
Academic Freedom and Tenure: University of Missouri (Columbia)¹

(MAY 2016)

This report concerns the action taken on February 25, 2016, by the Board of Curators of the University of Missouri to dismiss Dr. Melissa A. Click, an assistant professor of communication, from the faculty of the University of Missouri on charges of misconduct without having afforded her the faculty hearing called for under both the university's regulations and the recommended standards of the American Association of University Professors. This action followed more than three months of controversy surrounding Professor Click's confrontations with two University of Missouri students on November 9, 2015. On that date Professor Click attempted to exclude both students from a public space on campus, a portion of the Carnahan Quadrangle, where African American student protesters and supporters had established a tent camp. The two young men were trying to photograph and film the tent camp over the objections of the protesters. Professor Click confronted both students in an attempt to make them leave the area and jostled one student's camera during the course of the confrontation. These encounters were captured on video by one of them, posted to YouTube, and attracted significant attention on social media and in the press. Concerns were later raised about a previous verbal confrontation on October 10, 2015, between Professor Click and city police

officers at a homecoming parade, captured in a police video made public in mid-February 2016.

The purpose of this report is not to defend Professor Click's November 9 actions, for which she has apologized publicly and repeatedly, nor to assert that those actions should have been protected under principles of academic freedom. As discussed below, opinions vary greatly about whether Professor Click's alleged misconduct warranted dismissal and even about whether her actions constituted misconduct at all. This report is primarily concerned with two issues: whether Professor Click was afforded the protections of academic due process called for under AAUP-recommended standards and whether the action taken against her was the result of overreach by the university's governing board and of inappropriate political interference, by members of the Missouri legislature, into the university's disciplinary process and into the university's affairs more generally.

I. The Institution

The University of Missouri, the first public university to be established west of the Mississippi River, was founded in Columbia in 1839. Commonly referred to as "Mizzou" or MU, it is the flagship institution of the University of Missouri system, which also has campuses in Kansas City, Rolla, and Saint Louis. Approximately 35,000 of the 78,000 students in the UM system are enrolled at the Columbia campus. MU has about 2,300 full-time and 900 part-time faculty members organized into seven colleges and eleven schools, as well as an honors college, graduate school, and extension division. It has been regionally accredited since 1913, currently by the Higher Learning Commission. Its athletics teams participate in Division I of the National Collegiate Athletic Association. The institution first began to admit African American students in 1950, and, in 2014, 8.2 percent of the institution's student body was African American.

1. The text of this report was written in the first instance by the members of the investigating committee. In accordance with Association practice, the text was then edited by the staff and, as revised with the concurrence of the committee, submitted to Committee A on Academic Freedom and Tenure. With the committee's approval, the report was then sent to the subject faculty member; the university administration; the University of Missouri system board of curators; and the leadership of the Faculty Council on University Policy, the local AAUP chapter, and the AAUP state conference. This final report has been prepared for publication in light of the responses received and with the editorial assistance of the staff.

MU is governed by the University of Missouri system board of curators, which consists of nine members appointed by the governor with the advice and consent of the state senate. The board is chaired by Ms. Pamela Q. Henrickson, an attorney from Jefferson City. Three seats on the board are currently vacant, with resignations of two African American members of the board occurring during the events recounted in this report. In February, the Republican state senate president pro tem, Senator Ron Richard, declared that the senate would not confirm any nominations to the board submitted by the Democratic governor for the duration of his term.

The system's chief executive officer is Interim President Michael A. Middleton, who had retired as deputy chancellor in 2015, and the university's chief executive officer is Interim Chancellor Henry C. Foley, previously senior vice chancellor for research and graduate studies at MU and simultaneously executive vice president for academic affairs, research, and economic development for the system. Both interim executives were appointed in November 2015 after President Timothy Wolfe and Chancellor R. Bowen Loftin resigned in the wake of protests that played a central role in the case under investigation.

The primary campus-level faculty governance body is the Faculty Council on University Policy. Its chair is Professor Ben Trachtenberg of the law school, and its vice chair is Professor Nicole Monnier of the Department of German and Russian Studies. The president of the local AAUP chapter, originally organized in 1917, is Professor Galen J. Suppes of the Department of Chemical Engineering; its vice president is Professor John M. Budd of the College of Education.

Since 1922, the AAUP has published four investigative case reports on issues of academic freedom and tenure at the University of Missouri and has censured the institution twice, in 1946 and 1973.² Of particular relevance for this report is the most recent investigation and censure, the facts of which are strikingly similar to the present case. The institution was placed on the Association's list of censured administrations in 1973 by vote of the Fifty-Ninth Annual Meeting because "the University's administration and Board of

Curators had overreacted massively and ominously" in taking disciplinary actions, without adequate safeguards of academic due process, against a number of faculty members following campus demonstrations that had occurred in 1970. The investigating committee at the time concluded that the "penalties which were imposed, and the manner in which they were imposed, cast a pall on the freedom with which faculty members at the university conduct themselves in and out of the classroom."

The faculty council at the time attempted, to no avail, to prevent improper interference by the curators, asserting that the board "concerns itself far too much with operation and administration" and that it should "reconsider its philosophy and methods of operation." Political pressure from state legislators appears to have influenced the curators to act summarily and to deny basic academic due-process rights to the affected faculty members. When Committee A considered the removal of censure in 1980, it reported on "[i]ntensive efforts . . . to achieve adoption of a comprehensive new set of regulations." The fruit of these efforts was a new set of institutional regulations that "conform[ed] with the standards recommended by the Association in almost all significant respects." With the board's final adoption of these regulations, censure was removed that year, and the regulations and policies adopted at that time remain operative. As a result, the university's regulations on dismissal for cause are closely aligned with AAUP-supported standards.

II. The Dismissal of Professor Click

Professor Click accepted her first appointment at MU as a visiting instructor in 2003 and was appointed to a tenure-track position in 2008. In 2009 she completed her PhD in communication at the University of Massachusetts Amherst. Her research concerns gender, sexuality, and the reception of popular culture.

Professor Click has not denied that she engaged in the conduct that became the basis for the charges that led to her dismissal. Indeed, her conduct is amply documented on video. The key facts relating to the misconduct charge are thus not in dispute. Nonetheless, those facts are best understood in the context of a chain of events at the university dating at least from the appointment of Mr. Timothy Wolfe as president of the University of Missouri system on December 13, 2011. Before taking office the following February, Mr. Wolfe had had no experience in higher education, having worked in various positions in corporate management. In January 2014, President Wolfe named Dr. R. Bowen

2. The other two investigations, published in 1922 and 1930, occurred before the Association adopted the practice of censuring administrations for violating principles of academic freedom and tenure, although the "Sex Questionnaire" case of 1930 was directly responsible for the proposal to adopt that practice.

Loftin, formerly president of Texas A&M University, chancellor of the Columbia campus.

As a subsequent account by an MU management professor and member of the faculty council states, “three autocratic decisions foreshadowed the more serious disruptions” of fall 2015.³ First, in May 2012 President Wolfe unilaterally decided to close the University of Missouri Press. While that decision was ultimately reversed in the face of faculty protest, a faculty committee concluded that the decision had not been made “in an appropriate manner.” Second, in June 2015 Chancellor Loftin decided to eliminate full tuition waivers for quarter-time graduate assistants having teaching or research responsibilities. Although the chancellor had promised a “faculty-driven” examination of graduate student funding, he made the decision without any faculty involvement. Third, on August 14, 2015, the MU administration announced that the graduate student health subsidy would expire within twenty-four hours, leaving large numbers of students without insurance. Within a week the administration reversed its decision, but not before graduate students marched, threatened a walkout, and gained wide support among faculty members and staff.

Hence, even before African American students organized to protest racism at MU, the atmosphere had grown uneasy. Faculty members and midlevel administrators saw evidence of mounting conflict between President Wolfe and Chancellor Loftin, while dissatisfaction with both executives was building within their own ranks.

Meanwhile, thousands of people had taken to the streets in Ferguson, Missouri, a Saint Louis suburb just hours from Columbia, following the August 2014 police shooting of Michael Brown, an unarmed African American eighteen-year-old. A number of MU’s African American students hail from Ferguson, and dozens of Missouri students joined demonstrators that August and again in November after a grand jury decided against indicting Darren Wilson, the white police officer who fatally shot Brown. Following the initial protests, three MU students started the activist group MU for Michael Brown, which later gave rise to a second group, Concerned Student 1950, the date referring to the year African Americans were first admitted to the university.

Members of these student groups were troubled by the absence of an official university response to racial

issues in Ferguson and on campus. In April 2015 a swastika and the word *heil* were drawn in what appeared to be charcoal on the wall of a residence hall stairway. Authorities arrested a resident days later and charged him with second-degree property damage motivated by discrimination. Additional incidents followed in the fall, as African American students, faculty members, and staff members spoke publicly of a long-standing pattern of abuse, with one professor writing that in eighteen years at the university she had been “called the n-word too many times to count.”

Tensions escalated on October 10 when members of Concerned Student 1950 blocked President Wolfe’s car during the MU homecoming parade. The president did not leave his car to speak with the students. “We disrupted the parade specifically in front of Tim Wolfe because we need him to get our message,” graduate student Jonathan Butler, one of the protesters, said. “We’ve sent e-mails, we’ve sent tweets, we’ve messaged, but we’ve gotten no response.” Attending the parade with her family, Professor Click witnessed the student action and was troubled by the hostile reaction of the mainly white crowd. In response she joined the demonstrators, who were removed to the sidewalk by Columbia police without violence. Professor Click’s decision, perhaps fateful, came just ten days after her department chair had notified her that her department had voted unanimously to support her application for tenure and that he concurred in that recommendation.

Concerned Student 1950 soon issued a list of demands and on October 20 called for President Wolfe’s resignation. On November 2 Jonathan Butler began a hunger strike on Carnahan Quadrangle, and other students, mainly African American, began camping out on the quad in support. On November 6 President Wolfe released a statement apologizing for the handling of the homecoming protest and expressing concern for Mr. Butler’s health. The next day, in what many observers saw as a decisive development, a group of African American football players announced that they were joining the protests and pledged to stop participating in football-related activities for the remainder of the season unless President Wolfe resigned or was fired. Head football coach Gary Pinkel tweeted his support for his players and included a photo of what appeared to be members of his staff with both black and white members of the team.

President Wolfe met early on November 9 with the board of curators and resigned. But he was not the only high-ranking administrator whose ouster

3. Arthur G. Jago, “How Three Bad Decisions Signaled Doom at Mizzou,” *Chronicle of Higher Education*, November 19, 2015, <http://chronicle.com/article/How-Three-Bad-Decisions/234278>.

was sought. On November 3 the MU English department faculty had unanimously voted no confidence in Chancellor Loftin. Then, on November 9, nine deans called on the curators to remove the chancellor. Citing Dr. Loftin's handling of race and cultural issues, among other complaints, they wrote that the chancellor had created a "toxic environment through threat, fear and intimidation." Hours after President Wolfe's resignation, Chancellor Loftin announced that he too would resign at the end of 2015. (On November 11, however, the curators voted to make his resignation effective immediately.) In the midst of these momentous developments, students, faculty members, and other university employees began to gather on Carnahan Quadrangle. They were joined by members of the national, state, and local media, as well as by independent journalists and videographers. Over the previous days many people had brought food and other supplies to the makeshift encampment, which the university had facilitated by providing heat lamps and some measure of security.

On November 8 Professor Click came to the site to help sort donated items and spent much of the day there. She also participated in drafting a statement in support of the protesters, which was posted to the department's website. On November 9 she returned to help other faculty members move a number of tables from the law school to the area of the encampment.

Protesters had previously posted handmade "no media" signs intended to keep reporters away, although access to the quadrangle, which is clearly a public space, cannot legally be so restricted. Most in the area chose to respect this restriction, however, including most members of the established media, who stood outside the crowd filming events from afar, interviewing random bystanders, or just awaiting the promised press conference. When news spread of President Wolfe's resignation and then of Chancellor Loftin's, by most accounts the situation grew somewhat chaotic. A few individuals attempted to enter the encampment to try to speak with or film the protesting students—or at least it so appeared to many who were present. At the time, although campus security was deployed nearby, on the quad itself no university personnel sought to organize or supervise the crowd. As a result, students, university staff members, and faculty members in the group—including Professor Click—decided to form a human ring around the protesters.

This was the situation in which Professor Click's confrontations with the two students—Mr. Tim Tai,

who had been hired by ESPN to cover the threatened strike by the football players, and Mr. Mark Schierbecker—took place. According to a report on Professor Click's conduct commissioned by the board of curators, "Professor Click began yelling directly at Tai that he had to stop and get out of the area, and he had to go. She then engaged the students around him to direct him from the area, stating, 'Students, can you tell him how much you want him to go?' As the students began chanting at Tai, 'go, go, go . . .,' Professor Click then began a chant, 'Hey Hey, Ho Ho, reporters have got to go!'"

Professor Click's confrontation with Mr. Schierbecker was more problematic. He had limited prior journalistic experience and no formal assignment on November 9. While he had previously submitted articles to the *Maneater*, a student publication, and had taken photos for the publication on an ad hoc basis until August 2015, his articles were never published. As recounted in the report,

Schierbecker saw Professor Click standing about ten feet away. During our interview, Schierbecker said that he wanted to know why they wanted to keep the media out, so Schierbecker approached her, and said, "I'm media, can I talk to you." Professor Click yelled, "No, you need to get out, you need to get out!" to which Schierbecker replied, "no, I don't." At that point, Professor Click reached toward Schierbecker and physically knocked Schierbecker's camera ajar which he was holding in his hands in what Schierbecker believed was an attempt to swipe it out of his hands, Professor Click saying again, "You need to get out!" Professor Click then walked a few steps away toward a group of individuals and began to yell, "Hey who wants to help me get this reporter out of here?" and while pointing at Schierbecker said, "I need some muscle over here, help me get him out, who's gonna help me?" . . . When Schierbecker told her that he had a right to be there in a public place, owned by the University, Professor Click told him, in what Schierbecker perceived as a sarcastic tone, "I know. That's a really good one, and I'm a Communication faculty and I really get that argument, but you need to go, you need to go, you need to go." She continued to block his camera with her hand while she was yelling at him.

While the reliability and fairness of the commissioned report are in some respects open to question,

a subject we discuss below, these quoted passages describe fairly accurately what is visible in the videos taken by Mr. Schierbecker. Within hours of these events, he had posted on YouTube a brief video of both his own and Mr. Tai's encounters with Professor Click, which soon gained widespread viewership.⁴ (By the time of this writing, the video had been viewed nearly three million times. Mr. Schierbecker later posted a longer version of his video, which for many viewers shows Professor Click's actions in a more favorable light.⁵)

Ironically, November 9 was also the day that Professor Click received notification that the tenure committee of the College of Arts and Sciences had recommended her for tenure by a vote of 5–1. By the morning of November 10, however, it was clear that the Schierbecker video had created a problem for both her and the university. Believing that her behavior in the video had been a mistake and was not characteristic of her usual demeanor, Professor Click issued a public apology, with the approval of the MU news bureau, her college, and her department chair. "I regret the language and strategies I used," she stated, "and sincerely apologize to the MU campus community, and journalists at large, for my behavior, and also for the way my actions have shifted attention away from the students' campaign for justice." She also apologized by telephone to Mr. Tai, who accepted her apology, and in person to Mr. Schierbecker, who did not.⁶ In addition, Professor Click met with the doctoral faculty of the journalism school, where she held a courtesy appointment. The next day she voluntarily resigned from that appointment and from her position on the Student Publications Committee.

Almost immediately after the posting of the original video, Professor Click began receiving numerous messages by e-mail and telephone demanding her resignation from the university, many of them threatening

violence, including rape and murder, yet the university police declined to provide her with a campus escort.⁷

On November 20 Professor Click was notified that the dean of arts and sciences had recommended her for tenure. Two days later, she met with senior associate provosts Patricia A. Okker and Kenneth D. Dean, who told her that if disciplinary action were undertaken, the administration would follow established policies and procedures. During her meetings with administrators, Professor Click says she was advised repeatedly not to speak to the public or the media, advice that she followed until a crisis management firm began assisting her on February 1.

On December 18, citing the university's rules, which incorporate language from the AAUP's 1940 *Statement of Principles on Academic Freedom and Tenure*, University of Missouri provost Garnett S. Stokes issued a letter of reprimand to Professor Click, faulting her for failing to "exercise appropriate restraint" and "show respect for the opinions of others." The letter also stated, "Your words and actions have reflected poorly on you, on your department, and on our university. Physical confrontations and calls for aggressive acts have no place at Mizzou."

The provost added, "I am aware that the impact of the widespread viewing of the videos of your activities on the Quadrangle has led to an incredible and continuing backlash of threats against you and your family. I am deeply sorry that the outrage of others would be communicated in such hateful ways." She also encouraged Professor Click "to continue [her] growth as a teacher, scholar, and mentor of students." "I believe you can use your serious mistake to not only better yourself," she wrote, "but to help others learn from it too." The provost directed both her department chair and her dean to place the letter in her personnel file.

As a first indication of the political pressure that was to accompany the case, on January 4 more than one hundred Republican state legislators released two identical letters demanding Professor Click's immediate dismissal. In addition to expressing outrage over Professor Click's conduct, the letters stated, "The public spotlight that is now shining on Click because of her behavior has also revealed some of the 'research' she is conducting at the University. Our constituents

4. "#ConcernedStudent1950 vs the media at Mizzou,"

YouTube video, 6:36, November 9, 2015, <https://www.youtube.com/watch?v=xRIRAyulN4o>.

5. "Students Against Freedom of Press—Missouri University—(FULL)," YouTube video, 12:38, November 10, 2015, https://www.youtube.com/watch?v=WC_S4AOsb2Y.

6. Mr. Schierbecker later complained that legislators were misusing his video. "I think they are using my video as an excuse for the budget cuts they already wanted to make," he told the *Columbia Missourian*. "I think they do want her fired, just on a human level, but it has only been politically possible to cut funding because of this video."

7. Such harassment continues. Shortly after the AAUP announced that it would send this investigating committee to Missouri, a telephone message was left at the Association's Washington office advising the committee to "bring [its] own body bags."

have expressed outrage at the fact that she is using taxpayer dollars to conduct research on *50 Shades of Grey*, Lady Gaga, and *Twilight*. While we recognize that there may be some value in pop culture studies, her behavior has the public questioning her ‘research’ and her unacceptable actions during the protest.”

The next day Missouri Democrats issued a statement calling their Republican colleagues’ letters a “gross overstep,” asserting that faculty employment should be strictly a campus concern. “Unfortunately for our legislators,” the Democrats wrote, “it is once again not under their domain to decide what can and cannot be researched at Mizzou or at any other university. Academic freedom means that students and professors may pursue knowledge in whatever form it may take, *50 Shades of Grey* included.”

Also on January 5 a letter of support signed by 117 MU faculty members was released to the campus. The letter said in part: “We wish to state in no uncertain terms our support for Click as a member of the University of Missouri faculty who has earned her position through an outstanding record of teaching and research. We believe that her actions on November 9 constitute at most a regrettable mistake We affirm our support of her as a colleague, a teacher, and a scholar, and we call upon the University to defend her First Amendment rights of protest and her freedom to act as a private citizen.”

On January 21 board of curators member David L. Steelman published an op-ed piece in the *Washington Post* calling for Professor Click’s dismissal. He wrote, “The university’s sole action has been to place what I consider a meaningless admonishment in her file. In my opinion, this tepid action does not reflect a particularly strong commitment to our values; moreover the inaction indicates an institutional narcissism that undermines our values and responsibilities to the broader society.”

Mr. Steelman went on to criticize the faculty letter of support for Click as more evidence of “narcissism, the desire to look only inward, and to worry more about the perks and privileges of faculty.” “The university” he concluded, “should stand for character, respect, and responsibility. That means rejecting the narrow self interests of the faculty who signed a letter merely to avoid accountability and responsibility for those whose acts bring shame to the University of Missouri.”

On January 22 Professor Click received notice that the university promotion and tenure committee had requested she submit a statement on whether she

believed the committee should take into account the events of November 9 in reviewing her application for tenure.

On January 25 the Columbia city prosecutor filed charges of third-degree assault, a misdemeanor, against Professor Click based on a complaint filed by Mr. Schierbecker. On January 29 these charges were held in abeyance when Professor Click agreed to perform twenty hours of community service. In a public comment, Chancellor Foley called the charges against Professor Click “a very bad situation for us all.” He nevertheless observed that those who demanded her immediate dismissal “have a misunderstanding about how things work here. The role of the chancellor is not the same as CEO of a for-profit corporation.” In conclusion, he stated, “We are confident she does not pose any danger to any student.”

“For those of you who are calling for hasty action,” Chancellor Foley told a press conference that day, “I say this: We have good, strong processes in place, and we’ll follow them to their completion and logical outcome. When we deviate from such time-honored traditions at the university, as some have called for, we tend to make mistakes, and it often leads to turmoil.” The chancellor added that he believed Professor Click had a moment of “heated anger” on November 9 and that he doubted she would do anything similar again, calling her a “model citizen in other ways.” Someone asked if the possibility existed that Professor Click would be fired before the tenure process was completed. “No,” Foley said, “not going to happen.”

Nevertheless, just two days after the assault charges were filed, on January 27, the board of curators held a special meeting after which board chair Henrickson issued this statement: “MU Professor Melissa Click is suspended pending further investigation. The Board of Curators directs the General Counsel, or outside counsel selected by the General Counsel, to immediately conduct an investigation and collaborate with the city attorney and promptly report back to the Board so it may determine whether additional discipline is appropriate.”

On January 28 the executive committee of the Faculty Council on University Policy responded with a statement challenging the legitimacy of the board’s action and calling on the curators to follow the university’s official procedures for imposing sanctions on faculty members:

The faculty of the University of Missouri recognize that the Board of Curators is vested

with authority to govern the University by the Constitution of the State of Missouri, by Missouri statutory law, and by the Collected Rules and Regulations of the University. Pursuant to that authority, the Curators delegate substantial day-to-day operational authority to the President, the Chancellor, and to other administrators—including authority over personnel matters. Further, the University administration engages in shared governance with the faculty. . . .

In addition, the Board has approved faculty bylaws for the four campuses in the UM system, including those for the Columbia campus, which are codified at CRR 300.010. In the Faculty Bylaws for the University of Missouri-Columbia, the CRRs set forth a process for “the filing and disposition of charges alleging breaches of professional ethics or commission of irresponsible acts made against UMC faculty members and teachers.” Pursuant to that provision, “A charge of unethical or irresponsible action may be brought against a faculty member or teacher by a person or group of persons associated with the University, such as a student, faculty member, teacher, administrator, or board member.” . . .

The provisions of CRR 300.010, which have been approved by the Board of Curators, are designed to protect the rights of accused faculty members while also protecting the University’s interest in identifying and responding to faculty irresponsibility. The Chancellor has authority to review hearings conducted under this rule. CRR 300.010.L.9.

Accordingly, if members of the Board believe that a formal investigation of Professor Click’s conduct is appropriate, the faculty respectfully suggest that the Board bring a charge against her under CRR 300.010, allowing the University’s existing process to go forward under the supervision of the Interim Chancellor, whom the Board appointed in November. Suspending Professor Click and conducting its own investigation to determine whether additional discipline is appropriate, without using the existing procedures that the Board has approved, undermines confidence in the current leadership of the University.

The MU faculty council statement was endorsed on February 23 by the Intercampus Faculty Council of the University of Missouri system, which added that it did “not support the Board of Curators’ action

to suspend Melissa Click without charges first having been brought upon her to initiate the appropriate action required by the University’s Collected Rules and Regulations.”

The MU AAUP chapter also wrote to Chancellor Foley and the curators, emphasizing that “regardless of one’s opinion of Dr. Click’s actions, she has a right to due process through faculty assessment in regard to her employment status. Bowing to political pressure involving the employment of MU faculty is both dangerous and damaging to the reputation of the university and our potential to recruit and retain the best faculty.”

In February the Bryan Cave law firm, hired by the curators on January 28, conducted an investigation of the case at the direction of the university’s general counsel, meeting for four hours with Professor Click on February 2 and speaking with her again by telephone on February 12.

On February 4 a board of curators meeting on the Columbia campus was disrupted by protesters from Concerned Student 1950, which issued a statement that read in part: “It is unfortunate that Melissa Click has become the victim of social and political violence. Click is a white woman, professor, and ally who supported historically marginalized students at the University of Missouri during a time when students were exposing the institution for preserving racism. The University of Missouri system is devoting time to tarnishing Click’s career instead of dismantling the oppressive RACIST social system it perpetuates.”

Throughout the month of February, legislative pressure on the institution remained intense, with the higher education appropriations committee of the House of Representatives approving a spending plan that included a 2 percent increase for all state colleges and universities except the University of Missouri. The chair of the committee explained the decision as follows: “Lawmakers and their constituents . . . want Melissa Click, an assistant professor of communications, to be fired for impeding news coverage of the protests, and they want university leadership to stand up to the protesters.” Students “are there to learn, not to protest all day long,” he added. “I thought we learned that lesson in the ’60s. Obviously we haven’t. When the curators didn’t immediately do something about that problem, that was kind of the last stroke for me.”

On February 17, in the middle of a contentious legislative hearing on university funding, state senator Paul Weiland handed Chancellor Foley a written

complaint against Professor Click in response to the chancellor's statement that no disciplinary action had been taken against the communication professor because no formal complaint had been filed. A university spokesperson later clarified that the senator had no standing to file such a complaint.⁸ On February 23 Tom Flanigan, chair of the house budget committee, proposed to eliminate from the university's budget an amount equivalent to the salaries of Professor Click, her department chair, and her dean.

On February 13 the online *Columbia Missourian* published a profile of Professor Click that included footage from police cameras during the October 10 university homecoming parade. The video shows her joining student activists who had stopped the vehicle carrying then-president Wolfe. "I remember thinking, stupidly, that if as a white person I put myself in front of the students, that maybe they wouldn't push me," she explained to the *Missourian*. Professor Click hugs the students and then stands between them and the city police trying to keep the activists back from the parade. She can be then heard yelling at an officer, "Get your fucking hands off me!"

Chancellor Foley called Professor Click's actions "a verbal assault against members of the Columbia Police Department." "Her conduct and behavior are appalling," he added, "and I am not only disappointed, I am angry, that a member of our faculty acted this way. Her actions caught on camera last October are just another example of a pattern of misconduct by Dr. Click—most notably, her assault on one of our students while seeking 'muscle' during a highly volatile situation on Carnahan Quadrangle in November." The next day Dr. Foley sent a campus-wide e-mail message about the newly released video that suggested that he no longer stood by his January 25 statements.

On February 13 the chair of the Department of Communication notified Professor Click that he no longer supported her application for tenure and that the department committee was now evenly divided on its recommendation. On February 16 the dean of the College of Arts and Sciences notified her that he no longer supported her candidacy for tenure.

8. President Middleton, speaking after the hearing, said a legislator's initiating a complaint sets a bad precedent. Indeed, he said, "the idea of anyone in the general public having standing to file complaints against any faculty member based on their perception that the faculty did something that was inconsistent with responsible behavior by faculty, and having that start the cumbersome process that is contemplated by the rules to resolve that complaint, that is an ominous proposition."

The Bryan Cave law firm completed its investigation on February 12 and provided a copy of its report to Professor Click. On February 19 Professor Click responded to the report, and the next day the report and her response were provided to the curators. On February 24 the board met and voted 4–2 to dismiss her. The next day the board sent Professor Click a seven-page letter, outlining in detail specific actions she had taken on October 10 and November 9. The letter stated, "In sum, your conduct discussed above was not compatible with University policies and did not meet expectations for a University faculty member. Such conduct is not permitted and the best interest of the University calls for additional discipline." The letter went on to stress that "[t]he Board does not base its determination on your presence at the October 10, 2015 homecoming parade or the November 9, 2015 events on Carnahan Quadrangle; your association with any students, faculty members, or others; your expression of views on matters addressed in the protests or in support of students engaged in protest; or any of your other expressions other than those that were part of your conduct discussed above."⁹

The letter informed her of her dismissal and outlined a process for appeal to the board. In a public statement, Chancellor Foley said, "The process the Board of Curators used to reach a determination about Dr. Click's employment at the university is not typical—but these have been extraordinary times in our university's history, and I am in complete agreement with the board that the termination of Dr. Click is in the best interest of our university." He also stated that "there has been fairness in this process and investigation."

Following the announcement of her dismissal, Professor Click issued her own statement:

While I have taken the Curators' offer to appeal their decision to terminate me, I do not believe that the process they used to come to their decision was fair. I firmly believe that the Curators must adhere to MU's Collected Rules and Regulations and rescind their termination notice.

I reject the Board of Curators' claim that my case is "not typical." In their decision to terminate

9. It is worth noting that when the board posted a copy of this letter on its website, it neglected to redact from the letter Professor Click's home address, which, given the threats she had received and was still receiving, caused her to fear for her safety; for that of her husband, who is also a professor at MU; and for that of their small children.

my employment, the Curators bowed to conservative voices that seek to tarnish my stellar 12-year record at MU. Instead of disciplining me for conduct that does not “meet expectations for a University faculty member,” the Curators are punishing me for standing with students who have drawn attention to the issue of overt racism at the University of Missouri. While I have apologized on numerous occasions to numerous parties for my actions on October 10, 2015 and November 9, 2015, I will not apologize for my support of Black students who experience racism at the University of Missouri.

Less than two hours after the announcement, Chancellor Foley addressed the faculty council at its regularly scheduled meeting. According to a report in the *Maneater*, at the beginning of the meeting, faculty council chair Trachtenberg said he believed the board of curators had made a “terrible decision” in acting to fire Professor Click. “Regardless of one’s position or opinion on Professor Click’s behavior or fitness for duty, she was entitled by the rules—rules that the Board of Curators approved—to a fair process,” Chair Trachtenberg was quoted as saying. “That she did not receive. The UM system statement announcing the firing notes that Professor Click’s behavior at the October Homecoming parade contributed to the decision to fire her. In my opinion, whatever you think of her involvement in the protest, her participation and even her somewhat coarse language is constitutionally protected. . . . If I am correct, then her firing is motivated, at least in part, by [an exercise of] her First Amendment rights.”

Professor Trachtenberg went on to say that, by suspending Professor Click and then dismissing her after Chancellor Foley said the administration would not suspend her without due process and after President Middleton said she should not be fired, the board had undermined the authority of both administrators.

Council members asked if faculty members should be concerned about the security of their own positions since the board had asserted the right to dismiss anyone, with or without reason. In response, Chancellor Foley called the situation of Professor Click “highly unusual,” adding, “It’s the intention of the board never to do anything like this again.” When several council members asked him to clarify how he knew the board would never act similarly again, the chancellor said he did not know. He also said that he did not expect faculty members to change their

viewpoints, but warned them to be cautious in how they expressed their views. “Be very mindful of the fact that you’re being recorded and that your behavior will be judged,” he said. The council then approved a statement condemning Professor Click’s dismissal as “violat[ing] the norms of faculty governance to which the University of Missouri has traditionally adhered and which are essential to the functioning of a great university. . . . By creating a new process as it went along, the Board denied Professor Click the fair procedures that she, like all faculty, had been promised.” The council statement concluded, “By flouting the Collected Rules and Regulations of the University, the Board of Curators has caused needless injury to the University of Missouri.”

Professor Click’s dismissal was applauded by state legislators, including Representative Denny Hoskins, speaker of the house pro tem. On March 1 house budget committee chair Flanigan proposed to restore the cut funds that had originated with him. Another state representative, Mr. Caleb Rowden, said that “Flanigan’s move to restore the money cut to spur action on Professor Click is a good sign.” “When things happen positively at Mizzou,” he added, “that has a reflection here in the budget.”

Also on March 1, however, state senator Kurt Schaefer, a Republican whose district includes the MU campus and who is running for state attorney general, filed Senate Concurrent Resolution 66, which proposed a University of Missouri System Review Commission, eventually approved on May 3. The new commission’s task is to review the University of Missouri system’s collected rules and regulations, administrative structure, campus structure, auxiliary enterprise structure, degree programs, research activities, and diversity programs and to present recommendations for needed changes. The system’s adoption, or failure to adopt, the commission’s recommendations will be considered by the general assembly in the next year’s appropriation process.

Professor Click submitted to the board of curators her appeal of its termination decision on March 4. The following Wednesday the university promotion and tenure committee informed her that it would consider her tenure application during the appeal. On March 15 the curators notified her that they had rejected her appeal of the dismissal, now effective immediately. Two days later Professor Click’s department chair asked her to vacate her office by April 1.

On March 18 a group of more than sixty faculty members sent a letter to the Higher Learning

Commission (HLC) that focused on Professor Click's dismissal as part of "a growing pattern of state interference with the autonomous governance of the University of Missouri." The letter cited HLC accreditation standards emphasizing university autonomy and delegation of authority by the governing board to the campus administration and faculty. The signatories wrote that they felt "obligated to ring the alarm bell about current trends toward legislative usurpation of university autonomy and faculty governance at MU, of which this case is but one extreme example. We are concerned about the future direction of our university, its reputation and freedom to pursue academic excellence and innovation in all disciplines devoid of inappropriate political interference."

III. The Involvement of the Association

Following the January 28 public announcement of her suspension, the AAUP's staff contacted Professor Click to offer its assistance and invited her to submit documents relating to her situation. By letter of February 2, the staff conveyed to Chancellor Foley the Association's concern regarding Professor Click's summary suspension, since a threat of immediate harm had not only not been suggested in Professor Click's case but had been explicitly disclaimed by the chancellor. The chancellor responded only to acknowledge receipt of the letter.

On February 26 the Association's staff wrote again to Chancellor Foley, this time to convey its concern regarding Professor Click's summary dismissal, stating that "[b]eyond its evident lack of conformity with the regulations of the University of Missouri, an action to dismiss a faculty member with indefinite tenure or a probationary faculty member within the term of appointment absent demonstration of cause in an adjudicative hearing before an elected faculty body is an action fundamentally at odds with basic standards of academic due process as set forth in the joint 1940 *Statement of Principles on Academic Freedom and Tenure* and the complementary 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*."

Having received no response to its February 26 letter, the staff wrote again on March 3 to inform both the chancellor and the curators that the Association's staff had scheduled a meeting for March 7 to discuss a staff recommendation that the executive director authorize an investigation. Replying on March 17, Chancellor Foley wrote, "In deciding whether to exercise its governing authority to terminate her

appointment, the Board has ensured that Dr. Click is aware of the concerns and evidence regarding her conduct and is being given an opportunity to explain her views."

In a separate response, board chair Henrickson reiterated the chancellor's assertion that the curators had treated Professor Click fairly. She added that since the board had yet to review the appeal submitted by Professor Click that day, an investigation would be "premature." The letter concluded: "Finally, I note that as the University's governing authority, the Board retains authority and responsibility to act in matters of faculty dismissal regardless of the specific process that is used. In this instance, no other process had addressed the seriousness of Dr. Click's conduct in a timely fashion so it was incumbent on the Board to act."

Informing the administration and the board on March 7 of the authorization of the investigation, the Association's staff responded, "As we have repeatedly indicated, . . . the only acceptable resolution in this matter is for the board to rescind the notice of dismissal issued to Professor Click and to ensure that any subsequent action is consistent with the pertinent institutional regulations of the University of Missouri and with AAUP-supported procedural standards. Allowing her to appeal a summary dismissal to the body that dismissed her, rather than a duly constituted faculty hearing committee, is not consistent with these standards. For that reason, we see no need to await the outcome of the appeal."

The undersigned investigating committee visited the Columbia campus on March 22 and 23, 2016. We were welcomed and treated graciously by all we met, including Chancellor Foley, who was accompanied in our interview with him by a university attorney. Although the curators declined to meet with us, Chair Henrickson, on behalf of the board, did provide a detailed ten-page response, dated March 17, to the staff's March 7 letter. (This response is discussed below.) We appreciate the cooperation of the campus administration and the board with this investigation.

The investigating committee also met with Professor Trachtenberg and Professor Monnier, leaders of the faculty council; with Professors Suppes, Victoria Johnson, and Mark Prelas from the MU AAUP chapter; and separately with another professor who is a member of the faculty council and of the AAUP chapter. In addition, we met with a student who is a founding member of Concerned Student 1950 and another student who was standing a few

feet from Professor Click during the confrontation with the two students on November 9. Finally, the investigating committee met at length with Professor Click.

IV. Issues

The sections that follow discuss substantive, procedural, and other issues of Association concern.

A. Substantive Concerns

This section analyzes two substantive issues regarding the stated grounds for Professor Click's dismissal.

1. Adequacy of Stated Cause

As previously noted, Professor Click has not denied that she engaged in the conduct that ultimately led to her dismissal. The key facts relating to the charges of misconduct are thus not in dispute. Nonetheless, these facts are subject to varying interpretations, and there is considerable disagreement among faculty members at MU about their meaning and significance.

In his March 17 letter to the AAUP's staff, Chancellor Foley wrote, "This case did not concern Dr. Click's exercise of academic freedom but instead involved conduct that was contrary to expectations for faculty behavior that are shared by the University and your organization." While we can agree that the fundamental issue in this case is not denial of Professor Click's academic freedom, whether her conduct on those dates was "contrary to expectations" and whether that conduct merited termination of her appointment are matters of considerable dispute.

In all of our meetings with faculty members and students at MU, we were told that views of Professor Click's behavior varied widely across a spectrum ranging from those who believed she acted improperly and should have been dismissed to those who believed her acts should have been considered protected by the First Amendment and that she did nothing to merit any discipline whatsoever. Most faculty members, it seems, stood somewhere in between these extremes. Faculty council chair Trachtenberg told us that, despite the diversity of opinion regarding her conduct, a clear consensus existed among most faculty members that Professor Click had been adequately penalized and, given the threats and public vitriol to which she had been subjected, had "suffered enough."

In board chair Henrickson's lengthy March 17 letter to the AAUP's staff and elsewhere, the curators offer two basic justifications for a finding of misconduct based on Professor Click's actions on October

10 and November 9. First, they assert that the university's regulations "emphasize the importance of protecting free expression." The relevant provision (section 330.030) states: "The University of Missouri will at all times defend the right of free expression of opinion, including the right of peaceful assembly. The University will, indeed, guard this right in behalf of all persons associated with the institution and will not tolerate actions by any individual or group that would seek to restrict the appropriate freedoms of any other individual or group."

It can be argued that the November 9 confrontations between Professor Click and the two student journalists did not involve a dispute over freedom of expression at all. Mr. Ken Paulson, president of the First Amendment Center at Vanderbilt University and the Newseum and former editor in chief of *USA Today*, reviewed the video, but he did not see a fight over the First Amendment. He told the *Columbia Missourian*, "The First Amendment was not violated. It was a clash between people, not freedoms. . . . Journalists are allowed under the First Amendment to cover events. Protesters are allowed under the First Amendment to assemble. Journalists and protesters don't owe a debt to each other. The issues aren't competing First Amendment issues. It is a conflict between two groups of citizens. There was a difference of opinion about where the reporters could go."

With respect to Professor Click's conduct at the October 10 homecoming parade, there was clearly no violation of the cited university regulation. While her demeanor and use of vulgar language on that homecoming day may offend some, no one has questioned her right to join the protest; the law is clear that crude and profane language are protected expression; and there is no evidence that Professor Click interfered in the slightest with anyone else's rights to speak or assemble.

Nor does any evidence exist that Professor Click physically assaulted or obstructed any other individual, including police officers, on October 10. But the second justification offered by the curators is that Professor Click assaulted a student on November 9. As noted above, Mr. Schierbecker filed an assault charge with Columbia police on November 12. Touching his camera, as Professor Click clearly did, may well qualify as third-degree assault under the state of Missouri's definition, which includes incidents in which someone "knowingly causes physical contact with another person knowing the other person will regard the contact as offensive

or provocative.” This definition apparently informs the misdemeanor charge that the city prosecutor filed against Professor Click before, five days later, announcing a deferral of prosecution as long as she completed twenty hours of community service and avoided legal trouble for one year.

Nevertheless, as one MU professor later argued in the *Los Angeles Review of Books*, “it’s ironic that on the videos, similar ‘assaults’—people touching each other lightly during arguments—happen dozens of times, though Professor Click was the only one charged.” The Concerned Student 1950 leader with whom we met alleged that it was Professor Click who was assaulted several times in this sense on November 9. And the other student witness we interviewed confirmed that similar jostling and pushing took place multiple times that day.

Chair Henrickson’s March 17 response to the Association’s staff delineates five specific provisions of the university’s regulations that the curators believe Professor Click violated. These include the provision discussed above as well as language from the 1940 *Statement of Principles on Academic Freedom and Tenure* that calls on faculty members “at all times” to “exercise appropriate restraint.”¹⁰ The response also cites a regulation obliging each faculty member “as a teacher” to “demonstrate respect for the student as an individual,” but in full context this rule appears aimed principally at instructional activity and not the sorts of events in which Professor Click participated on October 10 and November 9.

The remaining two regulations are problematic. One notes that a professor “determines the amount and character of the work he/she does outside his/her institution with due regard to his/her paramount responsibilities within it.” We fail to see the relevance of this rule—which seeks to regulate outside employment—to Professor Click’s actions on either October 10 or November 9. The final cited regulation states that “[t]he personal conduct at all times of any employees of the University shall be of such a nature as not to bring discredit upon the institution. Conduct contrary to this policy will result in the termination of such employees’ connection with the University.” This regulation is inconsistent with principles of academic freedom. It should be obvious to any disinterested observer that because the meaning of “discredit” is subject to a wide variety of potentially inappropriate

interpretations, such a sweeping provision offers opportunities for rampant abuse.

To be sure, the AAUP’s *Statement on Professional Ethics* also affirms that, “as citizens engaged in a profession that depends upon freedom for its health and integrity, professors have a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom.” Calling for a journalist to be removed from a public space could be deemed to violate this standard. But the 1940 *Statement* insists that a faculty member’s appointment “should be terminated only for adequate cause . . . or under extraordinary circumstances because of financial exigencies.” Regulation 5 of the AAUP’s *Recommended Institutional Regulations on Academic Freedom and Tenure*, moreover, provides that “adequate cause for a dismissal will be related, directly and substantially, to the fitness of faculty members in their professional capacities as teachers or researchers.”

While we doubt whether Professor Click’s actions, even when viewed in the most unfavorable light, were directly and substantially related to her professional fitness as a teacher or researcher, we recognize that some faculty members might come to a different conclusion. Therefore, we cannot say that a reasonably open-minded review of the case by an appropriately constituted faculty hearing body might not have produced a conclusion similar to that reached by the curators, although it might also have yielded a verdict at the other extreme. A likely outcome of such a process could also have been the recommendation of a sanction short of termination. But the critical point, discussed below, is that such a process—mandated by MU’s own rules—did not take place.

2. Validity of Stated Cause

In her public response to the announcement of the Association’s investigation of her case, Professor Click claimed that the stated cause for her dismissal was not the actual cause and that the curators were actually “punishing [her] for standing with students who have drawn attention to the issue of overt racism at the University of Missouri.” This view was echoed in the Concerned Student 1950 statement quoted previously.

In Chair Henrickson’s March 17 response to the AAUP, she wrote: “We are aware of Dr. Click’s public assertion that she has been scapegoated. That does not hold water. Many other faculty members associated with students who were protesting in the Fall 2015 semester and expressed support for their views. No action has been taken against any of those

10. Regarding the hortatory nature of this provision, see Interpretive Comment 4 of the 1970 Interpretive Comments on the 1940 *Statement*.

faculty members. Instead, the Board has taken action only against Dr. Click because it was her conduct that was improper.”

It is difficult to disentangle the events surrounding Professor Click from the wider tensions that roiled the MU campus last fall. It is also difficult to imagine that she would have been treated as she was in the absence of the backlash against the protesting students that emerged after November 9 in the legislature and the media, including social media. To be sure, the “discredit the institution” standard invoked by the board and discussed above does suggest that public perceptions played a role here. However, we have seen no evidence that directly refutes the board’s contention that its actions were not determined by Professor Click’s views or associations.

Similarly, many observers saw the board’s action as motivated less by concern with Professor Click’s alleged misconduct and more by an effort to appease legislators threatening to punish the institution financially if she were not dismissed. The March 18 faculty letter to the Higher Learning Commission certainly makes that claim. As we will argue below, legislative intrusion into matters best left to campus administration and faculty is a major and menacing concern raised by this case. But without access to transcripts of the curators’ discussions, we cannot draw definite conclusions on the extent to which such intrusion motivated their decision to terminate Professor Click’s appointment. Nevertheless, as we discuss in section D, below, the confluence of circumstantial evidence does support a conclusion that legislative pressure played a role in the decision.

B. Procedural Concerns

This section discusses two issues related to departures from AAUP-supported procedural standards as well as from the university’s regulations.

1. Affordance of Academic Due Process

Just as there is no dispute regarding whether Professor Click engaged in the conduct cited as the grounds for her dismissal, there is also no dispute regarding the failure to afford her a faculty hearing. The 1940 *Statement of Principles* and derivative AAUP policy documents provide that dismissal of a faculty member with continuous tenure, or with a special or probationary appointment before the end of the specified term, be preceded by the administration’s demonstration of cause in an adjudicative hearing before an elected faculty body. No one denies that Professor Click was

not afforded such a hearing, nor that such a hearing is mandated by MU regulations.

The primary justification the curators offered for their summary action was that “no other process had addressed the seriousness of Dr. Click’s conduct in a timely fashion.” In her March 17 response to the Association’s staff, Chair Henrickson claimed that “the process which would have involved a hearing before a faculty body had failed to address Dr. Click’s conduct.” Hence, she wrote, “the board found it necessary to act on its own in this singular instance when existing University procedures failed to address the seriousness of Dr. Click’s conduct.”

The faculty council executive committee’s letter of January 28 addressed this alleged failure by noting that “neither the alleged victim of Professor Click’s misconduct, nor any other member of the University community, has filed a faculty irresponsibility charge against her.” The letter acknowledged that some faculty members had considered doing so, but had decided against it because of Professor Click’s “heartfelt apology” and the attacks against her. In our conversations, we were told that Mark Schierbecker had been advised that as a student he could file such a complaint—recall that he did file a criminal assault charge with the Columbia police—but that he too declined to do so.

Following Professor Click’s suspension and later dismissal, as recounted above, MU’s faculty council, its executive committee, and the Intercampus Faculty Council all referred the board of curators to the appropriate institutional regulations that would have allowed either the board collectively or individual curators to file charges against Professor Click. The board chose not to do so.

The most reasonable explanation—not only for refusing to follow the institution’s own regulations but also for declining the opportunity to press charges under those regulations—is that the curators feared the process would fail to produce a desired result. Certainly curator Steelman, who announced in the pages of the *Washington Post* a week before the board launched its investigation his conviction that Professor Click was guilty and should be dismissed, might well have served as a significantly more legitimate prosecutor than judge and juror.¹¹

11. Since there are just six current members of the board and the announced vote on Professor Click’s dismissal was 4–2, we may conclude that Curator Steelman did not recuse himself from ruling on a case on which he had already publicly declared, even prior to the initiation of the board’s investigation, his strongly held position.

Referring to the Association's contention that Professor Click was entitled, under normative academic standards, to a faculty hearing, Chair Henrickson in her March 17 response to the staff argued that "a normative practice is not an absolute requirement" and that established procedures "are not the only means for the Board to act on a termination of an appointment. Consistent with its constitutional and statutory governing authority, the Board expressly has retained authority to act in such matters." She also cited a passage in the 1940 *Statement* providing that "dismissal for cause of a teacher previous to the expiration of a term appointment, *should, if possible*, be considered by both a faculty committee and the governing board of the institution" (the emphasis is Chair Henrickson's).

When we asked Chancellor Foley why it "wasn't possible" to utilize the normal campus disciplinary process, he responded that it would be more accurate simply to state that this "didn't happen." When asked why he did not initiate the process himself, he responded that since he would have the final say on any decision, he did not want to place himself in the position of being both prosecutor and jury, a position we find reasonable. When asked why the curators did not file charges themselves, he responded that he did not think they were aware, at least when they first took action, that they could do so. However, Professor Trachtenberg informed us that board members were aware of this option, and Professor Monnier said that she personally informed curator Steelman that he could file a charge.

To be sure, a governing board may well have legal authority to act independently, but to contend that normative practices enshrined in institutional regulations may be ignored entirely at a board's discretion is essentially to argue that these regulations are meaningless. And the "if possible" phrase from the 1940 *Statement* that Chair Henrickson cites was hardly meant to justify declining even to determine whether the possibility exists. Surely, initiating the process defined in the MU regulations was not "impossible." It was just not attempted.

It may be of some historical interest that in 1938 Professor Mark Ingraham, who was then AAUP president, spoke at a session of the National Association of State Universities. In that talk Ingraham directly addressed the origin of the "if possible" language, which was already present in a draft of the 1940 *Statement* then in circulation, stating, "The 'if possible' was put in largely because one or two people who

had tried to do it found the faculty refused. I think that is not usual, but we have to admit such situations arise." In the current case, because the faculty was never asked, it never had the opportunity to refuse. In other words, "impossible" does not mean "inconvenient," "not attempted," or "undesirable."¹²

In lieu of a hearing, the board chose to engage outside counsel "to conduct an objective fact investigation." Chair Henrickson's March 17 letter states, "The investigation involved review of relevant documents, materials, and video recordings, and interviews of more than 20 witnesses. Dr. Click was interviewed twice and she was represented by counsel on both occasions. Dr. Click identified witnesses she thought should be interviewed. Outside counsel interviewed or attempted to interview each of those witnesses and included their information in the report of the investigation. The report contained full summaries of the interviews as exhibits to the report so Dr. Click would know the identity of the witnesses and their statements and have an opportunity to rebut any evidence."

The report produced by the Bryan Cave firm comes to several hundred pages including exhibits. While written in an objective language and tone, the report is not equivalent to the "taped or stenographic record of the hearing" that the applicable university regulations require "be taken" and "maintained for five (5) years." It is true that Professor Click was afforded an opportunity to suggest witnesses, but she was not provided an opportunity to question any witnesses, including those she had suggested. The student from

12. One explanation for the failure to implement the policy prescribed in the university regulations that we heard from both Interim Chancellor Foley and faculty council chair Trachtenberg is that the regulations are written in such a way as to suggest that anyone filing a complaint must then function in effect as the prosecutorial "relator" throughout the entire procedure, including appeals, which creates a powerful deterrent against anyone filing charges who might not be willing to attend multiple hearings and carry the issue through to the end. Our own reading of the regulations is more flexible, however, and we believe it would have been possible for any complainant to delegate subsequent responsibilities under the regulations to an agent, perhaps a university official, who could serve as a relator. Indeed, we have learned that such a process has been followed by the campus administration in at least one other faculty disciplinary case. We therefore see no reason why Chancellor Foley or any other complainant might not have similarly designated a relator in Professor Click's case. But even if that were not done, there is little reason to believe that this rule created a significant obstacle to the board as a whole or to a single curator filing charges and acting as prosecuting relator under the procedures mandated by university regulations.

Concerned Student 1950 with whom we met said he was interviewed, likely at the suggestion of Professor Click. However, he was not afforded an opportunity to review the summary provided of his testimony and was not identified in the report by name, so it is difficult to understand how Professor Click could have had “an opportunity to rebut” directly his or anyone else’s testimony.

Moreover, the witness statements appended to the report are not depositions or transcripts of interviews. Instead, they are primarily secondhand accounts by the interrogators of what they claim the witnesses said. Finally, we have seen no evidence that the outside counsel made any effort to identify and interview any neutral bystanders or others unknown to either Professor Click or the curators who might have come forward with useful information. In just two days we were able to identify and interview a student who was standing very close to the confrontations between Professor Click and the student journalists, but she informed us that not only had she not been contacted by the curators’ investigators but she had not even heard that such an investigation was taking place. Indeed, as far as we can tell, the investigation conducted by the Bryan Cave firm took place almost entirely outside the knowledge of the broader university community.

By dismissing Professor Click absent the affordance of an adjudicative hearing by an elected faculty body and in disregard of other procedural rights guaranteed under both AAUP policies and MU Collected Rules and Regulations, the board of curators violated fundamental principles of academic due process. That violation was not mitigated but only worsened by the curators’ employment of outside counsel to conduct a supposedly objective investigation characterized as an adequate substitute for a faculty dismissal hearing.

2. Terminal Salary or Notice

Regulation 8 of the AAUP’s *Recommended Institutional Regulations on Academic Freedom and Tenure* requires that, in cases of dismissal for cause not involving moral turpitude, the faculty member will receive salary or notice of at least one year, if the decision is reached after eighteen months of probationary service or if the faculty member has tenure. However, the relevant section of the MU policy provides for terminal salary only for tenured faculty members and only to the end of the contract year.

Professor Click did receive salary during the time of her suspension and appeal, but in our meeting with

her she informed us that payment ceased immediately when her appeal was denied and the termination became effective. While cessation of salary under these circumstances may be permissible under the cited MU policy, it violates Regulation 8 of the AAUP’s *Recommended Institutional Regulations*.¹³

In this context, it may be useful to mention that because Professor Click was under consideration for tenure during the time period covered in this report, the administration could have addressed the problem it believed she posed by simply rejecting her candidacy. As noted earlier in this report, although Professor Click initially received positive recommendations for tenure from her department committee and chair and from her dean, these recommendations were reversed. And Chancellor Foley’s remarks of January 25 certainly left open the possibility that denial of Professor Click’s tenure application was a possible, perhaps even expected, conclusion to the controversy. It is impossible to determine to what degree these changes of position were products of sincere and independent reconsideration in light of subsequent events and to what degree they were a consequence of some sort of external pressure.

C. Governing Board Overreach

In addition to issues of academic due process, the actions of the board of curators raise concerns over the conduct of institutional governance. Like several other cases recently investigated by the Association (for example, at the Universities of Illinois, Iowa, and Virginia), this case involves unilateral action and unwarranted interference in academic matters by a governing board. The *Statement on Government of Colleges and Universities*, jointly formulated by the AAUP, the American Council on Education, and the Association of Governing Boards of Universities and Colleges, provides as follows: “The governing board of an institution of higher education, while maintaining a general overview, entrusts the conduct

13. Professor Click’s actions were generally described as “misconduct.” Although the curators and Chancellor Foley also made clear that they found that misconduct reprehensible, no one invoked the standard of “moral turpitude.” Interpretive Comment 9 of the 1970 Interpretive Comments on the 1940 *Statement* defines moral turpitude as “that kind of behavior which goes beyond simply warranting discharge and is so utterly blameworthy as to make it inappropriate to require the offering of a year’s teaching or pay. The standard is not that the moral sensibilities of persons in the particular community have been affronted. The standard is behavior that would evoke condemnation by the academic community generally.”

of administration to the administrative officers—the president and the deans—and the conduct of teaching and research to the faculty. The board should undertake appropriate self-limitation.” Similar language can be found in the accreditation criteria of the Higher Learning Commission: “The governing board delegates day-to-day management of the institution to the administration and expects the faculty to oversee academic matters” (criterion 2C, number 4).

There can be little doubt that, by intervening in this case and circumventing established university regulations designed to defend the academic freedom and due-process rights of MU faculty members, the curators violated these principles and standards. The board’s own bylaws (section 10.030, article II) state that its responsibilities include “determin[ing] broad policy guiding the appointment of all faculty members and employees, on the recommendation of the President, and consistent with its other policies and regulations adopted by the Board.” They do not include making individual appointment and termination decisions. In addition, the bylaws call on members of the board “to accept and defend academic freedom and the practice of collaboration governance as fundamental characteristics of good University governance.”

To be sure, the board is also under its bylaws authorized to “[e]xercise such other authority as from time to time it deems appropriate not inconsistent with the applicable laws and regulations of the United States of America and applicable laws and regulations of the State of Missouri.” But we believe that such authority should be exercised only when existing policies and practices have been exhausted and when emergencies arise. And it need hardly be reiterated that in this case the board’s actions were not consistent with the regulations of the University of Missouri.

In both their responses to the AAUP and their public statements, board chair Henrickson and Chancellor Foley pointed to the exceptional character of the board’s conduct in this case. And it is true that instances of similar overreach by the board have been infrequent. But the frequency of such interference cannot be the sole measure of its gravity. The board’s dismissal of a faculty member for cause absent an adjudicative hearing before an elected faculty committee or any genuine academic due-process protections is itself sufficient evidence of inappropriate overreach. In addition, curator Steelman’s op-ed in the *Washington Post* not only prejudged Professor Click’s case but arguably can be seen—and was so viewed by many

faculty members—as an unwarranted and inappropriate attack on shared governance, academic freedom, and the faculty itself, in violation of Mr. Steelman’s duty under the bylaws to defend academic freedom and “collaboration governance.”¹⁴

We recognize the extraordinary and difficult situation faced by the board in fall 2015, when MU experienced, in Professor Trachtenberg’s words, “a complete collapse of leadership.” But by acting unilaterally in the case of Professor Click, the board effectively undermined the authority of the very leaders it appointed just months earlier to restore order and address underlying problems. Indeed, by suspending Professor Click just two days after Chancellor Foley had publicly declared his faith in existing processes, apparently with no prior notice to the chancellor, the board revealed a remarkable disrespect not only for the faculty in its governance role but also for its own appointees.

D. Political Interference

The board’s overreach, however, is not fully comprehensible outside the context of the extraordinary political interference by members of the Missouri legislature. Indeed, few would question that political pressure was exerted on the campus, and most would assume that it had a significant, if not decisive, impact on the decision to terminate Professor Click’s appointment.

We have already highlighted several instances in which legislators sought to exercise inappropriate influence on the outcome of Professor Click’s case. These include the two letters from more than one hundred Republican legislators demanding her dismissal; the approval of a spending plan that exempted MU from a statewide funding increase; the contentious public hearing of February 17 at which a legislator attempted to file a complaint against Professor Click; and the February 23 proposal to eliminate from the university’s budget an amount equivalent to the salaries of Professor Click, her department chair, and her dean. The March 1 legislative proposal to restore cut funding following the announcement that the curators

14. It might also be noted that the absence from the board of one-third of its members, including two African American members who resigned within days of each other and within days of the curators’ decision to investigate Professor Click, raises troubling questions about the board’s functioning in this matter, although both of those who resigned claimed publicly to be doing so for personal reasons unrelated to events at MU.

had voted to dismiss her provides only additional confirmation of the intent to interfere.

Missouri house budget chair Tom Flanigan said in February that the proposal to reduce MU's funding "was not made lightly." While Mr. Flanigan acknowledged that the proposed cuts were meant to target Professor Click, he said there were other concerns as well. Pointing to the unrest of the fall, Representative Flanigan said the cuts would come in two areas: roughly \$400,000 from the MU budget specifically targeting the salaries of Professor Click, her chair, and her dean and another \$7.6 million in reductions to the system administration. Perhaps most troubling were the lawmakers' disparaging references to Professor Click's research.

But these actions were not the only legislative attempts to intrude into scholarship at the Columbia campus. In an October 30 letter, state senator Kurt Schaefer charged that the university was breaking the law by allowing a graduate student to carry out her research on the impact of a recently imposed law requiring women in Missouri to wait seventy-two hours between the time they seek information about an abortion and the point at which they have the procedure. Senator Schaefer, who is the chair of the Senate Interim Committee on the Sanctity of Life and a candidate for the Republican nomination for attorney general, called the dissertation a "marketing aid" for Planned Parenthood.

The study is being conducted by a graduate student in the School of Social Work and supervised by the director of the school, Dr. Marjorie Sable. In 2013, Dr. Sable became a member of the Board of Directors of Planned Parenthood of Kansas and Mid-Missouri, and she was selected as secretary in 2014. The study was approved by the university's institutional review board. The student conducting the research is a staff member at a Saint Louis clinic who pays her own tuition without scholarship support and is paying any expenses for the study from her own pocket.

In our conversation with Chancellor Foley, he insisted that he had followed the stance taken by his predecessor and resisted Schaefer's demand, so far successfully. "I draw the line at legislators telling our students what they can and cannot research and study," he said. Nonetheless, the existence of such pressure has been a matter of serious concern for many faculty members.

The *Statement on Government of Colleges and Universities* declares: "When ignorance or ill will threatens the institution or any part of it, the

governing board must be available for support. In grave crises it will be expected to serve as a champion. Although the action to be taken by it will usually be on behalf of the president, the faculty, or the student body, the board should make clear that the protection it offers to an individual or a group is, in fact, a fundamental defense of the vested interests of society in the educational institution." The pertinent accreditation standard of the Higher Learning Commission is more specific: "The governing board preserves its independence from undue influence on the part of donors, elected officials, ownership interests, or other external parties when such influence would not be in the best interest of the institution" (section 2C, number 3).

While we are relatively confident that Chancellor Foley and President Middleton, in their admittedly difficult and even unpleasant dealings with legislators, sought to defend the university's autonomy, we see little evidence that the board of curators joined in such efforts. Instead, it is difficult not to conclude that the board's unilateral decision to terminate Professor Click's appointment without affording her the faculty hearing required under university policies was in some measure a response to inappropriate legislative intrusion and pressure. Indeed, we find no evidence that the curators ever publicly protested this interference or resisted individual legislators' attempted exercise of undue influence.

In this light, the establishment of a University of Missouri System Review Commission has ominous implications. While some hope the commission will focus mainly on mismanagement and administrative bloat, its authorization to review the entire system—"including but not limited to the system's collected rules and regulations, administrative structure, campus structure, auxiliary enterprises structure, degree programs, research activities, and diversity programs"—could open the door to interference in curriculum, scholarship, and faculty status, including the tenure system. Moreover, that the commission's members will be appointed by leaders of the legislative majority in both houses, who have been among those most critical not only of system leadership but also of the faculty, does not bode well.

It is therefore unlikely that Professor Click's dismissal will be the final instance of legislative interference in the operations of the University of Missouri. As one MU professor wrote, "In the wake of Professor Click's firing, politicians and others have only stepped up their demands that the university make changes in exchange for continued funding, and it's clear that

something like the evisceration of tenure that has been achieved in Wisconsin is the long-term goal.”

The faculty council leaders with whom we met told us that tension between the legislature and the university is nothing new. However, they argued that adoption of term limits a few years ago and the intensified polarization of state and national politics have greatly exacerbated the situation. We therefore conclude that not only was there undue political interference in the case of Professor Click, but that the threat of such interference continuing and even worsening is genuine.

E. Conditions for Academic Freedom and Institutional Governance

The University of Missouri has gone through an especially difficult period. The student demonstrations and administrative turmoil of fall 2015 posed formidable challenges to both the administration and the faculty, challenges that placed institutions of shared governance under strain and imperiled academic freedom. In many ways the MU faculty rose to these challenges. In particular, the faculty council and its leadership were able to take principled and forceful positions in defense of academic freedom and shared governance, even while keeping essential lines of communication open with the administration and the board. The AAUP chapter also rose to the occasion, as did many other faculty members, who spoke out individually and in groups with petitions, open letters, and newspaper and magazine articles.

At the same time, it must be acknowledged that there is much to worry about with respect to the future of shared governance and academic freedom at MU. In important respects, Chancellor Foley has worked energetically to correct some of the daunting problems he inherited. The Concerned Student 1950 activist with whom we met praised him for his efforts to reach out to students and for “recognizing Loftin’s mistakes.” The chancellor has also not avoided dialogue with the faculty, however heated those conversations have sometimes become. In our meeting with him, he was both gracious and responsive.

Nonetheless, Chancellor Foley’s dramatic shift from defending campus policies on January 25—just two days before the curators voted unilaterally to suspend and investigate Professor Click—to endorsing just a month later both the curators’ decision and the process they used to reach that decision is troubling. Chancellor Foley stated in his meeting with us that his reversal was motivated chiefly by a recognition that “we had

to move on.” It is not clear, however, that moving on required his acquiescence in the board’s position.

We must therefore conclude that the faculty at MU cannot now rely on an administration fully dedicated to a robust defense of principles of academic freedom and shared governance. And Chancellor Foley’s ill-considered warning to the faculty council—“you’re being recorded and your behavior will be judged”—while surely not intended as a statement of policy, only adds to the uncertainty.

In our conversation with her, Professor Click stated that after her dismissal all faculty members grew fearful. While we cannot confirm the accuracy of that observation, we can certainly conclude that, in light of the board’s action against Professor Click and in the context of legislative threats to the institution and unresolved administrative turmoil, academic freedom and shared governance at MU are endangered.

V. Conclusions

1. While the investigating committee cannot exclude the possibility that a reasonably open-minded review of the case by a representative faculty body might have produced a result similar to that reached by the curators, we are not convinced that Professor Click’s actions on October 10 and November 9, 2015, even when viewed in the most unfavorable light, were adequate grounds for her dismissal by the University of Missouri system board of curators.
2. By denying Professor Click an adjudicative hearing of record before a duly constituted faculty body and other procedural rights guaranteed under both AAUP policy documents—including the 1940 *Statement of Principles on Academic Freedom and Tenure*—and the University of Missouri Collected Rules and Regulations, the board of curators violated basic standards of academic due process. In so doing, the board of curators set a dangerous precedent that threatens the security of position and, consequently, the academic freedom of all faculty members at the University of Missouri.
3. In terminating the appointment of Professor Click, effective immediately following the denial of her appeal, the board of curators violated Regulation 8 of the AAUP’s *Recommended Institutional Regulations on Academic Freedom and Tenure*, which requires that, in cases of dismissal for cause not involving moral turpitude, a full-time faculty member with more than eighteen

months of service will receive salary or notice of at least one year.

4. By acting unilaterally in the case of Professor Click, the board of curators effectively undermined the authority of both the faculty and campus administrators, violated principles of shared governance, and failed to adhere to the admonition in the *Statement on Government* to “undertake appropriate self-limitation.”
5. While there is no definitive evidence to suggest that the board of curators did not act upon its stated motives, there is reason to suspect that grounds other than Professor Click’s actions were the real cause of her dismissal. By threatening budgetary and other consequences and openly demanding the summary dismissal of a faculty member, members of the Missouri legislature exerted undue political interference in the case of Professor Click, and the threat of such illegitimate interference continues.
6. In light of the board’s action against Professor Click and in the context of legislative threats to the institution and unresolved administrative turmoil, academic freedom and shared governance at MU are endangered.¹⁵ ■

15. The Board of Curators of the University of Missouri, having received the draft text of this report, with an invitation for comments and corrections, provided a lengthy and detailed response by letter of April 27 from board chair Henrickson. The board’s specific comments were taken into account in preparing the final draft of this report. Quoted below is the portion of the letter that sets forth in full the board’s defense of its action against Professor Click.

In fairness, what should not be lost in the draft report is that this is a case of misconduct—misconduct which faculty and the AAUP should condemn, not blindly defend. Dr. Click assaulted one of our students and encouraged others to physically intimidate him; she excluded people from a public space where they had a right to be present; and she interfered with freedom of the press at the university that is home to the world’s oldest journalism school. After waiting months for faculty or administration to address her conduct and after she was criminally charged by the city prosecutor, the Board took action to address the misconduct, which it has the legal authority to do.

Before acting, however, the Board ordered an objective fact investigation by experienced investigators and provided the results of the investigation, including the names of key witnesses and their statements, to Dr. Click. The Board provided Dr. Click an opportunity to respond to the investigation and, after the Board’s initial decision, it gave her the opportunity to appeal the decision. Using the same evidence that was fully disclosed to Dr. Click, the Board took action based on her misconduct in failing to fulfill established expectations of faculty—expectations that are derived from the AAUP’s own standards. The Board’s decision had nothing to do with her teaching, research or any other form of academic freedom. . . .

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

NICHOLAS FLEISHER (Linguistics)
University of Wisconsin–Milwaukee

SHELIA KENNISON (Psychology)
Oklahoma State University

Investigating Committee

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; **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*

*Did not participate in the vote.

[W]e ask that the investigative committee and Committee A reconsider the analysis and conclusions of the draft. While we endorse the normative practice of faculty hearings in cases of mid-term dismissal, the language and core principles of the 1940 *Statement* do not suggest that the absence of a faculty hearing *under the facts of this case* represents a danger to academic freedom. In this regard, we recognize the draft report’s discussion of the wording of the 1940 *Statement* and its history. But we respectfully submit that the draft’s analysis and its discussion of faculty response to Dr. Click’s conduct actually supports the Board’s action in the context of this particular case. As explained in our March 17, 2016 letter, the Board’s action was consistent with core principles of the 1940 *Statement* in key respects. The draft report fails to present any meaningful or persuasive analysis to the contrary.