



INDIANA UNIVERSITY
NORTHWEST

Vicki Román-Lagunas
Executive Vice Chancellor for Academic Affairs
Indiana University Northwest
3400 Broadway
Gary, IN 46408

April 20, 2022

Dear EVCAA Román-Lagunas,

The Faculty Board of Review was charged with evaluating Dr. Mark McPhail's appeal of his dismissal. We have reached the end of our analysis of the case, and we are writing to share our findings. Before we start, we would like to thank you for your cooperation and support throughout our engagement with the case. We truly appreciate your openness and transparency in answering all our questions and inquiries.

Dr. McPhail is appealing his dismissal, which occurred on or around September 14, 2021, when you wrote to him that you saw "no reasonable alternative" to proceeding with his dismissal in the face of reliable reports that he had made threats of violence. In your letter to Dr. McPhail of September 14, 2021, you wrote,

"...it has recently been reliably reported to me, and substantiated by a report to another member of the IUN campus, that you have made, on more than one occasion, a threat of physical violence that we have no choice but to take quite seriously."

In his appeal, Dr. McPhail also included a quote from an email by IU Counsel Marcia Gonzales dated September 29, 2021. In the email, Ms. Gonzales wrote that Dr. McPhail "had made a threat of physical violence" and had stated that "the only way to end racism is to kill all white people." In this email, Ms. Gonzales seems to point to a second reason for dismissal when she states that "Prof. McPhail's employment was terminated, given the extreme gravity of this statement *and the wide range of prior issues of which Prof. McPhail had been made aware*" (our emphasis). These "prior issues" are understood to be the academic issues behind Dr. McPhail's removal from teaching and service in the Fall of 2021. The Faculty Board of Review already expressed its opinion in that regard when it examined Dr. McPhail's first appeal.

Because Dr. McPhail's dismissal heavily depended on reports that he had made threats of violence and had endorsed the killing of all white people as a means to ending racism, we focused our investigation on the question of whether the allegations were well documented and credible. We also examined the question of whether our campus's and Indiana University's dismissal procedures were duly followed.

Our method was to speak with several people who, in our opinion, were likely to be informed of facts relevant to the case. In addition to meeting with Dr. McPhail and you, we had hearings with the people listed below. Next to the name of each person, we are including our reasons for wanting to speak with him or her. (For the sake of brevity, from now on, we will omit all titles, such as “Doctor,” “Professor,” and “Dean.” We will refer to each person by name alone.)

- Charles Hobson (When we had our hearing with McPhail, he said that, after he was administratively removed from teaching and service for the Fall of 2021, he spoke with Hobson and discussed his disappointment with the decision.)
- Ellen Szarleta (Same reason as for Hobson.)
- Police Chief Monte Davis (By speaking with the Chief of Police, we were hoping to understand the extent of the IUNPD’s involvement in assessing the allegations that McPhail had made threats.)
- Mianta’ Diming, IUN’s HR Director (We were hoping to come to a better understanding of the formal and legal aspects of dismissals from the standpoint of Human Resources on our campus.)
- Cynthia Roberts (Hobson told us that he contacted Roberts after speaking with McPhail and asked her to contact the EVCAA and the Chancellor on his behalf, so that he could meet with either or both. By speaking with Roberts, we hoped to learn more about the circumstances that led Hobson to want to speak to the Administration about his conversations with McPhail.)
- David Klamen (A few months ago, at a hearing concerning McPhail’s first appeal—the one pertaining to his removal from teaching and service for the Fall of 2021—Klamen had told us that it had been reported to him that McPhail was very angry after he was notified of the removal. On the same occasion, Klamen had reported to us that he had been advised to take precautions against possible violence by McPhail.)
- Bala Arshanapalli (At his most recent hearing, Klamen told us that Arshanapalli had warned him that McPhail was very angry in the aftermath of his removal from teaching and service. According to Klamen, Arshanapalli had advised Klamen to avoid all contact with McPhail.)

Here is a synthesis of the most important information that emerged from our interviews:

- McPhail stated that he did not make any threats against anybody; he said that, after being removed from teaching and service for the Fall of 2021, he spoke with Hobson, Szarleta, and IU Bloomington professor Carolyn Calloway, who later sent a letter on McPhail’s behalf to the President of IU; he said that he never discussed the killing of white people in any form with anybody; he said that he emailed two people: Arshanapalli (from whom he received no response) and James Winbush of IU Bloomington, who replied that he had been advised not to communicate with McPhail; McPhail stated his firm belief that he was dismissed without due process and a chance to defend himself.

- Hobson said that he communicated with McPhail after McPhail’s removal from teaching and service for the Fall of 2021; Hobson stated that McPhail did not make any threats; Hobson said that he contacted the Administration through Roberts because McPhail was distraught about his removal from teaching and service; Hobson wanted to make the Administration aware that McPhail needed help and support; Hobson also stated that he was concerned that the disciplinary action against McPhail may result in bad publicity for our campus; in a call he received from the IUNPD after meeting with the EVCAA, Hobson denied that he had heard McPhail make any threats; Hobson emphasized to us that, given his background in Human Resources, if he had heard McPhail make any threats, he would have made a police report; Hobson said that he had discussed the history of racism in the U.S. 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; Hobson said that he mentioned McPhail’s view to the EVCAA to impress upon her how deeply McPhail felt about systemic racism in the U.S.
- Szarleta said that she had phone conversations and exchanges of text messages with McPhail around the time of his removal from teaching and service as well as after his termination; she stated that McPhail seemed more hurt than angry and that she never heard him make any threats or advocate violence as a means for addressing racism.
- Because of his obligation to maintain confidentiality, Chief Davis could share very little information with us; he stated that, in general, IUNPD investigates reports of threats; he said that, as part of those investigations, IUNPD may or may not speak with those who have been alleged to have made threats; Chief Davis could not tell us whether or not IUNPD had investigated McPhail or spoken to anyone who may have reported any threats by McPhail. By checking public records, we were able to determine that no charges for making threats were ever filed against McPhail.
- Mianta’ Diming clarified that she only deals with staff dismissals; she stated that faculty dismissals are handled by the EVCAA; she outlined the HR Department’s process for dealing with misconduct allegations and dismissals; she stated that she documents everything in writing; if somebody is alleged to have made a threat, she makes sure to speak with that person and get his/her version of what happened unless, in her judgment, there exists a clear and present danger of violence; written documentation and direct communication with the parties involved in a complaint are the points she stressed the most.
- Roberts told us that Hobson contacted her regarding a “potentially explosive” situation involving McPhail and asked her to broker a meeting with the EVCAA and the Chancellor; Roberts said that Hobson related to her that he had spoken with McPhail and McPhail was very upset about his removal from teaching and service; according to Roberts, Hobson said to her that he was concerned that McPhail’s state of mind could result in “harm to self or others”; as far as threats, Roberts stated that Hobson reported to her that McPhail had said that the solution to racism is to kill all white people; we asked Roberts if she felt threatened when she heard Hobson’s report and she responded in the

negative; Roberts said that IUNPD contacted her and she gave a detective the same account of events that she gave to us.

- Klamen stated that Arshanapalli approached him after a routine meeting and warned him not to have any contact with McPhail; according to Klamen, Arshanapalli said that he had spoken with McPhail in the aftermath of his removal from teaching and service and had found him to be very angry; Klamen stated that Arshanapalli's warning was lengthy and was repeated after another meeting about a week later; Klamen said that, while Arshanapalli did not say that McPhail had made any threats, Arshanapalli described McPhail as extremely agitated; Klamen attributed to Arshanapalli a statement to the effect that McPhail was screaming and seemed incoherent; Klamen said that, around the same time, a different colleague contacted him to say that he had heard rumors that Klamen was not safe and McPhail had threatened him; Klamen said that he was advised by an attorney for IU that there was a serious threat against him and therefore he should stay away from campus, leave his home, move to a hotel, and temporarily relocate his family as well; Klamen said that he was contacted by IUNPD twice and received personal safety advice from the Chief of Police.
- Arshanapalli stated that he received a call from McPhail after McPhail was removed from teaching and service; Arshanapalli described McPhail as upset, frustrated, and angry in the course of that call; Arshanapalli made it clear that, in his opinion, McPhail did not say anything inappropriate in the course of the conversation; Arshanapalli said that McPhail did not make any threats against Klamen or anyone else; Arshanapalli stated that he advised Klamen that it would be best to avoid McPhail on account of the fact that McPhail was upset because of the administrative decision to remove him from teaching and service for a semester; Arshanapalli thought that, if Klamen and McPhail came into contact with each other, an unpleasant conversation may ensue—a circumstance that should be avoided, in his opinion; Arshanapalli said that he received a call from IUNPD and responded in the negative when asked whether McPhail had made any threats; Arshanapalli said that he spoke with Klamen informally but did not feel that he had a reason for making a formal report to the EVCAA or the Chancellor.

After getting through all the hearings, we focused on comparing the testimonies and interpreting the information that was presented to us. Our analysis converged on the following points:

- a. According to Hobson, Szarleta, and Arshanapalli, who all spoke with McPhail directly, McPhail did not make any threats.
- b. One or more IUNPD detectives spoke with some of the same people we spoke with, and IUNPD did not start any criminal proceedings against McPhail.
- c. According to Roberts, Hobson said to her that McPhail had in fact expressed himself in a threatening way, speaking of killing all white people as a remedy for racism.
- d. Thus, there seems to be an inconsistency between Hobson's testimony and Roberts'.

- e. Klamen and Arshanapalli characterized their conversations somewhat differently from each other, with Klamen describing Arshanapalli's warnings as more dire and emphatic than Arshanapalli did.
- f. McPhail stated to us that he did not say anything regarding the killing of white people.
- g. In his appeal (p. 3), McPhail wrote that he did make a comment incorporating a reference to the killing of white people, but the comment was misconstrued. McPhail did not explain in the appeal who he made the comment to, but it seems reasonable to assume that the comment was made in conversation with Hobson. McPhail wrote in the appeal (p. 3) that, by broaching the subject of the killing of white people, he meant to refer to how the killing of white Civil Rights activists in the 1960s had affected White America's perception of the Civil Rights Struggle in the United States.
- h. Hobson stated that some discussion of the killing of white people occurred in his exchanges with McPhail but only to the extent that McPhail had remarked that racism would not have occurred in the Americas if the Native Americans had killed all the early white settlers.
- i. There seems to be an inconsistency between f., on the one hand, and g. and h., on the other. It is also not clear why McPhail and Hobson offered very different interpretations of the comment incorporating a reference to the killing of white people. So, there appears to be some tension between g. and h. as well.
- j. Given g., h., and Roberts' testimony, it seems reasonable to conclude that something concerning the killing of white people was probably said in an exchange between McPhail and Hobson. However, it is not clear whether the remark should be interpreted as some sort of threat or as a point bearing on the history of racism in America.

According to your letter to McPhail of September 14, 2021, your conclusion that McPhail had made threats warranting his dismissal was based on two testimonies, one by a witness reporting that McPhail had made "on more than one occasion, a threat of physical violence" and one by a witness substantiating the first witness's report in communication with "another member of the IUN community."

We do not know the identity of the witnesses your letter refers to because, as you explained to us, the witnesses are protected by IU's Whistleblower Protection Policy (UA-04). So, we could not interview these witnesses. However, it is possible that the whistleblowers are among the people we spoke with.

Based on our interviews with the witnesses we had access to, our conclusion is 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.

We appreciate that, as the EVCAA, you have a duty to investigate any concerning circumstances and to protect the IU Northwest community by acting quickly to counter anything that may constitute a threat to the well-being and safety of its members. In our opinion, your decision to investigate the alleged threats and your decision to implement means for protecting our academic community were fully warranted.

However, we find that the course you pursued—McPhail's summary and immediate dismissal—was not warranted by our campus's policies and procedures.

You told us that the policy you followed is ACA-33 (*Code of Academic Ethics*). Under "Enforcement Procedures," point b. ("Administrative Action on Violations of Academic Ethics"), ACA-33 reads in part:

"Subject to the substantive standards of University tenure policy and the procedural safeguards of the faculty institutions, sanctions appropriate to the offense should be applied by the academic administrators. Possible sanctions include the following: reprimand, consideration in establishing annual salary, consideration in promotion decisions, consideration in tenure decisions, retention of salary, termination of employment, and immediate dismissal."

ACA-33 is explicit that all the sanctions available to academic administrators are subject to "the substantive standards of University tenure policy and the procedural safeguards of the faculty institutions." On our campus, the procedural safeguards of the faculty institutions are spelled out in the IU Northwest "Dismissal Procedures for Tenured Faculty & Librarians" (<https://www.iun.edu/faculty-organization/docs/meetings/2001/dismissprocedure.htm>; henceforth "Dismissal Procedures"). This policy has been in force on our campus for over 20 years as it was approved by the IU Northwest Faculty Organization in October of 2001.

The Dismissal Procedures contain a clear and structured process for dealing with situations where a faculty member is alleged to have engaged in serious misconduct and may pose a threat to the safety of the campus. Under "II. Alleged Misconduct," the Dismissal Procedures give administrators the power to suspend a faculty member "if immediate harm to himself, herself, or others is threatened by continuance." Suspension and a temporary ban from campus are effective means of protecting the campus community, or at least they are as effective as immediate dismissal. Immediate dismissal was not the only protective option available in the circumstances. The Dismissal Procedures contemplate suspension, not immediate dismissal, as the protective option of choice.

The Dismissal Procedures also pay close attention to due process and to the protection of the rights of those faculty members who are accused of serious misconduct. The measures prescribed for deciding a case where serious misconduct is alleged include an informal discussion period between the faculty member and the Administration, the creation of an impartial committee of three faculty members tasked with determining the seriousness of the alleged misconduct, and a series of formal proceedings involving the full disclosure of the nature of the allegations and of

all available documents and evidence. The Dismissal Procedures are also concerned with ensuring that a faculty member accused of serious misconduct has ample and unobstructed opportunity to respond to the allegations.

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. At the same time, in a letter dated September 14, 2021, IUNPD Chief Monte Davis put McPhail on notice that he was not allowed to enter "any Indiana University-owned property." As one can see in McPhail's appeal, IUNPD also gave McPhail a trespass warning for placing a phone call to an IU number. Both Chief Davis's letter and the trespass warning threaten criminal prosecution for any violation. So, not only was McPhail deprived of the rights he had as a faculty member under the Dismissal Procedures, but he was also completely silenced through measures that made it a prosecutable offense for him to attempt to contact the IU Administration to respond to the allegations against him.

It is clear to us that treating an IU faculty member in this way is not acceptable. If our campus has clear and detailed Dismissal Procedures, then our campus should follow them to the letter so that both the safety of the academic community and the right of the faculty to due process are acknowledged and protected. In this case, the campus Administration had justifiable reasons for investigating the allegations and moving towards protective measures. However, the Administration should have followed the process mandated by the Dismissal Procedures instead of issuing a summary dismissal and cutting McPhail off from any opportunities for presenting his reasons and explaining his position.

It is difficult to make recommendations in a situation like the current one because McPhail's dismissal in September of last year may well have stretched things beyond repair. In his appeal, McPhail proposed a threefold remedy. Two parts come from his first appeal (the one against his removal from teaching and service, dated September 13, 2021). They are as follows:

1. "Accept the recommendation of Mark Criley, Senior Program Officer of the American Association of University Professors, presented in his letter to the Chancellor Ken Iwama, dated August 30, 2021: 'Our information about Professor McPhail's case has come to us exclusively from him, and we appreciate that you may have additional information that might contribute to our understanding of what has occurred. We would therefore welcome your comments. However, if the facts as we have recounted them are essentially accurate, we urge that Professor McPhail be reinstated immediately to his full faculty responsibilities. If the IUN administration wishes to suspend him from his duties, we urge prior affordance of a faculty hearing consistent with the above-cited standards, including payment of his full salary during the pendency of a hearing.'"
2. "I request that the committee recommend that my full salary, along with back pay and retirement withdrawals, be restored, and that my teaching and service responsibilities be resumed. I request, in accordance with Indiana University Northwest Post-Tenure Review and Enhancement Policy, that a review of my teaching and service performance be conducted that includes evaluations, comments, peer reviews, and examination of materials, and that I be assigned appropriate service commitments and given a reasonable opportunity to improve in any area deemed to be inadequate. I request also that none of the documents associated with this Administrative Action be entered into my personnel file until it has been resolved to the satisfaction of all parties."

The third part of the remedy McPhail proposes is the following:

3. "Advise the EVCAA and the University to pursue a more equitable and honorable course of action in effecting my separation from the University."

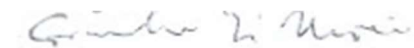
There seems to be a tension between the components of the remedy McPhail proposes. Points 1 and 2 speak to reinstatement whereas point 3 speaks to separation and a settlement. We speculate that, at this point, what McPhail may want more than anything else is an "equitable and honorable" separation from Indiana University. We urge our campus Administration and all other applicable offices of Indiana University to work with Dr. McPhail and his representatives to reach a settlement that is honorable and acceptable to him.

We would also like to recommend that IU Northwest's Dismissal Procedures be given more prominence on our Academic Affairs website. All administrators, faculty members, and librarians should be aware of their existence. New administrators, faculty members, and librarians should be given a copy at orientation events.

Finally, we would like to recommend that the Administration should generate and maintain written records of all allegations of misconduct that are submitted to it. One of the challenges of this case was that, as you explained to us, your Office did not have any written records or other documentation pertaining to the case. We believe that the campus Administration should follow a process akin to the one used by the Director of Human Resources, who documents everything in writing and asks witnesses to check that she has accurately captured their statements. A paper trail is more dependable than memory, which becomes less and less reliable as the recollected events recede into the past.

Respectfully submitted,

(In alphabetical order)



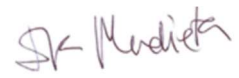
Gianluca Di Muzio, Associate Professor of Philosophy



Kristin Huysken, Associate Professor of Geology and Assoc. Dean for Student Success, COAS



Zoran Kilibarda, Professor of Geosciences

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Eva Mendieta, Professor of Spanish

Handwritten signature of Susan Zinner in cursive script.

Susan Zinner, Professor of Public and Environmental Affairs