronger procedural safeguards than those found in the AAUP's own recommended standards. Yet in this current case, to our knowledge the only such case at LSU over the past year, the administration elected to await the conclusion of the lengthy HRM investigation, which joined in the recommendation for dismissal, before turning to LSU's PS-104 procedure, which calls for the administration to demonstrate adequate cause in a hearing of record before a body of faculty peers. The result was a unanimous faculty recommendation, from a committee acceptable to Dr. Alexander, that a severe sanction not be imposed. In an April 2 letter announcing that he was recommending dismissal, Dr. Alexander omitted mention of the fact that the faculty hearing body had recommended to the contrary. In the draft version of this report, Dr. Alexander was invited by the AAUP's staff to comment on how this omission might be treated in the report's published final version, but, as noted above, he declined to do so.

The last of the three issues relates to LSU's level of tolerance for speech or conduct by some members of the faculty or staff that other people, on or off campus, find offensive. This issue is a frequent topic in the widespread discussion that the case has generated. A common assumption seems to be that very few people these days, in backwaters as well as in the mainstream, are seriously offended by profanities, sexual references, and the like. Given the absence of multitudes who claim to have been offended, the argument goes, the LSU administration's tolerance for alleged offenders is astonishingly low for a public university. Indeed, whatever the provisions of LSU's sexual harassment policy, as a legal matter isolated off-color comments not directed at anybody in particular do not constitute a hostile work environment or any other violation of sex-discrimination law. The LSU administration did not respond to the staff's request, in the circulated draft of this report, for comment on the numbers of those claiming to have been offended and on the concern regarding tolerance.

This supplementary report on a censured administration is the seventh such report that the AAUP has issued. In three of the six previous cases, the censure was eventually removed. Committee A hopes

that this current case can soon be resolved and that not long afterward LSU will join the ranks of those institutions that have departed from the Association's censure list.[2] ■

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Committee A on Academic Freedom and Tenure has by vote authorized publication of this report on the AAUP website and in the *Bulletin of the American Association of University Professors*.

Chair: **HENRY REICHMAN** (History), California State University, East Bay

Members: **MICHAEL BÉRUBÉ** (English), Pennsylvania State University; **DON M. ERON** (Writing and Rhetoric), University of Colorado; **JEFFREY A. HALPERN** (Sociology), Rider University; **MARJORIE HEINS** (Law), New York, NY; **MICHAEL E. MANN** (Meteorology), Pennsylvania State University; **WALTER BENN MICHAELS** (English), University of Illinois at Chicago; **DEBRA NAILS** (Philosophy), Michigan State University; **JOAN WALLACH SCOTT** (History), Institute for Advanced Study; **HANS-JOERG TIEDE** (Computer Science), Illinois Wesleyan University; **DONNA YOUNG** (Law), Albany Law School; **RUDY H. FICHTENBAUM** (Economics), Wright State University, *ex officio*; **RISA L. LIEBERWITZ** (Law), Cornell University, *ex officio*; **JOAN E. BERTIN** (Public Health), Columbia University, consultant; **BARBARA M. JONES** (Legal History), American Library Association, *consultant*; **JAMES TURK** (Sociology), Ryerson University, *consultant*; **IRENE T. MULVEY** (Mathematics), Fairfield University, *liaison from the Assembly of State Conferences*

2. General counsel Thomas V. Skinner submitted a brief response to the Association's invitation to LSU administrative officers for corrections and comments on this report. His letter asserted that "the report is inaccurate in many of its statements and allegations, as well as its conclusions" but that the administration was not able to respond at this time because of "imminent litigation" being initiated by Professor Buchanan. The letter urged that the AAUP "withhold the publication of any report until it has the opportunity to learn more about this specific situation through the course of the legal process." "A rush to judgment," the general counsel's letter concluded, "will benefit no one."