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# Academic Freedom and Tenure: Indiana University Northwest<sup>1</sup>

(JANUARY 2023)

“On September 14, 2021, police officers showed up at my house in Wisconsin and delivered a letter from the [Indiana University Northwest] chief of police saying that I could not enter university property and that doing so would result in criminal prosecution for trespass. On September 16, police officers again arrived at my door and delivered to me a letter from Executive Vice Chancellor for Academic Affairs Vicki Román-Lagunas saying I had made a ‘threat of physical violence’ and that my employment was therefore terminated.” Thus wrote Dr. Mark McPhail in appealing his dismissal from his tenured professorship in the Department of Communication at Indiana University Northwest. After the police left his home following the second visit, Professor McPhail reports that he fell to the floor, sobbing and shaking. At the time that he was deemed a “threat” to the IUN community, he was 150 miles from campus.

## I. The Institution

Founded in 1963, Indiana University Northwest, one of five regional campuses in the Indiana University system, is located in Gary, a city about twenty-five miles from downtown Chicago and part of its metropolitan area. IUN enrolls approximately 3,400 students,

including some 2,500 full-time undergraduates and ninety full-time graduate students. Of its approximately 320 faculty members, some 140 are full-time, and around sixty hold tenured appointments. Its student population is, by a slim margin, majority non-white, with 16 percent of undergraduates identifying as Black or African American.

The IU system president is Dr. Pamela Whitten, who was appointed in 2021. The first female president in system history, she previously served as president of Kennesaw State University in Georgia and prior to that was a professor of telecommunications at the University of Kansas and Michigan State University. Mr. Ken Iwama has been IUN’s chancellor since August 2020, having come to IUN from the College of Staten Island, where he had most recently served as vice president in the Division of Economic Development, Continuing Studies, and Government Relations. Prior to that, Chancellor Iwama, who appears to have never held a faculty appointment, had been director of diversity and compliance at the institution. IUN’s executive vice chancellor for academic affairs is Dr. Vicki Román-Lagunas, who was appointed in 2017 to replace Dr. McPhail, her predecessor in that position. Dr. Román-Lagunas previously served as acting provost and professor of Spanish at Northeastern Illinois University. The primary agency of faculty governance at IUN is the Faculty Organization, which consists of all full-time faculty members. The president of the Faculty Organization, serving a four-year term that started in 2020, is Professor Mark Baer, an associate professor of theater.

The regional campuses of Indiana University do not have individual governing boards. They are subject to the board of trustees of the IU system, and their chancellors are required to appoint a board of advisers whose members serve in an advisory capacity only.

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1. The text of this report was written in the first instance by the investigating committee. In accordance with Association practice, the text was then edited by the Association’s staff and, as revised with the concurrence of the investigating committee, was submitted to Committee A on Academic Freedom and Tenure. With the approval of Committee A, it was subsequently submitted to the subject faculty member, the administration, and other concerned parties. This final report has been prepared for publication in light of the responses received and with the editorial assistance of the staff.

## II. The Case of Professor Mark McPhail

Dr. Mark McPhail holds an MA from Northwestern University in performance studies and a PhD in rhetoric and public address from the University of Massachusetts Amherst. He joined IUN in 2015 as executive vice chancellor for academic affairs, serving under Chancellor Iwama's predecessor, Dr. William J. Lowe. He was at the same time appointed as professor of communication with tenure. Professor McPhail arrived at IUN after a twenty-seven-year history of faculty and administrative appointments at other institutions, including an immediately prior five-year stint as dean of arts and communication at the University of Wisconsin–Whitewater. Professor McPhail previously held appointments at Southern Methodist University, Miami University, the University of Utah, the University of Michigan, and Emerson College. The following account is based on appeal documents, email messages, the legal complaint against IUN that Professor McPhail filed in Indiana superior court in April 2022 (subsequently filed in federal district court in May), and the investigating committee's interviews.

Dr. McPhail's term as executive vice chancellor was brief and reportedly frustrating. He had a difficult working relationship with then chancellor Lowe, who he believed denied him the authority and independence necessary in his role as chief academic officer of the institution. In January 2016, he offered his resignation from that position; Chancellor Lowe declined to accept it and promised Dr. McPhail he would be given greater authority. But the situation continued to worsen.

The crisis came on May 18, 2016, when the chancellor informed Dr. McPhail of anonymous complaints about his conduct. In his May 20 letter of resignation, addressed to Chancellor Lowe, Dr. McPhail recounts the conversation: "You informed me that several faculty members had complained about my behavior, alleging that I was 'heavy handed,' 'quick to anger,' and 'impatient,' and that they were 'scared of me,' that I 'did not listen,' and that I had spoken ill of other individuals at IUN in their absence. You noted that you had also observed these behaviors and that you considered them unprofessional and admonished me from engaging in any behavior in the future that could be interpreted in this manner." The letter continues,

As I have informed you, I believe that there is significant evidence of hostility toward people of color, in particular people of African descent, at Indiana University Northwest. Evidence of this

belief is substantial: extremely poor graduation rates for African American students; the lack of representation of students, faculty, and administrators on a campus located in a community that is predominantly African American; the results of the Campus Climate Survey; and my own personal experiences and professional expertise as an African American administrator and recognized scholar of race relations and communication. Furthermore, in numerous conversations with community members, staff, and faculty at IUN, both black and white, these beliefs have been confirmed and substantiated. While these anecdotal reports might be dismissed or minimized, the extent to which they are supported by empirical evidence suggests that they are both reasonable and accurate. Additionally, I believe that the recent criticisms of my character and competence are motivated as much by subjective hostilities as by legitimate concerns with my performance.<sup>2</sup>

This time the chancellor accepted Dr. McPhail's resignation from the IUN administration, and the former vice chancellor for academic affairs assumed a full-time faculty position.

On June 6, Professor McPhail filed a complaint with the university's Office of Affirmative Action and Employment Practices, alleging that as executive vice chancellor for academic affairs he had been subject to salary discrimination and a pattern of racial hostility. The office investigated, but in a report issued on January 10, 2017, stated that it had found no basis for the complaint. Professor McPhail then sent his complaint, the university's report, and his response to the US Equal Employment Opportunity Commission in Gary. That office never responded.

Following a paid leave for academic year 2016–17 granted under the terms of his resignation as vice chancellor, Dr. McPhail returned to teaching in the 2017–18 academic year. As a faculty member, Professor McPhail continued to call attention to what he perceived as racial equity and justice issues at IUN,

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2. In a May 25, 2016, email message to Chancellor Lowe, Dr. McPhail reiterated his concern that the "climate of hostility toward persons of African descent that I believe exists at IUN will persist unabated and that the possibility of future anonymous accusations that impugn my character and question my professional judgment will continue, enabling the individuals who have made these accusations to interfere with my ability to obtain work elsewhere."

regularly highlighting what he characterized as systemic problems on campus as well as the institution's difficulties recruiting and retaining faculty, staff, and students of color. In April 2018, Professor McPhail organized a widely publicized and well attended on-campus forum, "Do Black Minds Matter in Indiana?" The forum focused on accounts of how state universities, including IUN, were harming the state's residents by their failure to recruit, retain, and graduate Black students. According to Professor McPhail, this event so impressed Dr. James C. Wimbush—vice president for diversity, equity, and multicultural affairs at the IU system's Bloomington campus—that he offered Professor McPhail a renewable one-year senior research fellowship in his office to write a book about the history of people of color in the IU system.

In summer 2018, as Professor McPhail prepared to leave for his fellowship position, the IUN administration unilaterally created a School of the Arts that housed the communication department along with programs in fine and performing arts. Mr. David Klamen, formerly the associate dean of the College of Arts and Sciences, was appointed dean of the new school. On August 1, 2018, Professor McPhail emailed Ms. Aneesah Ali, director of IUN's equal opportunity and affirmative action office, to convey his concern that Dean Klamen had been appointed without a search or any transparency about the action, in violation of institutional policies and federal Equal Employment Opportunity Commission (EEOC) guidelines. He urged Ms. Ali to contact Vice Chancellor for Academic Affairs Román-Lagunas, as the responsible administrator, to discuss the appointment process. Ms. Ali answered, copying Dr. Román-Lagunas, that she was unaware of the creation of a new school or the appointment of a new dean.<sup>3</sup>

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3. Professor McPhail was not the only faculty member to question these unilateral actions. On March 25, 2019, the then chair of the communication department, Professor Bonita Neff, filed a grievance with the IUN Faculty Board of Review (FBOR) about the process by which Dean Klamen had been appointed. Two weeks later, on April 8, Dean Klamen, in consultation with Executive Vice Chancellor Román-Lagunas, initiated termination proceedings against Professor Neff based on five allegations of "serious misconduct," one of which was "misus[ing] University property by printing over 20,000 pages in less than one year." Professor Neff appealed the dismissal to the FBOR, which found unanimously in her favor on three of the charges and 3 to 2 in her favor on the other two. By a vote of 3 to 2, the FBOR recommended that her dismissal be rescinded. Chancellor Iwama rejected the board's recommendation, and Professor Neff's dismissal became effective on May 29, 2020.

In March 2020, near the close of the second year of his research fellowship, Professor McPhail had begun preparing to return to his faculty duties at IUN in the fall and contacted Dean Klamen, now responsible for the communication department's course assignments, to discuss his teaching schedule for the upcoming year. Dean Klamen did not respond and did not assign Professor McPhail any classes. In June, Professor McPhail, still not having received any information about his course assignments for the fall, filed a complaint with the Gary Commission on Human Relations alleging that Dean Klamen and vice chancellor Román-Lagunas were withholding his teaching assignments for the upcoming year in retaliation for having written the director of IUN's EEOC office in August 2018 to complain about Dean Klamen's appointment. In July, Professor McPhail received his course assignments, and he returned to teaching in fall 2020.

At the close of that academic year, in July 2021, Dean Klamen conducted an annual performance evaluation of Professor McPhail.<sup>4</sup> He claimed that Professor McPhail's teaching had been rated as "inadequate" in a 2017 evaluation, based on low enrollments and a DFW rate (the percentage of students who receive a D or an F, or who withdraw) that was considerably higher than the department average. Dean Klamen stated that "in preparation for his return to teaching and to allow for necessary adjustments to transition to online teaching due to the pandemic," Professor McPhail had been given a course release and "intensive training support" in fall 2020. Nevertheless, the dean added, Professor McPhail's teaching during the 2020–21 academic year had remained "unambiguously inadequate." As evidence, Dean Klamen cited the current DFW rate for Professor McPhail's classes (56 percent in the spring of 2021, compared with a department average of 29 percent); low enrollments; "reports" that students were "avoiding enrolling" in his classes because of his "reputation as a teacher"; and low student-evaluation response rates and scores.

In his August 3 reply to Dean Klamen's evaluation, Professor McPhail claimed that he had not received

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4. In its later report regarding Professor McPhail's suspension, the FBOR noted with concern that this evaluation was conducted off cycle: IUN faculty members are normally reviewed for a calendar year rather than at the end of the academic year. Dean Klamen provided no explanation for the off-cycle review.

or even been informed of any previous faculty evaluation, and he asked that copies of his evaluations be shared with him.<sup>5</sup> He averred that “all of the students who failed [his] courses did so because they did not submit required work,” even after “numerous reminders,” and that many students who received low grades had not availed themselves of opportunities to correct or resubmit work. Professor McPhail also offered brief remarks about the inadequacy of student evaluations as a measure of teaching effectiveness, quoting a research article critical of their use for that purpose. In closing, he stated, “Since working at Indiana University Northwest, I have not received any peer reviews of my teaching, which have been standard practice at every institution of higher education at which I have worked during my career. I have not been made aware of any of the concerns noted in [Dean Klamen’s evaluation] and was not contacted at any time prior to this review or given the opportunity to respond to the inaccurate and incorrect information contained within.”

Replying on August 12, Dean Klamen stated that Professor McPhail’s response was “not sufficient to mitigate the serious and ongoing concerns expressed in the evaluations and ratings” and that, in “attempt[ing] to shift blame to students for [his] own professional shortcomings,” Professor McPhail had violated the Indiana University Code of Academic Ethics. He added, “I am recommending to the Executive Vice Chancellor that you teach no classes this upcoming semester. This recommendation is based on the teaching deficiencies noted. I also note that when you were given additional opportunities and time for training that [were] not otherwise provided to other faculty, you were still unable to carry out your teaching responsibilities in a professional manner.” Dean Klamen added that he would also recommend that Professor McPhail’s salary for the semester be reduced by 75 percent, “commensurate with the removal of [his] teaching responsibilities.”

The following day, August 13, Executive Vice Chancellor Román-Lagunas accepted Dean Klamen’s recommendation, notifying Professor McPhail by email that he was suspended from all teaching duties for the fall 2021 semester and that his salary would be reduced by three-quarters.

On September 13, Professor McPhail submitted an appeal of his suspension to the IUN Faculty Board of

Review (FBOR), alleging that the suspension had been imposed in retaliation for his EEOC complaints and his criticisms of the administration. Matters escalated dramatically the following day.

On the morning of September 14, three IUN police officers came to Professor McPhail’s home—150 miles away in Wisconsin—to deliver a trespass notice, which informed him that he was the subject of a campus police investigation, barred him from IUN’s campus, and threatened him with arrest and prosecution for entering any university property. After he made a telephone call that evening to the office of a colleague in Bloomington, police officers notified him that his call had violated the trespass notice. Two days later, IUN police officers delivered a letter from Executive Vice Chancellor Román-Lagunas, dated September 14, stating that, based on reports that he had made “on more than one occasion, a threat of physical violence,” the administration “had no reasonable alternative but to proceed with dismissal.”

Professor McPhail’s attorney emailed Ms. Marcia N. Gonzalez, an IU senior associate general counsel, to deny the allegations and inquire about the nature of the alleged threats. Ms. Gonzalez responded: “The bases for Prof. McPhail’s termination were that he not only had significant problems with his teaching, service, and commitments to the University as previously documented for him but that he had also made a threat of physical violence, stating words to the effect that ‘the only way to end racism is to kill all the white people.’” Ms. Gonzalez expanded upon the allegations in a follow-up message:

A faculty member stating that all members of a particular race should be killed constitutes serious personal and professional misconduct, particularly when accompanied by the specific warnings that followed this statement, as further described below. It is important to note that such a statement and the accompanying warnings following this statement had to be taken seriously to protect the safety of the University community. The statement, standing alone, was enough to warrant dismissal. However, there were additional prior professional misconduct issues, about which Prof. McPhail had been made aware. Prof. McPhail’s employment was terminated, given the extreme gravity of this statement and the wide range of prior issues. A suspension (either with or without pay) is not appropriate in these circumstances. Prof. McPhail’s statement

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5. Professor McPhail informed the investigating committee that he has never received a copy of the 2017 evaluation.

was reported directly by a very concerned member of the IUN Community to EVCAA Román-Lagunas on or about September 10, and the report was made in confidence. During this same week, Dean Klamen was also advised confidentially by a colleague that he should avoid Prof. McPhail for fear that an “incident” may result and that he should be very concerned if he were to encounter him in person. Each of these reports was separate and distinct, and the individuals involved were not the same. However, in both cases, each person reported that Prof. McPhail was very angry. Based on these reports, the names of the reporters have been kept in confidence and immediate steps were taken in the interest of protecting the IU community.

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On October 12, 2021, Professor McPhail filed an appeal of his dismissal with the FBOR, alleging that the action against him lacked a legitimate basis, was imposed without regard for due process or institutional policies, and was carried out in retaliation for his criticisms of and complaints against the administration. The board informed him that it would have to complete its review of his suspension appeal before it could address his dismissal appeal.

On November 29, the FBOR reported its findings on Professor McPhail’s appeal of the suspension. While concurring with the administration’s claim that there were reasons for concern about Professor McPhail’s classroom performance, it found that “the Administration chose to address these concerns through a process that compromised due process and an action that lacked a fundamental sense of fairness.” It criticized the administration for not affording Professor McPhail “adequate time to remediate the issues” or a “substantive remediation plan.” It described the 75 percent reduction in pay as “overtly punitive” and said such measures “should be kept as a last resort and reserved for circumstances where every other avenue of intervention has proved ineffective.” Instead, it stated, the administration should have used the institution’s post-tenure review policy and, if necessary, progressive discipline to address the issues. The FBOR concluded that Professor McPhail’s suspension was unjustified and recommended that his salary and benefits be reinstated retroactive to the date of his suspension. After acknowledging the complications posed by Professor McPhail’s subsequent dismissal, the FBOR stated that if he were still employed at IUN,

it would recommend that he be reinstated to his duties and afforded further opportunities for professional development. It also stated that it would recommend that another administrator replace Dean Klamen in supervising Professor McPhail because of an “evident break in communication and collegial trust” between them.

In a December 27 letter, Vice Chancellor Román-Lagunas notified Professor McPhail that she had rejected the FBOR recommendation, providing the following rationale:

It is important to reiterate that this administrative action was not based on a singular event but on the totality of events that occurred over a significant period of time. The FBOR based their recommendations on an alleged irregular time period covered by the FAR [Faculty Annual Report] 2020 evaluation and that a complete year should have been part of the evaluation. However, the issues involved in this administrative action were not solely based on your teaching during a four-month period. The information provided in the FAR 2020 included comparative data since 2017 which showed no improvement on your part nor any desire from you to make any modifications to address these issues over the years. . . . I do not agree that the issues should have been reviewed under the Indiana University Northwest’s Post Tenure Review and Enhancement Policy (“PT Policy”). The PT Policy focuses on performance enhancement. The decisions you have made not to comply with appropriate and established teaching standards represent deliberate conduct choices you have made, as opposed to simply being a performance issue. Thus, the Code of Academic Ethics was invoked.<sup>6</sup>

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6. The investigating committee considers it misleading, at best, for the executive vice chancellor to assert that the “FAR 2020 included comparative data *since* 2017” (emphasis added). What Dr. Román-Lagunas and Dean Klamen had was evidence *from* 2017. Professor McPhail had last taught in the academic year 2017–18 and then was on a research leave until fall 2020 when he returned to teaching. At most, Dean Klamen and Dr. Román-Lagunas had information from one full year of teaching, from three years prior, as a single comparison. Academic year 2017–18 was also Professor McPhail’s first year of teaching after stepping down as executive vice chancellor. He told this committee that his chair had identified some issues regarding the alignment of his curriculum with departmental expectations and that he addressed those right away.

On January 28, 2022, Chancellor Iwama notified Professor McPhail that he, too, had rejected the FBOR's findings and recommendations regarding his suspension. In a letter addressed to Professor McPhail, he contended that the FBOR's recommendation for remediation and progressive discipline was inappropriate because "supporting documentation" showed "that the issues under review were not new" and "were originally brought to [Professor McPhail's] attention going back as far as 2017." He reiterated the contention of the dean and the vice chancellor that the issue was not Professor McPhail's teaching competence but his failure to conform to standards of professional ethics: "evidence demonstrates you have chosen not to perform the job consistent with the job's requirements or the needs of your students." With regard to Professor McPhail's allegations of racism and retaliation, he noted that the university took all such allegations "very seriously" and urged Professor McPhail to bring his concerns to the "appropriate offices" of the institution for investigation.

In the ensuing months, the FBOR conducted its review of Professor McPhail's dismissal appeal. It should be noted that the board did not conduct a dismissal proceeding: the administration did not present formal charges or evidence beyond what was contained in the administration's communications with him and, crucially, it did not assume the burden of proving adequate cause for Professor McPhail's dismissal. Consequently, the FBOR limited itself to attempting, through interviews with faculty members and administrators, to piece together the administration's justification for its action. What follows is a brief summary of the reconstruction of events presented in the board's report, which it sent to Dr. Román-Lagunas on April 20, 2022.

The FBOR interviewed two faculty members and one administrator who had spoken directly with Professor McPhail following his suspension: Dr. Charles Hobson, a professor of business administration; Dr. Ellen Szarleta, a professor in the School of Public and Environmental Affairs and the director of the Center for Urban and Regional Excellence; and Dr. Bala Arshanapalli, the associate executive vice chancellor for academic affairs.

Professor Hobson told the FBOR that he had spoken with Professor McPhail on the telephone at some point after his suspension. Professor Hobson said that Professor McPhail had not made any threats and that if he had, Professor Hobson—a human resources expert—would have filed a police report. However,

Professor Hobson stated that he had contacted the administration after the call because he was concerned that Professor McPhail was distraught and in need of support from the administration. The FBOR's report states that "Hobson said that he had discussed the history of racism in the US with McPhail and had heard McPhail state his view that if indigenous people had killed all the early white settlers, racism would not have established itself in the Americas. Hobson said that he mentioned McPhail's view to the EVCAA to impress upon her how deeply McPhail felt about systemic racism in the US."

Professor Szarleta reported having had several telephone and text conversations with Professor McPhail following his suspension. She told the FBOR that Professor McPhail seemed "more hurt than angry" and that "she never heard him make any threats or advocate violence as a means for addressing racism."

Dr. Bala Arshanapalli, the associate executive vice chancellor for academic affairs, told the FBOR that he had spoken with Professor McPhail on the telephone after the suspension and described him as "upset, frustrated, and angry" during that call. Dr. Arshanapalli later spoke to Dean Klamen about the conversation and advised him to avoid Professor McPhail because, he told the FBOR, he feared that a meeting between the two might lead to an "unpleasant conversation." He also informed the FBOR that Professor McPhail had not said "anything inappropriate" and had not made "any threats against [Dean] Klamen or anyone else" during the call—a statement he also made to the IUN police.

Thus, according to the FBOR interviews, none of the three people who had spoken directly to Professor McPhail between his suspension and dismissal stated that he had made any threat of violence.

The FBOR also interviewed Dean Klamen and Dr. Cynthia Roberts, dean of the IUN school of business, who had spoken with Professor Hobson and Dr. Arshanapalli about Professor McPhail's alleged threats.

Dr. Roberts's recollection of her conversation with Professor Hobson differed substantially from his. She told the FBOR that Professor Hobson had asked her to arrange for him to meet with the chancellor and the executive vice chancellor for academic affairs because the situation with Professor McPhail was "potentially explosive." She said that Professor Hobson was concerned that Professor McPhail's "state of mind could lead to 'harm to self or others'" and that he had told her that "McPhail had said that the solution to

racism is to kill all white people.” She informed the FBOR that she had provided a similar oral report to an inquiring IUN police detective.

Dean Klamen told the FBOR that Associate Executive Vice Chancellor Arshanapalli on two occasions had “warned” him not to have contact with Professor McPhail and had described Professor McPhail’s manner during their telephone call as “very angry” and “extremely agitated,” adding that he at times was “screaming” and “incoherent.” Dean Klamen told the committee that Dr. Arshanapalli did not say that Professor McPhail had made any threats. However, Dean Klamen said, a “different colleague” had contacted him to say that he had “heard rumors that Klamen was not safe and McPhail had threatened him.”<sup>7</sup> Dean Klamen also reported that a university attorney had advised him that there was a “serious threat against him and that therefore he should stay away from campus, leave his home, move to a hotel, and temporarily relocate his family as well.” He also reported that the IUN police chief had twice contacted him and provided safety advice. However, by checking public records, the FBOR determined that no charges were ever filed against Professor McPhail.

Based on these findings, the FBOR concluded in its April 20 report that “there was cause for thoroughly investigating the possibility that McPhail may have made threatening remarks. What we learned from the witnesses we interviewed tells us that, shortly after he learned of his removal from teaching and service for the Fall of 2021, McPhail had conversations that probably went near the topic of killing white people or killing all white people, although it is not completely clear how one should interpret McPhail’s remarks.”

Nevertheless, the FBOR found that Professor McPhail’s dismissal was unwarranted and that the action taken had violated the institution’s dismissal procedures. It also concluded that in summarily dismissing Professor McPhail, the administration had failed to afford him the procedural safeguards required under both Indiana University system and IUN regulations. After acknowledging that the administration’s actions might have “stretched things beyond repair”—that is, that Professor McPhail might no longer be interested in returning to IUN if his dismissal were rescinded as he had requested in his appeal—the FBOR speculated that

“what [Professor] McPhail might want more than anything else is an ‘equitable and honorable’ separation” from the university. It therefore urged the IUN administration “to work with Dr. McPhail and his representatives to reach a settlement that is honorable and acceptable to him.”

This investigating committee is not aware of any substantive administrative response to the FBOR’s findings. In a three-sentence letter dated May 31, 2022, Executive Vice Chancellor Román-Lagunas informed Professor McPhail that since he had “chosen to have this matter addressed in litigation, we will fully participate in the federal court process regarding this matter over the next year or more.”

### **III. The Association’s Involvement**

Professor McPhail contacted the AAUP’s staff in August 2021 upon receiving notice of his suspension from service. Under Association-supported standards, a faculty member facing suspension for reasons other than a demonstrable threat of immediate harm is entitled to a prior adjudicative hearing of record before an elected faculty committee in which the administration bears the burden of demonstrating adequate cause for the action. On August 30, 2021, the staff wrote to Chancellor Iwama to convey the AAUP’s concern that Professor McPhail’s suspension violated this standard and to urge him to reinstate Professor McPhail pending such a hearing. The staff received no response.

In September 2021, Professor McPhail contacted the AAUP to inform its staff of having received the trespass order and dismissal notice. The staff advised him of Association-supported procedural standards for dismissal, which, as with disciplinary suspension, require a prior adjudicative hearing of record before an elected faculty committee in which the administration must demonstrate adequate cause. The staff urged him to seek clarity with the administration and the FBOR about whether he would be afforded a dismissal proceeding that comported with these standards.

By early April 2022, Professor McPhail had concluded that his attempts to resolve the situation with the IUN administration would prove fruitless and that the FBOR planned to treat his dismissal case as an appeal in which Professor McPhail would bear the burden of proof. At Professor McPhail’s request, the staff wrote to Chancellor Iwama on April 12, 2022, to explain that, under AAUP-supported standards, “a post-dismissal appeal of a unilateral administrative action is not an acceptable substitute for a prior dismissal hearing at which the administration must

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7. This colleague is not named in the report, and it does not appear that the FBOR was informed of his identity.

offer specific charges and must bear the burden of demonstrating that the charges are true and that they warrant dismissal. It is essential that the Indiana University Northwest administration provide its faculty this indispensable safeguard of academic freedom: failure to do so effectively renders tenure all but meaningless at the university.” The staff’s letter closed by urging Chancellor Iwama either to reinstate Professor McPhail and follow AAUP-supported standards in any future action against him or to reach a mutually acceptable resolution with him. Once again, the staff received no response.

The staff wrote again to Chancellor Iwama on May 4, noting that the FBOR’s recommendation regarding Professor McPhail’s dismissal concurred with that of the AAUP, and urged him to accept it. In a May 6 reply, Chancellor Iwama, citing Professor McPhail’s pending litigation, declined to comment other than to say that the administration did not accept the account of events presented in the staff’s letters. On May 23, the staff responded to Chancellor Iwama to emphasize the AAUP’s concerns about the academic freedom and racial-equity dimensions of Professor McPhail’s case: “The Faculty Board of Review report also raises the possibility that Professor McPhail’s dismissal was not a response to a direct threat of physical violence but instead a reaction to a general remark Professor McPhail made to a colleague about the history of race relations and racial violence. If such was indeed the case, he was dismissed in violation of his academic freedom. Further contributing to our concerns on this point, Professor McPhail has alleged that the administration’s actions against him were in response to his calling attention to and speaking about issues of racial equity at IUN.”

The staff’s May 23 letter also informed Chancellor Iwama that because of the gravity of the Association’s concerns, the staff would request that the AAUP’s executive director authorize an investigation into Professor McPhail’s case unless the matter were resolved in the ensuing weeks.

On June 10, Chancellor Iwama informed the staff that the administration would not participate in an investigation should one be authorized, again citing Professor McPhail’s pending lawsuit. By letter of August 17, the staff informed Chancellor Iwama that an investigation had been authorized. In a letter dated August 24, 2022, an attorney representing Indiana University responded: “The University respectfully will not be participating in this investigation. In deference to the federal court process, please refrain

from contacting University employees, including the faculty, staff, or the administration, regarding this matter.”

Between August 26 and September 22, 2022, the undersigned investigating committee conducted interviews by video conference, telephone, and email with three current and four former IUN faculty members as well as one current and one former administrator at other IU institutions. Perhaps not surprisingly, several members of the faculty who had been contacted were reluctant or afraid to be interviewed. One potential faculty interviewee even reported being under “strict instructions from IU Legal to direct all inquiries about the McPhail case to its office.” Professor Mark Baer, the Faculty Organization president, at first did not wish to be interviewed but changed his mind, he informed the investigating committee, because he believed that, as president of IUN’s chief faculty governance body, it was his responsibility to go on the record to “shine a light on the strong system of governance, and strong faculty voice at IUN.” The committee regrets that officers of the administration and the members of the Faculty Board of Review declined to be interviewed. However, we believe that we have sufficient evidence on which to base our findings and conclusions, especially the voluminous documentation to which we had access—including two appeals, responses to those appeals from the FBOR and the administration, and the documents submitted with Professor McPhail’s lawsuit against the university.

#### **IV. The Issues of Concern**

Of the issues posed by Professor McPhail’s case, the investigating committee considers the following as most salient.

##### **A. Procedural Issues**

These issues constitute the most serious departures from AAUP-recommended standards.

##### **1. Academic Due Process in a Case of Dismissal**

As previously noted, under AAUP-recommended standards of academic due process, an administration can dismiss a faculty member for cause only following an adjudicative hearing of record before an elected faculty body. In such a hearing, the burden of demonstrating adequate cause for dismissal rests with the administration. This procedure is set forth in the joint *Statement on Procedural Standards in Faculty Dismissal Proceedings* and, more elaborately, in Regulation 5 of the



AAUP's *Recommended Institutional Regulations on Academic Freedom and Tenure*. The following provisions of Regulation 5 are critical:

- “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. Dismissal will not be used to restrain faculty members in their exercise of academic freedom or other rights of American citizens” (5a).
- Dismissal will be preceded by “(1) discussions between the faculty member and appropriate administrative officers looking toward a mutual settlement; (2) informal inquiry by the duly elected faculty committee, which may, if it fails to effect an adjustment, determine whether in its opinion dismissal proceedings should be undertaken, without its opinion being binding upon the president; (3) a statement of charges, framed with reasonable particularity” (5b).
- “The individual concerned will have the right to be heard by a duly elected faculty hearing committee” (5c).
- “During the proceedings the faculty member will be permitted to have an academic adviser and counsel of the faculty member’s choice” (5c[5]).
- “The burden of proof that adequate cause exists rests with the institution and will be satisfied only by clear and convincing evidence in the record considered as a whole” (5c[8]).
- “The faculty member and the administration will have the right to confront and cross-examine all witnesses” (5c[11]).
- “If the hearing committee concludes that adequate cause for dismissal has not been established by the evidence in the record, it will so report to the president. If the president rejects the report, the president will state the reasons for doing so, in writing, to the hearing committee and to the faculty member and provide an opportunity for response before transmitting the case to the governing board” (5c[16]).

In addition, Regulation 6 (“Action by the Governing Board”) provides for an appeal of an adverse decision by the president (or, in this case, the chancellor) to the governing board, which should include, among other elements, “opportunity for argument, oral or written or both, by the principals at the hearing or by their representatives.”

Dismissal proceedings at IUN are governed by a system-wide policy, IU Policy ACA-52 (“Permanent Separations for Academic Appointees”), and by an institutional policy, “Indiana University Northwest’s Dismissal Procedures for Tenured Faculty and Librarians.” Together these incorporate most of the AAUP-supported procedural elements listed above—including extensive peer review and settlement discussions prior to the initiation of formal proceedings, a detailed statement of charges, the right to a hearing before an elected faculty body, the right to be accompanied in that hearing by an adviser or counsel, and the right to call and cross-examine witnesses.

Nevertheless, several elements are lacking. The university’s dismissal regulations do not afford the faculty member the right to appeal to the governing board, as the chancellor’s decision on receipt of the faculty hearing body’s recommendation is final. In addition, IU and IUN dismissal policies are silent regarding burden of proof in cases of alleged *misconduct*, the stated basis for Professor McPhail’s dismissal. In cases of dismissal for *incompetence*, however, IUN’s institutional policy provides that “the burden of proof that adequate cause exists rests with the institution and will be satisfied only by substantial evidence in the record considered as a whole.”

No one has contested that in dismissing Professor McPhail the IUN administration failed to observe AAUP-recommended dismissal standards, even though most of those standards are incorporated into the university’s regulations.<sup>8</sup> The September 14 letter from Dr. Román-Lagunas informed him that the administration had “no reasonable alternative but to proceed with dismissal pursuant to applicable policies,” but subsequent email conversations between his attorney and IU attorney Marcia Gonzalez clarified that his dismissal had been effective on that date. The administration did not discuss the matter informally with Professor McPhail prior to his dismissal, nor does any evidence exist that the administration consulted an elected faculty committee prior to deciding to dismiss him. When

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8. The FBOR report on its review of Professor McPhail’s appeal of his dismissal condemns the administration’s disregard of the institution’s official regulations: “McPhail was not given access to the process our campus’s Dismissal Procedures mandate. Instead, he was summarily dismissed without an opportunity to access the protections afforded by the Dismissal Procedures. He was given very little information on the sources and nature of the allegations against him. . . . It is clear to us that treating an IU faculty member in this way is not acceptable.”

he appeared before the FBOR, Professor McPhail was not permitted to have counsel or an adviser with him or to call or cross-examine witnesses. He was not allowed to appeal the chancellor's decision to a higher authority, and, most egregiously, the burden of proof in his FBOR hearing was his, not the administration's. (As noted above, these latter two AAUP-recommended dismissal standards are missing from the IU and IUN dismissal policies.)

With regard to burden of proof, instead of being in a position where the administration was obliged to make its case for his dismissal, Professor McPhail was compelled to make his case to the FBOR that he should *not* have been dismissed. While the FBOR is an elected faculty body and appears to have exercised its responsibilities diligently within the narrow parameters of its charge as an appeals committee, its formal proceedings were not those of a prior dismissal hearing but of a post hoc review of an appeal of an action already taken. As Professor McPhail put it to the investigating committee: "It was like they threw me in jail and when I asked, 'But what have I done? What is my crime?' They simply said, 'If you don't like it, you can appeal.'"

To make matters even worse, the IUN administration, citing IU's Whistleblower Policy (U-04), declined to identify the individuals who allegedly reported that Professor McPhail had made threats of violence, leaving Professor McPhail to bear the additional burden of refuting the claims of anonymous accusers. The investigating committee is hard-pressed to understand how the whistleblower policy was applicable in this situation. IU's policy prohibits retaliation or adverse action against reporters in response to their good-faith reports of misconduct; it does not state that identities of complainants will be kept confidential or that their anonymous reports may be used as evidence in a disciplinary action. Moreover, IUN's dismissal policy provides that a faculty member facing dismissal for alleged misconduct is "entitled to full access to all relevant information regarding the case possessed by the dean or other administrative officers, *including the names and location of all witnesses* [emphasis added]. No information to which the faculty member or librarian is denied access shall be used by the administration."

This investigating committee therefore finds that the IUN administration, in dismissing Professor McPhail, disregarded not only its own regulations but also the widely adopted standards on academic due process called for in the 1940 *Statement of Principles*

and derivative Association documents. When one faculty member at an institution is dismissed without affordance of the protections of academic due process, all faculty members have reason to fear that their services may also be summarily terminated in violation of their academic freedom. For this reason, the AAUP regards these procedural safeguards as indispensable: neither tenure nor academic freedom can be said to exist in their absence.

## 2. Academic Due Process for Suspension

The AAUP has long regarded the suspension of a faculty member from his or her core professional responsibilities as a severe sanction, second only to dismissal in severity. As noted in the 2008 Committee A report *The Use and Abuse of Faculty Suspensions*, a faculty member's suspension "implies an extremely negative judgment, for which the basis remains untested in the absence of a hearing." Regulation 7a ("Procedures for Sanction Other Than Dismissal") of the *Recommended Institutional Regulations on Academic Freedom and Tenure* accordingly requires an administration that wishes to impose such a severe sanction on a faculty member to afford the same due-process protections set out above for dismissal proceedings—a prior adjudicative hearing before an elected faculty body at which the administration bears the burden of demonstrating adequate cause.

Regrettably, IU's and IUN's policies appear not to afford affected faculty members these crucial protections, and they were not provided to Professor McPhail when he was suspended from his teaching duties in August 2021. As it later did with his dismissal, the administration acted unilaterally, imposing the suspension without having demonstrated adequate cause before a faculty hearing body, leaving to Professor McPhail the burden of having to demonstrate that he should *not* have been suspended.

We therefore find that the IUN administration suspended Professor McPhail from his primary responsibilities in violation of AAUP-recommended procedural standards. These standards, like those governing dismissal, are essential for protecting a faculty member's exercise of academic freedom against severe, arbitrary, and unilateral administrative action.

## 3. Terminal Salary or Notice

The 1940 *Statement of Principles on Academic Freedom and Tenure* provides that "teachers on continuous appointment who are dismissed for reasons not involving moral turpitude should receive their

salaries for at least a year from the date of notification of dismissal whether or not they are continued in their duties at the institution,” a requirement reiterated in Regulation 8 of the *Recommended Institutional Regulations*. IU Policy ACA-52 similarly provides that a dismissed faculty member must receive notice of dismissal one year prior to the effective date except when a faculty member has been “found responsible for serious personal misconduct,” in which case he or she “may be dismissed upon shorter notice, but not on less than ten days’ notice.”

Professor McPhail’s salary—already reduced by 75 percent along with his summary suspension from teaching—was immediately terminated upon his dismissal, and he received no severance pay. No faculty committee had found that Professor McPhail had engaged in moral turpitude or other serious misconduct.<sup>9</sup> Absent such a finding, the IUN administration’s failure to provide at least one year’s salary as severance violated Regulation 8 of the *Recommended Institutional Regulations* and the Indiana University system’s own rules.

### B. Academic Freedom of Intramural Speech

Professor McPhail has contended that the stated reasons for the summary actions to suspend and then dismiss him were pretextual and that both sanctions were imposed in retaliation for his speech concerning the governance of his institution and his criticisms of the administration.

The 1940 *Statement of Principles on Academic Freedom and Tenure* declares that institutions of higher education serve the common good by seeking and disseminating the truth and that they are able to carry out this function only when their regulations protect faculty members’ academic freedom. The AAUP’s 2009 report *Protecting an Independent Faculty Voice: Academic Freedom after Garcetti v. Ceballos* notes that academic freedom encompasses freedom of intramural speech: that is, the liberty to

“address any matter of institutional policy or action whether or not as a member of an agency of institutional governance.” The Association’s statement *On the Relationship of Faculty Governance to Academic Freedom* similarly emphasizes that “the academic freedom of faculty members includes the freedom to express their views . . . on matters having to do with their institution and its policies,” adding that “the protection of the academic freedom of faculty members in addressing issues of institutional governance is a prerequisite for the practice of governance unhampered by fear of retribution.”

The IU system’s academic freedom policy, ACA-32, which is derived from the 1940 *Statement*, recognizes intramural speech as protected under principles of academic freedom: “Academic freedom includes the freedom to express views on matters having to do with the university and its policies.” The system’s Code of Academic Ethics, ACA-33, which borrows freely from the AAUP’s *Statement on Professional Ethics*, contains similar language: “Indiana University is committed to the concept of academic freedom and recognizes that such freedom, accompanied by responsibility, attaches to all aspects of a teacher’s or librarian’s professional conduct. Within this context, each person observes the regulations of the University, and *maintains the right to criticize and to seek revision and reform*” (emphasis added).

In both of his appeals and in his interview with the investigating committee, Professor McPhail asserted that the administration suspended and then dismissed him, not for the reasons stated, but primarily for his having criticized the IUN administration’s racial equity initiatives, objected to the unilateral appointment of Dean Klamen in 2018, and filed equal-opportunity complaints, including the complaint filed in summer 2020, when Dean Klamen declined to assign him courses for the fall—in short, in retaliation for his intramural speech.

As noted earlier, the stated basis for the summary suspension and the 75 percent reduction in pay imposed in August 2021 was Dean Klamen’s appraisal—based on high DFW rates, alleged reports by unnamed individuals, and below-average teaching evaluations—that Professor McPhail’s classroom performance was “unambiguously inadequate.” In rebuttal, Professor McPhail had pointed out that Dean Klamen’s was the first evaluation of his teaching he had received at IUN, that he had therefore not been afforded an opportunity to address the performance concerns the dean had identified, and that no faculty

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9. A 1970 Interpretive Comment in the 1940 *Statement* contains the following gloss on moral turpitude: “The concept of ‘moral turpitude’ identifies the exceptional case in which the professor may be denied a year’s teaching or pay in whole or in part. The statement applies to 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.”

members had participated in reviewing his teaching. The FBOR's November 29, 2021, report on Professor McPhail's grievance echoed these objections, emphasizing the dean's failure to afford Professor McPhail the opportunity to address shortcomings and his decision to immediately impose harsh sanctions instead of employing "a system of progressive discipline" or following the procedures in the institution's post-tenure review policy. In its report the FBOR also appeared to acknowledge that Dean Klamen may have been biased toward Professor McPhail: it recommended that Dean Klamen no longer supervise Professor McPhail "due to the evident break in communication and collegial trust."

It is likely that the general academic community would concur that one bad evaluation by an administrator—especially one whose hiring and subsequent conduct had been the subject of the faculty member's formal complaints—would not warrant suspension and a 75 percent reduction in salary. This committee certainly finds that the severity of the sanctions imposed on Professor McPhail does not seem justified by the stated basis, adding further credibility to Professor McPhail's contention that the action was based on impermissible considerations.

The administration's stated basis for summarily dismissing Professor McPhail was that Professor McPhail had "threatened physical violence" against white people. As noted earlier, there are several accounts of the origin of the administration's claim that Professor McPhail had made such a threat. In his dismissal appeal, Professor McPhail cited one possible origin—the following passage from a scholarly address on racial violence he had delivered at Mississippi State University in 2014:

Yet the progressive movements of the 1960s and 1970s chose other paths, and never fully honored the organizing tradition to which they were indebted. Many of the members of those movements never truly understood that the legal and legislative changes that occurred in 1964 and 1965 were not the result of a nation appalled by violence, repentant of its past transgressions, or awakened to the need for atonement. *Those changes were the result—and here again I offer a radical reading of the time—of white people dying.* Schwerner and Goodman in 1964, Liuzzo and Reeb in 1965. Rita Schwerner made the point devastatingly clear in a press conference given shortly after learning of the disappearance of her husband:

"If he and Andrew Goodman had been Negroes, the world would have taken little notice of their deaths. After all, the slaying of a Negro in Mississippi is not news. It is only because my husband and Andrew Goodman were white that the national alarm has been sounded." (Emphasis added.)

Professor McPhail informed the investigating committee that he would sometimes make observations of this sort in conversations with colleagues.

However, the administration's claims that Professor McPhail used "words to the effect 'that the only way to end racism is to kill all the white people'" and that he had said "all members of a particular race should be killed" are not consistent with the evidence provided to this committee. According to the FBOR report, Professor Hobson testified that "he had discussed the history of racism in the US with McPhail and had heard McPhail state his view that if the indigenous people had killed all the early white settlers, racism would not have established itself in the Americas." But the report also states that Hobson explained that the reason he had "mentioned McPhail's view" to Executive Vice Chancellor Román-Lagunas was "to impress upon her how deeply McPhail felt about systemic racism in the US," not to warn her about a threat of violence.

The committee must emphasize that the speech, however distorted or decontextualized, on which the IUN administration justified its dismissal of Professor McPhail does appear to be related to his scholarship. Under principles of academic freedom, administrations should accord such speech wide latitude. As the AAUP's 2013 report *Academic Freedom and Electronic Communications* noted, "While institutions clearly have an obligation to protect members of the community from genuine threats of violence, overbroad interpretations of messages as constituting such threats . . . can violate academic freedom, especially if the accused is denied the protections of academic due process before any adverse action has been taken."

The committee, moreover, finds the charge that Professor McPhail had actually threatened to hurt white people implausible.<sup>10</sup> Individuals with whom the committee spoke described Professor McPhail as

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10. In its April 20 report, the FBOR, after summarizing its extensive interviews, concludes only that "there was cause for thoroughly investigating the possibility that McPhail may have made threatening remarks" (emphasis added).

“direct on matters of race, but also decent,” and his manner “mild and soothing.” Others stated that when frankly discussing race, Professor McPhail’s “mode of presentation and professionalism” was such that they could not imagine anyone perceiving it as threatening. One person offered, “In no way was Mark ever making statements that could be perceived as threats. Our conversations were academic and professional—always.” Evidently, the IU police department also did not believe that Professor McPhail posed a threat, as it did not open a case against him. In fact, the committee is not aware of a single person who spoke *directly* with Professor McPhail after he received notice of suspension who stated that he posed a threat. Only two IUN administrators, both of whom received their information secondhand and one of whom had a fraught relationship with Professor McPhail, according to the FBOR, interpreted his speech to be violent and threatening.<sup>11</sup>

For the preceding reasons, the committee does not find the stated basis for IUN’s summary dismissal of Professor McPhail credible. In addition, as with the action to suspend him summarily from service, the committee finds a troubling disproportion between the stated basis for the sanction and its severity. The committee therefore finds plausible Professor McPhail’s allegation that the stated reasons for suspending and dismissing him were pretextual and that the real basis for these actions were activities that fell under the protection of academic freedom: his speech concerning the governance of his institution and his formal and informal complaints about specific administrators. In the absence of a faculty hearing in which the administration would have been obliged to prove its charges “by clear and convincing evidence in the record considered as a whole,” this highly credible claim stands un rebutted.

### C. Racial Climate

According to the last census, the population of Gary, Indiana, is slightly more than three-quarters Black or African American, 11 percent white, and 9 percent Hispanic or Latino. In contrast, 62.3 percent of

tenured and tenure-track faculty members at IUN are white, only 10.4 percent are African American, and just 6.5 percent are Hispanic or Latino.<sup>12</sup>

According to individuals interviewed by the investigating committee, these disparities have contributed to a strained relationship between the campus and the community. Professor Mark Baer, president of IUN’s Faculty Organization, told the committee that “IU Northwest serves a region with a complicated history of segregation and racial injustice with lingering impacts. My colleagues are aware that they teach in this context, and so we start at ground zero in an environment that is outside of everyone’s comfort zone [in our classrooms]. But we work really hard—both administration and faculty—and addressing diversity challenges is part of our strategic plan at IUN.”

Other interviewees were less positive in their assessment of the institution’s efforts, with one faculty member stating that “there are pockets of the faculty who work regularly with Gary. But are we embracing that as an institution? No. Not at all.” Others even reported a “lack of interest” on the part of IUN. Professor McPhail was reportedly very involved with Gary. “Mark [McPhail] saw that there was tension,” one interviewee stated, adding, “The campus/town relationship was bad, and he wanted to change it. He wanted to raise standards. He wanted to engage actively with community leaders, and he made presentations to the faculty to raise standards and reach first-generation students. Mark knew that IU had not done a good job of recruiting students, faculty, or administrators of color.”

Racial tensions within IUN appear to have been central in Professor McPhail’s case. A former faculty member and administrator at IU told the committee, “I was concerned that Professor McPhail was trying to get IUN to respond to community needs. I knew other Black folks who worked in [the School of] Education at IUN. One left and has since passed. I wondered about how what happened to her [at IUN] had affected her health. IUN seemed like a hostile environment for Black folks.” Professor McPhail himself claimed, “The chancellor brought me in to be a token and a functionary. I showed that Black students had less than twenty percent graduation

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11. Dean Klamen’s and Dean Roberts’s retellings of their conversations with faculty members and other administrators are also inconsistent with how those others recounted their conversations with them. As this report has previously mentioned, Dean Klamen was the subject of Professor McPhail’s criticisms as well as his July 2020 EEOC complaint to the Gary Commission on Human Relations.

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12. Faculty of Color Percentages Compared to State Publics,” Indiana University, University Institutional Research and Reporting, [https://iuiua.iu.edu/doc/facts-figures/faculty-staff/diversity/ipeds-ft-ten-state-compare/State\\_peers\\_faculty\\_diversity.pdf](https://iuiua.iu.edu/doc/facts-figures/faculty-staff/diversity/ipeds-ft-ten-state-compare/State_peers_faculty_diversity.pdf).

rates. How can you have data for thirteen years that indicate you're failing and then say that you're doing all you can?"<sup>13</sup>

A former IU professor and administrator reported, "Retention of African American faculty and administration is difficult. I saw an unwillingness to talk about very real issues of race; . . . especially in Gary there have been historic exclusions of the Black community, a disinvestment in people." Many of the anonymous interviewees discussed the tense racial climate on campus and named numerous faculty members and administrators of color who had left IUN or were "driven out." One faculty member said, "You are welcomed if you fit the mold, and I'm trying to think of an African American faculty member that fits the mold, and I can't over there at [the College of Arts and Sciences], except Minority Studies, but they have decided to stay out of everything, for their own survival." These sentiments led the committee to ask several faculty interviewees whether they would have concerns about hiring an untenured Black faculty member in their departments. The unanimous answer was "yes." Clearly, Professor McPhail expressed similar concerns early in his time at IUN, as evidenced by this prescient remark, previously quoted, in his May 25, 2016, letter to then chancellor Lowe: "I remain concerned that the climate of hostility toward persons of African descent that I believe exists at IUN will persist unabated and that the possibility of future anonymous accusations that impugn my character and question my professional judgment will continue."

This committee sees in the IUN administration's accusations and sanctions against Professor McPhail the reflection of historical racial narratives that cast Black men in the US as angry, violent, and incompetent. Those narratives and associated prejudices may have affected the way in which some people perceived Professor McPhail in his role as executive vice chancellor for academic affairs (for example, as "intimidating" and "quick to anger") and as an instructor (as dilatory and tending to "shift blame" to others). They may also have made members of the administration more likely to perceive Professor

McPhail as a source of threats of physical violence. This was certainly the view of several faculty members who spoke with this committee. One interviewee noted, "Mark's work was threatening to a lot of faculty members. Mark was making necessary changes and then was painted as an 'angry Black man.' Mark was set up, and it was racist. . . . There is a lot of implicit bias." Another interviewee said that he was shocked by the accusations against Professor McPhail, which he found very much reminiscent of racist stereotypes: "It was something from the 1940s or 1950s—the way [Professor McPhail] was being talked about as angry and threatening."

This committee suspects that, had the disciplinary actions against Professor McPhail adhered to the AAUP-supported standards of academic due process discussed above, these procedural safeguards might well have mitigated some of the unchecked biases that he reports having experienced. As our previous findings indicate, we believe it highly unlikely that such proceedings would have resulted in his suspension and salary reduction or his dismissal. We note that the Faculty Board of Review rejected both of these administrative actions even though in its proceedings the administration did not bear the burden of demonstrating adequate cause.

Crucially, however, we doubt that these protections would have changed the culture that affected Professor McPhail. One interesting intersection of race and governance is worth emphasizing here. Many of the interviewees characterized Dr. McPhail in his role as executive vice chancellor for academic affairs as "action-oriented," inclined to "disrupt the status quo," and tending to "shake things up." They also regarded him as someone who respected and enforced institutional policies, even when doing so was not popular. According to one interviewee, he was therefore an easy target for "some white faculty members who felt threatened by him." Another interviewee saw Professor McPhail's situation as representative of a broader pattern affecting Black faculty members and administrators:

I think that for Black leaders, race, gender, and identity intersect no matter where you are. Governance systems often come into play in interesting ways. We people of color come into institutions looking for change. I have seen Black women leaders talked about as "harsh" or "moving too fast." But we come in with a sense of urgency, as change agents. I want to make things better. . . . I have seen Black leaders get into

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13. Only 3 percent of full-time faculty members in the US are Black men, and cases like Professor McPhail's might help to explain that situation (see <https://nces.ed.gov/fastfacts/display.asp?id=61>). Fighting hostile work environments while serving as "tokens" on administrative "leadership cabinets" without any ability to effect meaningful change would understandably take a deep toll on faculty members of color.

conflict with faculty and staff. We live in a country that is very racially divided. As a Black leader, I have experienced white faculty coming together in their mistrust, and for no other reason than I am not white. Professor McPhail dealt with that, too. Sometimes, it can be catastrophic for a career.

This committee notes that good governance policies and structures are not sufficient to mitigate racism. In fact, governance processes and the institutional culture can act as obstacles to rather than as facilitators of change, sometimes in bureaucratic and mundane ways and at other times in insidious and racist ways in which the administrator or faculty leader of color (especially one who comes from outside the institution) is depicted as “aggressive,” “disrespectful of institutional culture,” “having an agenda,” or “not understanding policy.” By contrast, efforts to oppose these changes are often praised in the name of “collegiality,” “being part of a team,” “maintaining a cohesive culture,” and so on.

The committee cannot help drawing the sad conclusion that, if Professor McPhail had not questioned the racism on campus and at IU, he might have been spared, at least temporarily, from becoming a target of it.

#### D. Climate for Faculty Governance

This investigation is primarily concerned with issues of academic freedom and due process. However, as is made clear in the statement *On the Relationship of Faculty Governance to Academic Freedom*, such issues are frequently intertwined with those of academic governance.

Under the AAUP’s *Statement on Government of Colleges and Universities*, the faculty, not the administration, should have “primary responsibility” for decisions regarding faculty status, an area that includes “appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal.” In these matters, the *Statement* observes, the faculty’s expertise entitles it to deference from the administration and the board, both of which “should concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail.” When the administration does not concur, the *Statement* declares, “the faculty should . . . have opportunity for further consideration and further transmittal of its views to the president or board.”

An elected faculty appeals committee on two occasions concluded that the IUN administration’s actions against Professor McPhail were illegitimate and should

be rescinded—even though, on both occasions, the burden of proof, contrary to AAUP-recommended standards, rested with Professor McPhail. In both instances, the administration rejected the committee’s recommendations, apparently without providing the FBOR any opportunity to respond before the matter was closed.<sup>14</sup> While the administration did provide an explanation for rejecting the FBOR’s recommendation on the suspension appeal, this committee did not find that explanation compelling, as we have noted. The administration did not provide any substantive explanation for rejecting the FBOR’s recommendation regarding the dismissal appeal. The administration’s dismissive attitude toward the faculty’s role in decisions concerning faculty status is further suggested by the fact that neither response was addressed to the FBOR. Instead, both were addressed to Professor McPhail.

The administration’s unilateral creation of the School of the Arts, the elimination of its three department chairs, and the appointment of its dean without a search or the input of faculty representatives are also indicative of problematic conditions for governance at IUN. The new structure of the School of the Arts, where the dean also functions as the chair of its component departments, appears based on Professor McPhail’s case to have significantly magnified the administration’s authority over matters of faculty status at the expense of the faculty’s.

The IUN administration’s disregard for the role of the faculty exhibited in the above-cited instances, especially in areas of faculty primacy, strongly suggests that conditions for shared governance at the institution are unsound. With the exception of Professor Baer, all of the faculty members who spoke with the committee agreed. One declared, “It’s a good old boys’ system, and people take care of each other to the exclusion of people of color. There are authoritarian aspects to the leadership.” All the faculty members we interviewed who remain unnamed in this report described a culture of retaliation in which faculty members are reluctant to express themselves openly. In fact, fear of retaliation was the primary reason most of those interviewed, regardless of their tenure status, gave for asking to remain anonymous. One interviewee

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14. As previously noted, the administration rejected an FBOR recommendation in at least one other recent case. On October 12, 2020, Chancellor Iwama overturned an FBOR recommendation that the administration rescind its dismissal of Dr. Bonita Neff and reinstate her to her tenured faculty appointment in the communication department.

asserted, “If this investigation wasn’t public, there would be more retaliation against the people involved.” Another stated, “I am keeping my head down and being very careful. I have a target on my back, as do others.” These fears seem an understandable response when an administration has shown itself to impose on its critics severe disciplinary action without the affordance of the basic elements of academic due process. The implications of the administration’s actions for intramural academic freedom and shared governance are obvious.

**V. Conclusions**

1. The IUN administration’s summary actions to suspend Professor McPhail from service, drastically reduce his salary, and, subsequently, dismiss him from his tenured appointment were effected in violation of AAUP-recommended standards of academic due process set out in the 1940 *Statement of Principles on Academic Freedom and Tenure* and the *Recommended Institutional Regulations on Academic Freedom and Tenure*.
2. Professor McPhail has alleged that the stated reasons for the actions taken against him were pretextual and that the real basis for these actions was retaliation for intramural speech that should have been protected under principles of academic freedom. In the absence of an appropriate proceeding, these highly credible claims remain un rebutted.
3. The racial climate at IUN appears to be unwelcoming to faculty members of color. In Professor McPhail’s case, it appeared to have been downright hostile, as evidenced by the presence of racist tropes of incompetent, angry, and physically violent Black men in the language used to justify his dismissal.
4. Shared academic governance cannot thrive at an institution in which the administration disregards crucial institutional policies. Nor can it thrive at an institution in which the administration regularly and without compelling reasons rejects the recommendations of duly constituted faculty committees after they have conscientiously discharged their duties in areas of faculty primacy. Conditions for academic governance at Indiana University Northwest can therefore only be described as unsound.<sup>15</sup> ■

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**AFSHAN JAFAR** (Sociology)  
Connecticut College, *chair*

**MONICA BLACK** (History)  
University of Tennessee–Knoxville

**VALERIE C. JOHNSON** (Political Science)  
DePaul 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: **CHARLES TOOMBS** (Africana Studies), San Diego State University

Members: **NICHOLAS FLEISHER** (Linguistics), University of Wisconsin–Milwaukee; **EMILY M. S. HOUH** (Law), University of Cincinnati; **RANA JALEEL** (Gender, Sexuality, and Women’s Studies), University of California, Davis; **MARK S. JAMES** (English), Molloy University; **VALERIE C. JOHNSON\*** (Political Science), DePaul University; **ANIL KALHAN** (Law), Drexel University; **MICHAEL MERANZE** (History), University of California, Los Angeles; **DERRYN MOTEN** (History and Political Science), Alabama State University; **PATRICIA C. NAVARRA** (English), Hofstra University; **JENNIFER H. RUTH** (Film Studies), Portland State University; **RISA L. LIEBERWITZ** (Law), Cornell University, *ex officio*; **IRENE T. MULVEY** (Mathematics), Fairfield University, *ex officio*; **JULIE M. SCHMID** (English), AAUP Washington Office, *ex officio*

\*Did not participate in the vote.

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15. When a draft of this report was shared with the IUN administration with an invitation for comments or corrections, an attorney with a law firm representing Indiana University replied, “As you know, the University respectfully has not participated in the AAUP’s inquiry in

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deference to federal court process and procedures. . . . The University does not accept the AAUP’s process, conclusions, or characterizations as set forth in the draft report. However, consistent with the University’s approach to litigated matters, no responses shall be provided by representatives of the University.”