

# Minutes of the MLA Executive Council

*[Note: The Executive Council voted to approve these minutes at its May 2010 meeting.]*

THE COUNCIL MET ON 26–27 FEBRUARY 2010 AT THE MLA OFFICE IN NEW YORK. PRESIDENT Sidonie Smith presided. The officers present were First Vice President Russell A. Berman, Second Vice President Michael Bérubé, and Executive Director Rosemary G. Feal. The Executive Council members present at the MLA office were Carlos J. Alonso, Sara Scott Armengot, Jennifer Crewe, Jane Harper, George Levine, Richard M. Ohmann, Karin C. Ryding, Lynne Tatlock, and Kathleen Woodward. The Executive Council members Jonathan Arac, Lawrence I. Buell, and Dorothea Heitsch participated in the two-day meeting by telephone, because a snowstorm caused the cancellation of their flights to New York. Francis Abiola Irele and Alexandra K. Wettlaufer were absent. The MLA staff members present were Director of Operations Terrence Callaghan, Director of Bibliographic Information Services and Editor of the *MLA International Bibliography* Barbara Chen, Director of Programs and ADFL Nelly Furman, Managing Editor of MLA Publications and Director of Publishing Operations Judy Goulding, Director of Financial Operations Amilde Hadden, Director of Convention Programs Maribeth T. Kraus, Director of Research and ADE David Laurence, Director of Book Publications David G. Nicholls, and Assistant to the Executive Director and Coordinator of Governance Carol Zuses.

On 26 February, the council meeting began at 12:15 p.m., later than scheduled, because the snowstorm delayed the arrival of several members. The council began by meeting in executive session to review council members' fiduciary responsibilities. Following the executive session, the council convened in regular session to begin working through its agenda. Beginning in mid-afternoon, the council met in subcommittees. The Subcommittee on Administration and Finance reviewed four staff reports, the report from the trustees of the MLA's invested funds, and the council's investment policy and considered appointments to five MLA committees. Attending were Sidonie Smith, chair; Sara Armengot; and Kathleen Woodward. The Subcommittee on Projects (Russell Berman, chair; Jane Harper; Richard Ohmann; Karin Ryding; and Lynne Tatlock) met to discuss four staff reports and one committee request and to consider appointments to five MLA committees. The Subcommittee on Meetings and Publications (Michael Bérubé, chair; Carlos Alonso; Jennifer Crewe; and George Levine) reviewed five staff reports and considered appointments to six MLA committees. At the conclusion of the subcommittee meetings, the full council reconvened in regular session to hear the reports and recommendations of its subcommittees and to begin taking action on the various requests before it. On 27 February, in one morning executive session and in three morning and

afternoon regular sessions, the council continued working through its agenda. The council adjourned at 2:45 p.m., having concluded all the business before it.

The council took the following actions:

1. *Administration and Finance.* The council received the independent auditor's report and financial statements for the year ended 31 August 2009. After members of the council's Audit Committee commented briefly on their meeting with representatives of Eisner LLP, the council-designated independent audit firm, the council voted to accept and approve the audit report.

The council also received the Finance Committee's report, which reviewed the budget for the current fiscal year using four-month projections. Rosemary Feal drew council members' attention to the few changes to revenue and expense projections that could be made at this early point in the fiscal year. She also reported on the cash reserve, which was at its target level.

The Finance Committee asked the council to consider several matters relating to the preparation of a budget for the fiscal year 2010–11, and the council authorized the staff to prepare a balanced budget.

The council adopted the following two resolutions relating to financial management. [Note: The president certified the council's action by signing the original documents containing the resolutions. These documents were then stamped with the association's corporate seal.]

WHEREAS, article 4, section E of the constitution of the Modern Language Association provides as follows: "The permanent fund of the association and its other endowment funds shall be administered by a board of three trustees, each appointed by the Executive Council for a three-year term, the three terms to be staggered by one year. One of the trustees shall be designated the managing trustee"; and

WHEREAS, Herbert Lindenberger, Malcolm Smith, and Catharine Stimpson have been appointed by the Executive Council as the three trustees with authority to administer the permanent fund of the association and its other endowment funds, and Malcolm Smith has been designated the managing trustee of this committee (the "Permanent Fund Committee");

NOW, THEREFORE, be it

RESOLVED, that, upon the written direction to Rosemary G. Feal as executive director, Judy Goulding as managing editor of MLA publications and director of publishing operations, and Terrence Callaghan as director of operations of any member of the Permanent Fund Committee to effect the purchase, transfer, sale, or other disposition of any security or securities held in the permanent fund or any other endowment funds, the executive director, managing editor of MLA publications and director of publishing operations, and director of operations be and hereby are authorized and directed to take all such steps and to execute and deliver all such documents as they shall deem necessary or appropriate to effect such purchase, transfer, sale, or other disposition; and be it further

RESOLVED, that the president of the MLA be and hereby is authorized and directed to certify this resolution to any third party requiring delivery of same in order to substantiate the proper authority for the disposition of the securities of the permanent fund or any other endowment funds.

RESOLVED: That Rosemary G. Feal as executive director of the corporation, Judy Goulding as managing editor of MLA publications and director of publishing operations for the corporation, and Terrence Callaghan as director of operations for the corporation be and hereby are authorized jointly to open a custody account with the United States Trust Company of New York in the name of the corporation and deposit therein such property of the corporation as they may deem advisable.

IT IS FURTHER RESOLVED: That Rosemary G. Feal, Judy Goulding, and Terrence Callaghan be and hereby are authorized jointly to direct all changes of investments and authorize the delivery of any securities or cash, and the property therein shall be subject to such control until further action by this board.

IT IS FURTHER RESOLVED: That United States Trust Company of New York be and hereby is designated a depository of this corporation and is authorized and directed to pay checks and other orders for the payment of money when signed in the following manner: [manner of signing specified].

The council also authorized the following staff members to sign nonpayroll checks over \$1,000: Terrence Callaghan, Barbara Chen, Rosemary Feal, Judy Goulding, Maribeth Kraus, and David Laurence.

The council reappointed Jennifer Crewe and George Levine to join the officers of the association on the council's Audit Committee in 2010.

The council reviewed its procedure for making decisions between meetings and revised it slightly. The procedure (see Jan. 2005 *PMLA* 278) calls for council members to use the council's electronic discussion list to discuss a proposed action and then to indicate whether the action, either as proposed or as modified during the discussion, should be taken. If the council does not reach a unanimous decision through the discussion list, then the matter is referred to the council's advisory committee (composed of the officers and the council members who are in the last year of their terms), which is charged with making a formal decision. Before the February meeting, as the council was considering a proposal for action (see item 16, below), a question arose about the need for unanimity on the council's advisory committee. At the current meeting, the council revised its procedure to include a requirement that decisions taken by the advisory committee be unanimous.

2. *Revision in the MLA Dues Structure.* The Executive Council confirmed the action taken by the 2009 Delegate Assembly to revise the dues structure of the association (see May 2010 *PMLA* 844–48). The following table shows the changes that the assembly approved. The new dues schedule will go into effect for the 2011 membership year.

Current Dues Schedule		New Dues Schedule	
Dues Class	Amount	Dues Class	Amount
1 Under \$15,000	\$ 25	1 Under \$15,000	\$ 25
2 \$15,000–\$20,000	\$ 40	2 \$15,000–\$20,000	\$ 40
3 \$20,000–\$30,000	\$ 50	3 \$20,000–\$30,000	\$ 50
4 \$30,000–\$40,000	\$ 65	4 \$30,000–\$40,000	\$ 70
5 \$40,000–\$50,000	\$ 75	5 \$40,000–\$50,000	\$ 85
6 \$50,000–\$60,000	\$ 85	6 \$50,000–\$60,000	\$100
7 \$60,000–\$70,000	\$ 95	7 \$60,000–\$70,000	\$115
8 \$70,000–\$80,000	\$105	8 \$70,000–\$80,000	\$130
9 \$80,000–\$100,000	\$125	9 \$80,000–\$100,000	\$145
R \$100,000–\$120,000	\$145	R \$100,000–\$120,000	\$165
T \$120,000–\$140,000	\$165	T \$120,000–\$140,000	\$185
V Over \$140,000	\$175	V \$140,000–\$160,000	\$205
		W \$160,000–\$180,000	\$230
		X \$180,000–\$200,000	\$255
		Z Over \$200,000	\$280
E Student	\$ 20	E Student	\$ 20
F New Regular	\$ 35	—	—
L Joint Secondary	\$ 20	L Joint Secondary	\$ 40

3. *Report of the MLA Trustees.* The council received the trustees' annual report, which showed that at the end of the calendar year 2009 the association's endowment fund and all six of the donor-restricted funds that support a number of association prizes had increased in market value. The trustees conducted their annual review of the performance of the various mutual funds in which the MLA had investments. They were pleased to note that, overall, the rate of return on the association's investments surpassed the rate of return of the S&P 500 stock index and several other investment benchmarks. Given the strong performance over time of the current investments in the endowment portfolio, the trustees decided to maintain them. The trustees also reviewed the council's investment policy (see Oct. 2005 *PMLA* 1674–76) and noted that the current investment allocation between fixed-income instruments (46%) and equities (54%) was in keeping with the 45-55 allocation recommended by the council. Because of the continuing uncertain state of the economy, the trustees said they planned to maintain their frequent consultations on the performance of the MLA's investments. Council members had questions about the diversification of the MLA's investment portfolio and about the association's short-term investments. The staff will transmit these questions to the trustees. The council thanked the trustees for exercising due diligence in their work for the association and for their remarkable skill in overseeing the MLA's investments in the current troubled financial climate.

4. *Review of Executive Council Statement on Investment Policy.* In conjunction with the report of the MLA trustees, the council reviewed its Statement on Investment Policy. The council's review focused on whether the association's

portfolio should include more socially responsible investments. Council members discussed the different approaches to socially responsible investing and whether a lower rate of return on such investments was acceptable. They also asked whether the trustees could identify other socially responsible mutual funds to add to the one such fund already in the MLA's portfolio. Since the president now meets with the trustees regularly, the council asked the president to transmit its questions and concerns to them.

5. *Approval of the October 2009 Council Minutes.* The council approved the minutes of its October 2009 meeting for publication in the May 2010 issue of *PMLA*.

6. *Council Subcommittee on PMLA Editor.* Because Patricia Yaeger's term as editor of *PMLA* will expire at the end of June 2011, the council began the process of selecting the next editor. A council subcommittee was constituted to oversee the selection process; it will make a recommendation to the council in October 2010. Named to the subcommittee were Russell Berman, chair; Carlos Alonso; and Kathleen Woodward.

7. *Departmental Reports.* The chairs of the three council subcommittees that had reviewed the annual reports from the MLA department heads summarized subcommittee members' comments and questions. After this general review, the council accepted the reports with thanks.

8. *Request from the Committee on Academic Freedom and Professional Rights and Responsibilities (CAFPRR).* At its October 2009 meeting, after discussing a report from the American Association of University Professors (AAUP) on the effects of the Supreme Court's decision in the case of *Garcetti v. Ceballos*, on the academic freedom of faculty members and graduate students at public colleges and

universities, CAFPRR drafted a statement to inform the membership about the Court's decision and its ramifications. The committee forwarded the statement to the council with a request that the council endorse it, thereby making it an MLA statement, and authorize its publication on the committee's page at the MLA Web site along with a link to the AAUP's report. (Note: In his capacity as chair of CAFPRR, Second Vice President Michael Bérubé presented the committee's request to the council and responded to council members' questions, but he recused himself from the council's decision on this matter.)

The council reviewed the committee's statement, made revisions, and approved the revised draft as an MLA statement. The statement the council approved appears below.

In the case of *Garcetti v. Ceballos* (2006), the Supreme Court held that public employees have no First Amendment protection for statements they make in the course of their professional duties. The case concerned a deputy district attorney, Richard Ceballos, who objected to misstatements made in an affidavit for a search warrant. Ceballos brought his concerns to his supervisors; when they decided to proceed with the case anyway, he spoke to the defense attorneys in the case, and defense counsel subpoenaed him to testify. In response, his supervisors in the district attorney's office retaliated against him, denying him a promotion and transferring him to a distant location. Ceballos sued, losing in district court but prevailing on appeal to the Ninth Circuit Court. The case then went to the Supreme Court, which reversed the findings of the Ninth Circuit, concluding that public employees are not protected when they speak "pursuant to their official duties."

Even though *Garcetti v. Ceballos* did not involve university personnel, the Supreme Court's holding has curious and unsettling implications for academic freedom. In dissent, Justice David Souter wrote, "This ostensible domain beyond the pale of the First Amendment is spacious enough to include even the teaching of a public university professor, and I have to hope that today's majority does not mean to imperil First Amendment protection of academic freedom in public colleges and universities, whose teachers necessarily speak and write 'pursuant to official duties.'" However, Justice Anthony Kennedy's majority opinion pointedly refused to answer Souter's question, noting, "There is some argument that expression related to academic scholarship or classroom instruction implicates additional constitutional interests that are not fully accounted for by this Court's customary employee-speech jurisprudence. We need not, and for that reason do not, decide whether the analysis we conduct today would apply in the same manner to a case involving speech related to scholarship or teaching."

Three lower courts have now walked through the door left open by the Supreme Court majority's ruling: *Hong v. Grant* (2007), *Renken v. Gregory* (2008), and *Gorum v. Sessoms* (2009). As a result of these rulings, faculty members

at public universities can now face disciplinary action for statements they make in the course of their official duties. Notably, this includes statements faculty members may make while serving on academic committees or while addressing university procedures and policies; indeed, it conceivably covers everything a faculty member might do or say in the course of his or her working day.

This development is bad enough, since it affects every faculty member's ability to render an honest assessment of a wide variety of ordinary academic matters, such as the design and maintenance of academic majors and graduate programs; admissions, hiring, tenure, and promotion; and the creation of new curriculums. But it has even more chilling implications in the light of the financial crisis many universities now face. Faculty members at public institutions who speak out on such matters—even to offer informed input on how to manage pay cuts, layoffs, furloughs, or deferred-compensation plans—can now face administrative retaliation if they participate in college and university governance, and they may have no recourse under the First Amendment.

The situation is complicated still further by the fact that the *Garcetti* decision relies on the precedent of *Pickering v. Board of Education* (1968), in which the Supreme Court found that Marvin Pickering's complaints about his local school board enjoyed First Amendment protection only because they were so ill-informed and implausible that no one could possibly take them seriously. In other words, the implication of *Garcetti* is that faculty members whose statements are utterly ill-considered and misinformed enjoy First Amendment protection from administrative retaliation, but faculty members who know what they're talking about speak up at their peril.

In response to *Garcetti* and the more recent decisions of lower courts, the Modern Language Association advises all faculty members at public colleges and universities to review and, if necessary, revise their faculty handbooks to include language that directly addresses *Garcetti*'s challenge to speech relating to official duties.<sup>1</sup> The MLA recognizes that faculty handbooks frequently do not have the force of law. Nevertheless, until *Garcetti v. Ceballos* and its progeny are overturned, we recommend that all faculty senates at public colleges and universities revisit their institution's definition of academic freedom, and we recommend that all public colleges and universities reaffirm the right of their faculty members to speak on matters of public concern—and matters pursuant to their official duties—without fear of retaliation.

#### Note

1. The Faculty Senate of the University of Minnesota recently revised their handbook's academic freedom clause. The relevant clause had previously read, "Academic freedom is the freedom to discuss all relevant matters in the classroom; to explore all avenues of scholarship, research, and creative expression; and to speak or write as a public citizen." Now the phrase "as a public citizen" has been deleted and replaced with the

following: “Academic freedom is the freedom to discuss all relevant matters in the classroom; to explore all avenues of scholarship, research, and creative expression; and to speak or write without institutional discipline or restraint on matters of public concern as well as on matters related to professional duties and the functioning of the University.” This revision is offered only as an example. Other strategies or different language may be more appropriate, depending on institutional context.

#### Works Cited

- Garcetti v. Ceballos. 04-473. Supreme Court of the US. 2006. *Legal Information Institute: Supreme Court Collection*. Legal Information Inst., Cornell U Law School, n.d. Web. 5 May 2010.
- University of Minnesota. *Academic Freedom and Responsibility*. U of Minnesota, Board of Regents Policy, 12 June 2009. Web. 5 May 2010.

9. *Revised Charge for the Committee on the Literatures of People of Color in the United States and Canada (CLPC)*. At the CLPC’s request, the council approved the following revised charge for the committee: “The Committee on the Literatures of People of Color in the United States and Canada develops projects designed to encourage dialogue across ethnic and racial boundaries and to promote intercultural perspectives on and comparative analyses of the literatures and languages of ethnic groups historically underrepresented in the United States and Canada.”

10. *Request from the Committee on Community Colleges*. Anticipating the expiration of its current charge in June 2010, the Committee on Community Colleges reported to the council on its past work and current and future projects. It requested that the council renew the committee for five years. Recognizing the committee’s accomplishments and, in particular, its successful efforts to encourage faculty members at two-year institutions to become MLA members and to participate fully in association activities, the council renewed the committee for five years, through June 2015. The council also decided to write a letter of thanks to the committee.

11. *Review of the Resolution Approved by the 2009 Delegate Assembly*. In accordance with article 7.B.3 of the MLA constitution, the council reviewed the resolution that the 2009 Delegate Assembly had approved (see May 2010 *PMLA* 850–52) to determine whether to forward the resolution to the membership for ratification. Resolutions that (1) do not impede the council’s ability to carry out its fiduciary responsibilities, (2) do not contain erroneous, tortious, or possibly libelous statements, (3) do not pose a threat to the association’s continuing operation as a tax-exempt organization, and (4) are consistent with the provisions of articles 2 and 9.C.10 of the MLA constitution may be forwarded to the membership.

The council determined that the resolution, which is a statement about job security for all higher education employees, posed no constitutional, legal, or fiduciary

problems. The council therefore authorized nonsubstantive copyediting changes to the wording of the resolution and forwarded it to the membership for the required ratification vote.

12. *Proposal of a Constitutional Amendment*. Following up on the council’s discussion of the resolutions process with the Delegate Assembly Organizing Committee (DAOC) in October 2009 (see May 2010 *PMLA* 858) and on the Delegate Assembly’s discussion of possible changes to the process suggested by the DAOC (see May 2010 *PMLA* 842–44), the officers asked the council to consider proposing two constitutional amendments that would affect the resolutions process. The first amendment, to article 11.C.3 of the MLA constitution, called for changing the number of signatures required on submission of a resolution to the DAOC from 10 to 150. The second amendment, to article 11.C.7, called for changing the threshold for the membership ratification vote on resolutions approved by the Delegate Assembly from approval by a majority of the members who vote to approval by at least ten percent of the members who are eligible to vote.

The council discussed the proposed amendments at length and voted to propose the second. In accordance with article 13.A of the MLA constitution, the council’s proposal for an amendment to article 11.C.7 will be forwarded to the Committee on Amendments to the Constitution for action.

13. *Election of a Council Member to the Delegate Assembly Organizing Committee (DAOC)*. The council elected Lawrence Buell to the DAOC for a two-year term (2010–Jan. 2012).

14. *Appointments to MLA Committees*. The council made fifty-two appointments to the standing committees of the association and appointed eight committee chairs or cochairs. The number of committee appointments reflected the council’s decision to begin reducing the size of the following committees to seven members: Advisory Committee on the *MLA International Bibliography*, Committee on Honors and Awards, Committee on the Literatures of People of Color in the United States and Canada, Committee on the Status of Women in the Profession, Committee on Disability Issues in the Profession, and Committee on Community Colleges. The council will complete the reductions when it makes committee appointments in February 2011. The names of all new and continuing committee members will appear at the MLA Web site.

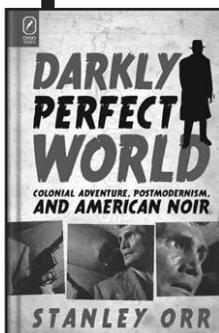
15. *Request from a Member*. Because the 2009 Delegate Assembly lost a quorum before it could act on Resolution 2009-2, which called on the MLA to condemn the University of Colorado for violating Ward Churchill’s freedom of speech and to urge that the university reinstate him (see May 2010 *PMLA* 852–54), Barbara Foley, a member of the assembly, requested that the council write a letter to appropriate officials at the University of Colorado to call attention to MLA Resolution 2007-3, which condemned the University of Colorado’s politically motivated investigation into Ward Churchill’s speech and scholarship,

and to remind the university of its responsibility to defend the free speech and academic freedom of faculty members. Foley suggested that the letter might also ask the university to reinstate Churchill. (Note: Because Richard Ohmann, a council member, was the proposer of record of Resolution 2009-2, he recused himself from the council's decision on this matter, though he was available to answer council members' questions about Foley's request.)

In making this request, Foley was following the Delegate Assembly Organizing Committee's (DAOC's) recommendation to the assembly on the disposition of Resolution 2009-2: that the assembly not approve the resolution but instead urge the Executive Council to write a letter to the University of Colorado based on Resolution 2007-3. Charles Rzepka, also a member of the assembly, wrote to the council to express his opposition to Foley's request and to the DAOC's recommendation. He noted that a number of delegates spoke against the resolution during the assembly's debate, and he stated his view that the loss of a quorum during the consideration of the resolution and the failure of a motion to continue debate in the absence of a quorum, which the assembly's rules allow, indicated a lack of support for the resolution among a majority of the delegates.

Because the National Coalition against Censorship (NCAC), of which the MLA is a long-time member, filed an amicus brief in support of Ward Churchill in the Colorado Court of Appeals, the council decided that no further action was necessary. The council asked the president to notify Foley, Rzepka, the DAOC, and the Delegate Assembly of the NCAC's action.

16. *Letter to Secretary of State Hillary Clinton.* In early February, the council was asked to consider signing a letter that the American Civil Liberties Union had drafted to thank Secretary of State Hillary Clinton for reversing a Department of State decision denying visas to the foreign scholars Adam Habib and Tariq Ramadan and to urge a similar reconsideration of the cases of a number of other scholars whose requests for visas had been denied on ideological grounds. For several reasons, including the need to act within a few days, the council was unable to reach a decision using its procedure for making decisions between meetings (see item 1, above). At the current meeting, the council decided to write a letter to Secretary Clinton citing the Department of State's recent action and urging that ideological considerations no longer influence the evaluation of requests for entry visas from foreign academics and scholars.

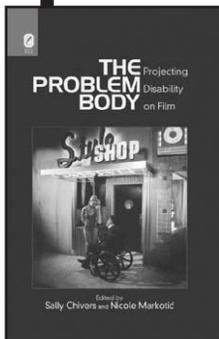


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