

The Colorado Sex Scandal: How Ideology, Incompetence, and Abuse of Power Ruined a Great Department

Over the past year, the administration at CU-Boulder has taken a series of related actions that have drawn heavy criticism from groups such as the American Association of University Professors, the American Civil Liberties Union, and the campus Faculty Affairs Committee. The administration has settled one lawsuit from a graduate student, but their actions have brought on two more lawsuits from faculty that remain to be resolved. Several professors have either been pressured into retiring, chosen to retire to escape the toxic atmosphere, or applied for jobs at other universities. How did all this come about?

The Title IX Threat

It started in April 2011. The U.S. Department of Education's Office for Civil Rights (OCR) sent a "Dear Colleague" letter to colleges and universities across the country, warning them of an epidemic of sexual violence said to be plaguing American campuses and ordering them to take forceful action to end the problem.¹ OCR mandated that universities conduct investigations into any alleged instances of sexual harassment, sexual assault, or rape. Until this point, some universities maintained standards for such investigations under which the accused is found guilty only when there is "clear and convincing evidence" of guilt. Although this is already weaker than the criminal standard of "proof beyond a reasonable doubt," OCR ordered universities to lower their standards much further, so that defendants are convicted whenever it is "more likely than not" that they are guilty.

The letter threatened universities with litigation or, worse, denial of federal funding if they did not comply with OCR's instructions. For the overwhelming majority of universities, this would be a disaster, threatening the university's very survival. Thus, it would be in the interests of any university to satisfy OCR--even if it means sacrificing some innocent students and professors in the process.

OCR upped the pressure when it began a formal investigation of CU-Boulder for possible violations of Title IX, the federal law prohibiting sex-based discrimination in education. The impetus for this investigation was an undergraduate student who said that she had been raped by another undergraduate student and the university had not adequately punished the perpetrator.² This investigation represented a very serious threat to CU. Legally, the federal government can cut off funding if it finds that a university harbors a "hostile environment" for women. Though this is an extremely vague term, OCR's letter mentioned that "a single instance of rape is sufficiently severe to create a hostile environment." (p. 3)

¹U.S. Dept. of Education, April 4, 2011, <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>.

²http://www.huffingtonpost.com/2013/07/18/cu-boulder-sexual-assault-investigation_n_3614277.html

At CU-Boulder, the administration's response was to vow to go beyond the government's recommendations and become a "national leader" in fighting sexual assault.³ Since then, the administration has taken a number of actions apparently designed to create publicity supporting their intended "national leader" image, to deflect blame away from themselves, and to satisfy OCR.

How Sexual Misconduct Is Viewed in the Academy

As universities lower their evidential standards, universities and government sources are at the same time broadening their views of what counts as a sexual crime. Thus, the U.S. government's National Women's Health Information Center advises readers that "Sexual assault can be *verbal, visual, or anything that forces you to join in unwanted sexual contact or attention.*"⁴ Notre Dame University classifies sexual intercourse without consent as rape and then adds that "agreement given while under the influence of alcohol or other drugs is not considered consent."⁵ According to the Dean of Students at Clark University, "Examples of some coercive statements include: 'If you love me you would have sex with me.', 'If you don't have sex with me I will find someone who will.', and 'I'm not sure I can be with someone who doesn't want to have sex with me.' Coercive statements are often part of many campus acquaintance rapes. Being coerced into having sex or performing sexual acts is not consenting to having sex and is considered rape/sexual assault."⁶ And according to the University of Michigan, "Examples of sexual violence include: discounting the partner's feelings regarding sex; criticizing the partner sexually; touching the partner sexually in inappropriate and uncomfortable ways; withholding sex and affection ..."⁷

These sorts of definitions are now common on sex education, rape awareness, and university web sites, so that "rape," "sexual assault," and "sexual violence" may cover such activities as having sex with a drunk person, talking someone into having sex, criticizing one's partner, and withholding affection.

University investigations are carried out by bodies that are systematically biased in favor of accusers and against defendants. These are the bodies that have put forward the sorts of definitions quoted above, and they are often insensitive to the harms of unjust accusations. In 1991, an assistant dean at Vassar College stated that the falsely accused "have a lot of pain, but it is not a pain that I would necessarily have spared them. I think it ideally initiates a process of self-exploration. 'How do I see women?' 'If I didn't violate her, could I have?' 'Do I have the potential to do to her what they say I did?' Those are good questions."⁸

Those accused of sexual crimes in the university's justice system are commonly denied the protections built into the justice system of the wider society--such as the right

³http://www.dailycamera.com/cu-news/ci_25663848/cu-boulder-vows-exceed-white-house-recommendations-sexual?source=pkg.

⁴http://www.womenslaw.org/laws_state_type.php?id=13048&state_code=PG; emphasis added.

⁵<http://oade.nd.edu/educate-yourself-alcohol/hookups/sexual-assault/>

⁶<http://www.clarku.edu/offices/dos/survivorguide/definition.cfm>

⁷<http://hr.umich.edu/stopabuse/resources/definitions.html>

⁸"When Is It Rape?", *Time*, June 3, pp. 48-54.

to have a lawyer present during questioning, the right to cross-examine witnesses, the right to review the evidence against one, the right to have the evidence judged by a jury of one's peers, and the right to appeal to a distinct tribunal. A recent editorial from twenty-eight Harvard Law professors described the procedures at Harvard as "overwhelmingly stacked against the accused" and lacking "the most basic elements of fairness and due process."⁹

All of this is part of the background needed to understand what has happened at the University of Colorado.

The Adler Case

Patricia Adler was a tenured professor in the Sociology Department at UC-Boulder. Professor Adler taught a large lecture course on "Deviance in U.S. Society." On one day of the course, Adler would have students participate in a skit in which undergraduate teaching assistants would pose as prostitutes, and students in the class would ask them questions. This skit, and the course as a whole, were carried out, apparently without incident or complaint, for the twenty years that Adler taught the course.

In the fall of 2013, a student expressed concerns to the chair of Sociology that students might be uncomfortable participating in the prostitution skit (though participation was voluntary and not part of anyone's grade, and no one had in fact complained).¹⁰ The chair reported this to the university's Office of Discrimination and Harassment (ODH), who sent investigators to observe Adler's class without her knowledge. ODH determined, as they informed Deans Steven Leigh and Ann Carlos on December 5, that there was no basis to proceed with an investigation into Patti Adler.

Nevertheless, at a December 10 meeting, Deans Leigh and Carlos told Professor Adler that she would not be permitted to teach the Deviance course again, and they further pressured her to retire immediately--this is Adler's account of the meeting, as well as that of another sociology professor who was present. Dean Leigh told Adler that her course was too risky in the "post-Penn State environment" (note: in the Penn State scandal, administrators were punished for covering up sexual abuse by football coach Jerry Sandusky).

Two days later, Professor Adler told her students that she was being forced to retire. A public uproar followed.

The administration's response? On December 16, in an email message sent to all university personnel, Provost Russell Moore made remarks implying that Adler had sexually harassed her students. On December 17, the local newspaper reported further remarks by unnamed university officials suggesting that academic freedom was in

⁹<http://www.bostonglobe.com/opinion/2014/10/14/rethink-harvard-sexual-harassment-policy/HFDDiZN7nU2UwuUuWMnqbM/story.html>

¹⁰The following account of the case is based on the "Report of the Boulder Faculty Assembly (BFA) Ad Hoc Committee to Investigate the Patricia Adler Case" (5/1/2014, <http://www.colorado.edu/facultyassembly/committees/REPORTS/ReportBFAAdlerFinalReport05.2014.pdf>) and Sarah Bright's "Professor Patricia Adler and the University of Colorado" (http://spot.colorado.edu/~tooley/Professor_Patricia_Adler_and_the_University_of_Colorado.pdf).

tension with the need to prevent sexual harassment.¹¹ In a December 18 meeting with faculty, Dean Leigh stated that “there have been concerns expressed over the years” about Adler; however, he gave no details. In fact, neither ODH nor any of the three previous chairs of Sociology knew of any such concerns prior to that semester.¹² In a December 19 message to all faculty, Chancellor DiStefano alluded to the need to provide an environment “free from harassment and discrimination.”

Originally, the administration’s claim was that Adler’s prostitution skit violated university sexual harassment policy because students might feel pressured to participate. Later, they claimed that their concern was that the prostitution skit might be surreptitiously filmed by students in the course, without consent of the participants. Later, in response to the public uproar, they backed off and said that Adler could teach the course again, including the prostitution skit, provided that a Sociology Department committee approved it.

In the end, Adler wound up teaching the Deviance course once more, in the spring of 2014. However, she did not include the prostitution skit, saying that students had been spooked by the publicity and by the legal consent forms that Adler now had to present them with. Adler then retired in the summer of 2014.

For their handling of the Patti Adler case, the administration was condemned by eight groups that examined the case:

- “The AAUP Colorado Conference condemns the University of Colorado’s treatment of sociology professor Patti Adler as a clear violation of academic freedom.... The reported concerns of CU administration ... have no bases in principle or in fact....”¹³
- The national AAUP echoed the Colorado AAUP, adding that “there has been an unwarranted and egregious violation of [Adler’s] academic freedom....”¹⁴
- The National Coalition Against Censorship, the ACLU of Colorado, the Foundation for Individual Rights in Education, and the Student Press Law Center all concurred with the AAUP “in expressing alarm over the University’s actions regarding Professor Patricia Adler.” They warn that “The overly broad and irresponsible use of harassment and discrimination investigations threatens to limit academic inquiry to the bland, conventional, and uncontroversial, throwing a deadening pall of orthodoxy over higher education.”¹⁵
- The BFA committee that investigated the case found that there was no justification for the administration’s punishment of Adler, that the administration violated university policy, and that they created a threat to academic freedom. They recommended that the administration take steps to repair the damage the administration had done to Adler’s reputation. The administration has refused to do so.

¹¹http://www.dailycamera.com/cu-news/ci_24738548/boulder-faculty-call-emergency-meeting-discuss-patti-adler

¹²“Professor Patricia Adler and the University of Colorado,” p. 19.

¹³<http://aaupcolorado.org/2013/12/18/statement-regarding-university-of-colorado-and-professor-patti-adler/>

¹⁴<http://www.aap.org/news/academic-freedom-violated-university-colorado>

¹⁵<https://www.scribd.com/doc/195329321/Statement-about-the-University-of-Colorado-s-Actions-Relating-to-Professor-Patricia-Adler>

- The Boulder Chapter of the AAUP joined the national and state organizations in condemning the administration, and they called for the administration to retract its defamatory statements about Adler.¹⁶ The administration refused to do so.

The Philosophy Department

For about a year and a half, the Philosophy Department as a whole has been under sanction by the administration. Department Chair Graeme Forbes communicated this situation to department members repeatedly in department meetings and cited it as the reason why the department was denied permission to hire any new members. The administration's hostility centers on fifteen ODH complaints that the department had accumulated since 2007 (but none of this was raised as an issue prior to the Title IX investigation). At a meeting with several senior members of the department, Provost Moore refused to answer any questions about the fifteen complaints--such as how many different faculty members were involved, or whether any of the cases had resulted in a guilty verdict. Nevertheless, he threatened to cut off funding for philosophy graduate students if there was "even one more complaint."

In the fall of 2013, the Department responded to the Provost's concerns by inviting a team from the American Philosophical Association's Committee on the Status of Women to visit, evaluate the climate for women, and give the department advice on how to improve its climate. This "Site Visit Team," a committee of three, consisting of two feminist philosophers, and a third who is an affiliated professor in Women's, Gender, and Sexuality Studies, and who teaches a course in feminist philosophy of science, assured the department that their report would be shared with no one outside the department, not even the administration. Department members assumed that this couldn't be used against them, that they might get some helpful advice, and that it would help convince the administration that the department was working to improve the climate for women. Chair Forbes repeatedly told department members that denying the existence of a hostile climate for women would just result in a backlash from the administration.

The Site Visit Team wound up writing a scathing report--representing the department as filled with drunken, lecherous bullies--which (in violation of their confidentiality promise¹⁷) they immediately sent to Dean Leigh and Provost Moore as well as the department. In the wake of this, Forbes strenuously advised faculty members that if the report should be leaked to the public, the department's continued existence would be doubtful. In a December 2 meeting with the department, Dean Leigh and Provost Moore warned members not to mention the report to anyone outside the department; they also warned that the department would face severe reprisals if it failed to take responsibility and denied the report's conclusions. Many members considered the Site Visit Report terribly unfair and thought that it contained significant errors, but the

¹⁶<http://www.cu-aaup.org/2013/12/29/cu-boulder-chapter-of-the-aaup-issues-statement-on-the-university-of-colorados-treatment-of-professor-patricia-adler/>

¹⁷The Team later lied about the confidentiality violation. The violation and the attempted cover-up are documented by Michael Tooley, "Violations by the Site Visit Team of its Agreement with the Philosophy Department," <http://spot.colorado.edu/~tooley/SiteVisitReport.html>

department was never given any chance to criticize or respond to the report. Provost Moore conceded that the report was imperfect, but he told the department that he had “owned” this report and that they should do the same.

In January 2014, Chancellor DiStefano, Provost Moore, and Dean Leigh decided to send the report to the local newspaper and post it on the internet. The administration informed the department of this in an 8 a.m. meeting, the morning that the report appeared--it was already posted on the internet as the meeting began. Along with the report was posted a video statement by Chancellor DiStefano, directing blame at the philosophy department and claiming credit for the administration for addressing the problems of the philosophy department. DiStefano had decided a week earlier to release the report and had prepared the video and a written statement to go along with it, to control the media spin; he kept his plans from the department, presumably so that the department would not have any statement of its own prepared that might conflict with the administration’s line. This caused serious, long-term damage to the reputation of the department, including all of its innocent members.

When asked why they released the Site Visit Report, the administration claimed that they had received a CORA (Colorado Open Records Act) request, which legally compels government employees to turn over certain kinds of government documents. It later emerged that there was no CORA request for the Site Visit Report in particular, but there was another CORA request, which apparently caused the administration to worry that the Site Visit Report might be requested in the future and thus might become public at a time when the administration was unprepared.

In the wake of the Site Visit Report, the administration decided to shut down admissions to the department’s graduate program, with no information on whether or when it would be reopened. They removed department chair Forbes and appointed a new chair from outside the department, Andrew Cowell.

Earlier, Provost Moore had threatened to shut down the entire department, firing everyone. The administration has maintained the “shut down” threat since then, but with the conditions for dissolving the department left vague, so that department members are left in a general state of fear concerning anything that might displease the administration. In a meeting at the end of the spring, 2014, the administration-appointed chair, Andrew Cowell, stated that this threat was still on the table, indicating that if the department did not cooperate to address its alleged climate problem, the administration would dissolve the entire department, then hire back only those whom they wanted and roster those people in other departments. This appears to be the administration’s theory of how one may dismiss tenured professors without the need to present any evidence of misconduct or follow other normal procedures.

Was the punishment of the department justified? The department was never told the details of what it was accused of, ostensibly because of university confidentiality rules. However, many of the facts eventually leaked out via informal channels. It now appears that exactly one professor in the department (Robert Hanna) was found guilty of sexual harassment, but this was kept secret from the department at the time under ODH confidentiality rules. The harassment is said to have consisted in sending amorous emails to another faculty member and to at least one graduate student. In addition, it appears that exactly one graduate student was found guilty of sexual assault--that was the case that

David Barnett looked into, where he concluded that ODH distorted the evidence to support a guilty verdict. This, too, was kept secret from the department. This does not add up to a justification for punishing the entire department.

The local chapter of the AAUP investigated the administration's treatment of the philosophy department.¹⁸ They issued a report "condemn[ing] several recent attacks upon the academic freedom, shared governance, and due process rights of faculty," concluding that "Leigh and Moore's tactics perpetuate a climate of fear and disregard for the academic freedom and due process protections of faculty at the University of Colorado."¹⁹

The Kaufman Case

Dan Kaufman is a tenured professor in the philosophy department who is well-known within the department to suffer from clinical depression. He is also known as a strong critic of the department's prominent feminist philosopher, Alison Jaggar. On one occasion, before he was awarded tenure, Kaufman joked at a party that he couldn't wait till he got tenure so he could fuck with Jaggar. One of Jaggar's students reported this to the rest of the department. Jaggar then accused Kaufman of "gender harassment." The department chair reported this to ODH as a sexual harassment complaint. Though ODH did not find Kaufman guilty of any policy violation, this became one of the 15 sexual harassment complaints that were later used as evidence of the department's harassment problem.

In the spring of 2014, chair Andrew Cowell, aware of Kaufman's psychiatric condition, met with Kaufman. Cowell asked Kaufman if he (Kaufman) was a danger to himself. Kaufman replied with a philosophical joke, to the effect that he (Kaufman) wouldn't kill himself, nor would he kill Cowell, unless Cowell turned out to be truly evil like Adolf Hitler, or they were in a trolley scenario. (The "trolley scenario" is a philosophical thought experiment in which a person diverts a runaway trolley so that it kills a single person, to prevent the trolley from killing five other people.) Cowell reported this conversation to the administration.

The administration then decided to ban Professor Kaufman from the campus.²⁰ They sent police to his classroom to remove him. Cowell then sent an email to the philosophy department, telling members that if anyone saw Kaufman on campus, they should dial 911 "immediately." He refused to give any information about why Kaufman was excluded. A university spokesman later explained that "in the post-Virginia Tech era, and in the shadow of the Aurora theater shootings," the university had to take all threats seriously.²¹

In the summer, after an assessment by a violence expert, the university decided to let Kaufman back on campus.

¹⁸<https://www.scribd.com/doc/218811005/AAUP-Report-on-CU-Philosophy-Department>

¹⁹AAUP Report, p. 10.

²⁰http://www.dailycamera.com/cu-news/ci_25292062/cu-boulder-philosophy-professor-leave-barred-from-campus

²¹http://www.dailycamera.com/cu-news/ci_26255351/cu-boulder-paid-violence-expert-2-625-assess.html

This case prompted the AAUP to condemn the CU administration for violating due process and for intentionally inflicting “maximum humiliation.”²² It has also prompted Professor Kaufman to sue the university for \$2 million.²³

The Monton Case

Brad Monton is a tenured professor of philosophy at CU. In the spring of 2014, Monton was a member of the Executive Committee of the Boulder Faculty Assembly (the BFA, a campus faculty governance group). During a February 3 meeting of the Executive Committee, Monton made a series of remarks critical of the administration’s treatment of the philosophy department and describing some of the events mentioned above. These remarks were summarized in the minutes of the meeting.

A week later, Monton was called into a meeting with Dean Leigh, Dean Mary Kraus, and philosophy department chair Andrew Cowell. By Monton’s account, he was pressured into retracting his remarks and resigning from the BFA. Cowell gave Monton a letter stating that Cowell and Leigh had determined that Monton was deliberately lying to the BFA. As punishment, Monton would be barred from departmental service and would receive zero credit for service on his annual performance evaluation. Cowell reserved the right to impose further punishments.²⁴ Monton’s remarks were then *deleted from the minutes*, with the new version of the minutes replacing the old version on the BFA web site. (Both the original and the censored versions remain available on Professor Tooley’s web site.²⁵)

Later that semester, the administration announced that Professor Monton was under investigation for alleged failure to report an amorous relationship with a student.²⁶ (Note: under university policy, such relationships between faculty and students are permitted; however, in some cases the faculty member must report the relationship to a supervisor, and/or recuse himself or herself from evaluating the student.)

Finally, in November 2014, philosophy department members suddenly learned that Monton had struck a deal with the administration, whereby they pay him \$120,000 to leave the university forever, and both parties agree not to sue each other. Monton is reportedly leaving the profession of philosophy entirely.²⁷

The Barnett Case

David Barnett is a tenured professor in the Philosophy Department. His view from the beginning has been--as he once stated openly in a department meeting (when Forbes was

²²AAUP, “Report on CU’s Treatment of the Philosophy Department,” p. 9.

²³http://www.denverpost.com/news/ci_26394644/university-colorado-prof-seeks-2-million-campus-banishment

²⁴AAUP Report, p. 7.

²⁵http://spot.colorado.edu/~tooley/Boulder_Faculty_Assembly_Minutes.html

²⁶http://www.dailycamera.com/cu-news/ci_26404195/cu-boulder-investigating-another-philosophy-professor-associate-professor-brad-monton

²⁷http://www.dailycamera.com/cu-news/ci_26985850/cu-boulder-pay-philosophy-professor-brad-monton-185k

chair)--that the department's problem is not so much a culture of sexual harassment as a culture of false accusations. In another department meeting, with Cowell presiding, Barnett criticized the administration for damaging the reputation of everyone in the department. On other occasions, Barnett raised concerns with Cowell about the administration's mistreatment of the philosophy department, and raised the concern that department members were afraid to speak their minds on these issues.

Today, Barnett is in the midst of termination proceedings and has already spent tens of thousands of dollars on legal fees. Of course, no one claims to be punishing Barnett for criticizing the administration. The administration's claim is that Barnett is being fired for "retaliation" against a student who made a sexual assault complaint.

In 2012, a female graduate student (hereafter referred to as GS1) accused a male graduate student (GS2) of sexually assaulting her at an informal gathering of students at GS2's house. The incident is said to have occurred in August. In October, a faculty member heard the accusation and insisted that the student report it to ODH (even dialing the phone and handing it to GS1). ODH interviewed the accuser and the other students who were in the house at the time. On advice from a lawyer, GS2 declined to meet with ODH. Though GS2 offered to respond to written questions, ODH refused to send any questions for GS2, so ODH never heard GS2's side of the story.²⁸ ODH then found GS2 guilty under its "preponderance of the evidence" standard. By order of the administration, GS2 (who had served as an instructor) was barred from ever working for the university again.

David Barnett, who was a friend and informal mentor of GS2, heard about the case and tried to learn more about it. He spoke with all of the witnesses, apart from GS1 and GS1's boyfriend. By Barnett's account, the witnesses stated that ODH had misrepresented their testimony, and the ODH report omitted key pieces of evidence tending to exonerate GS2. Barnett wrote (or perhaps co-authored with GS2) a report detailing the distortions by ODH.

Barnett sent this report, together with signed statements from the witnesses, to the administration. In addition, he spoke with another professor, who had assumed that GS2 was guilty. Barnett tried to inform the other professor about the evidence that GS2 might be innocent, but the other professor was unimpressed.

The university then hired a Denver attorney to investigate. The attorney's report is not publicly available, but according to rumor, it clears ODH of all wrongdoing. The university then hired the same attorney to investigate Barnett for "retaliation" against GS1. At no time did this attorney contact GS2 while conducting either of his investigations. Meanwhile, GS1 filed a lawsuit against the university, alleging that David Barnett had illegally retaliated against GS1 for her complaint against GS2.

Legally, for Barnett's action to qualify as prohibited "retaliation," Barnett would have to have acted *for the purpose* of retaliating against GS1, and not for some other purpose.²⁹ No one familiar with the case seems to believe that that was true; to all

²⁸http://www.dailycamera.com/cu-news/ci_26440259/cu-boulders-sexual-misconduct-investigations-rely-lighter-burden

²⁹<http://www.justice.gov/crt/about/cor/coord/ixlegal.php>

appearances, Barnett's purpose was to expose misconduct at ODH and correct an injustice against GS2. It is therefore hard to see how GS1 could have won in court.

Nevertheless, the university settled with GS1 out of court, paying her \$825,000. One can only speculate about the administration's motive. Perhaps, to stay on the good side of OCR, the administration hoped to project an image of aggressively pursuing all allegations of sexual misconduct and always taking the side of the alleged victim. Perhaps they wished to avoid a legal battle in which Barnett's report would become public--and along with it the administration's complicity in ODH's dishonest practices. Perhaps they wanted to make Barnett the scapegoat for the department's alleged sexual harassment problem.

Whatever the reason, when the administration announced the settlement, they at the same time announced that Barnett was being terminated--again managing the public relations front and spinning the story as one about the administration's commitment to rooting out sexual misconduct.

At first, the administration claimed to be firing Barnett for writing the report on the ODH case--which, they claimed, discussed GS1's sexual history and portrayed GS1 as sexually promiscuous. In internet discussions, this was interpreted to mean that Barnett had suggested that it was alright to rape GS1 because GS1 was promiscuous (even though no one in the case was even accused of rape). The administration did not explicitly say that; they simply left it as an unstated insinuation. In fact, Barnett's report did not discuss GS1's sexual behavior other than on the night of the alleged assault and did not discuss anything about GS1 other than what was obviously relevant to the question of whether sexual contact between GS1 and GS2 had been initiated voluntarily by GS1.

Now it appears that the administration is claiming that Barnett retaliated against GS1 by speaking with another professor and thereby damaging GS1's reputation with that professor. According to the administration's legal theory, then, attempting to defend an apparently innocent person, to someone who wrongly assumes that person to be guilty of a serious crime, is illegal.

Barnett is now preparing to sue the university for \$2 million for defamation and for retaliation against him for whistleblowing.³⁰ Likely Barnett's reputation in the profession has been permanently damaged.

The Faculty Affairs Committee and the BFA

During the summer of 2014, the Faculty Affairs Committee (FAC) of the Boulder Faculty Assembly (BFA) began drafting a motion of censure against the administration for its treatment of Patti Adler and the philosophy department. FAC accuses the administration of "blatant disregard for the rights, interests and well-being of its faculty" and of creating "a sense of fear, insecurity and distrust among the faculty."³¹ FAC planned to bring this motion of censure before the full BFA for a vote. However, before this could take place,

³⁰http://www.dailycamera.com/cu-news/ci_26857562/david-barnett-professor-at-center-termination-battle-seeks

³¹http://www.denverpost.com/portlet/article/html/fragments/print_article.jsp?articleId=26470831&siteId=3

Paul Chinowsky--chair of the BFA and a longtime supporter of the administration--effectively dissolved the Faculty Affairs Committee. In September, Chinowsky told the chair of FAC, Marty Walter, that Walter was being removed from FAC and that as a result of the shortage of members, FAC could not conduct any official business.

After FAC was reconstituted, FAC attempted to bring their motion to a vote at the October meeting of the BFA. Chinowsky put that item at the end of the agenda for the meeting, then ran out of time to discuss it. At the end of the October meeting, Chinowsky moved to “table indefinitely” (that is, postpone consideration of) the motion from FAC. A member asked “why not just table it until the next meeting?”; Chinowsky replied that this was the same thing. The members then voted to table the FAC motion indefinitely.

At the next BFA meeting, in November, Chinowsky again left the FAC motion to the very end. At the end of the meeting, as time was running out, Marty Walter moved to resume consideration of the FAC motion of censure. Walter’s motion passed with 18 in favor, 12 opposed, and several abstentions. However, Chinowsky declared that the motion had *failed* because it required a 2/3 majority. He declared that the FAC motion had now been permanently killed. (Chinowsky’s ruling here was indefensible under Robert’s Rules, which dictate that a motion to resume consideration requires a simple majority; however, the members present did not know enough about parliamentary procedure to challenge Chinowsky at the time.)

Finally, at the December BFA meeting, the BFA debated and passed a weakened version of the FAC motion, by a margin of twenty-seven to eight.³²

Long-Term Consequences

As a result of the administration’s actions, there is now an extremely hostile climate, filled with fear, distrust, and resentment, at CU-Boulder and in the philosophy department in particular. In a department that was once collegial and relaxed, members are now hiring lawyers, worrying about lawsuits, and censoring themselves for fear of being the next targets of the administration. At the end of the spring, 2014, two department members retired, and a third plans to retire at the end of the spring, 2015. At least two of these decisions were influenced by the hostile climate. Over the past year, three department members, partly influenced by the toxic climate, have considered moving to other universities. Two of those were given unprecedentedly large raises and persuaded to remain. The third case remains to be resolved. Hitherto, CU has been ranked 24th in the nation for philosophy, but the recent events may well destroy the department.

To assess the damage caused by the university administration, one must take account of three facts. First, the field of philosophy is extremely prone to gossip. Thus, nearly everyone in the profession has now heard about Boulder’s philosophy department being filled with sexual predators. Most have also heard something about Kaufman, Monton, and Barnett being disciplined in some way.

Second, many people read the *first* news story to appear on a given case but do not follow the multiple minor subsequent additions that trickle in over the months or

³²http://www.dailycamera.com/cu-news/ci_27070497/cu-boulders-faculty-assembly-urges-transparency-restraint-disputes-faculty

years. Others do not even read the first story but gather a vague impression of the gist of it from someone else. Thus, no matter what happens from this point forward, many people in the profession will retain, for many years to come, the sense that the philosophy department is or was full of sexual predators, and that Barnett, Monton, and Kaufman had something to do with it.

Third, the profession of academic philosophy is extremely punitive toward anyone even accused of sexual misconduct. For example, one philosopher recently advanced the following proposal: if any philosopher sues any professor or student for making a false accusation of sexual misconduct, then *even if he wins the lawsuit*, proving in court that he was maliciously defamed, that philosopher should nevertheless be blacklisted by the rest of the profession.³³ Another philosopher proposed that with allegations of sexual misconduct, philosophers should assume that the accused is guilty until he proves his innocence.³⁴ A third has argued that to doubt an accusation is itself to violate the presumption of innocence, since one should presume that the accuser is innocent of deception.³⁵

As a result, the harm to department members caused by the administration is serious, long-term, and possibly irreparable. Professor Monton will never work in philosophy again. Professors Kaufman and Barnett will probably never be able to work at another university and will have reduced academic opportunities (including speaking engagements, paper invitations, and all other academic honors), possibly for the rest of their lives. Graduate students graduating from the department will have reduced job opportunities due to the stain of scandal associated with CU-Boulder. The department will find it difficult to attract or retain faculty or students for years to come and will likely retain a climate of fear and suspicion for as long as the present administration remains in power.

Conclusion

None of the above discussion is meant to downplay the importance of combating sexual crimes or of creating a supportive environment for women. But the way to do that is not to abandon our norms of justice so that we may simply punish more men regardless of whether they be guilty or innocent. Nor is the preceding discussion meant to assess what is or isn't wrong with the Philosophy Department at CU-Boulder. Rather, the concern of this discussion has been what is wrong with the *administration* at CU-Boulder. The administration--specifically, Chancellor Phil DiStefano, Provost Russell Moore, and Dean Steven Leigh--have demonstrated by their actions that they are not fit to serve the University of Colorado.

³³Eric Schleisser, <http://digressionsnimpresions.typepad.com/digressionsimpresions/2014/11/how-to-reduce-retaliation.html>

³⁴Hilde Lindemann, <http://feministphilosophers.wordpress.com/2014/10/24/open-thread-supporting-victims-of-sexual-harassment/>

³⁵Anne Jacobson, <https://feministphilosophers.wordpress.com/2014/10/30/its-about-your-predatory-friends/>