University of Puget Sound
Faculty Meeting Minutes
January 31, 2006

1. President Thomas called the meeting to order at 4:04 p.m. Thirty-nine voting members of the faculty were present by 4:30 p.m.

2. The minutes of the December 6, 2005 faculty meeting were approved as posted.

3. There were no announcements.

4. President Thomas thanked those who attended his and David Beers' recent presentation on plans and projections for alumni programs as the Alumni Programs Office and the Parent Programs Office merge to become the Office of Alumni and Parent Relations.

President Thomas reported that we have $18.5 million in hand in commitments for construction of the science center. He said the goal was now $18.6 million and a foundation grant may push us beyond that. He reported that construction of Phase I (Harned Hall) was on schedule or a little ahead of schedule. He said he anticipated that at next week's meetings the trustees will approve moving ahead with Phase II (the north and east wings of Thompson Hall).

President Thomas added that there are two other major issues on the trustees' agenda next week: (1) presentation of the strategic plan , and (2) two workshops, one on endowment and one on debt financing. He said completion of Thompson Hall renovation will depend partly on debt financing. He reported that he and Dave Beers have been working with three co-chairs of a capital campaign planning committee on a campaign that will help us to implement the strategic plan.

President Thomas said that he and Mary had an "exotic holiday," spending Christmas Eve in Kuala Lumpur with 25 Pacific Rim students and some of their parents. The students showed a very impressive video they had made of their first four months. He and Mary were able to see first hand what an intense, unique and valuable experience the Pacific Rim study abroad program is for students. President Thomas also met with two trustees in Tokyo and had a good meeting there with 23 alumni and alumnae. He also met with another trustee in Hong Kong. He expressed his interest in increased recruitment abroad, especially in Asia, and reaffirmed the asset that Asian academic connections represent for UPS.

5. Academic Vice President Kristine Bartanen, noting that we are in the middle of tenure-line candidate season, thanked faculty who were working hard on these hires.

6. Faculty Senate Chair Barry Anton thanked faculty colleagues on the senate for their hard work this year and included Professional Standards Committee (PSC) Colleagues, especially Carolyn Weisz and Bill Breitenbach.

7. We then took up discussion of the proposed amendment to sections 6 and 7 of chapter III of the Faculty Code, concerning procedures for appeals and hearings. The amendment had its first reading at the October 24, 2005 meeting and was discussed further at our December 6,

2005 meeting. President Thomas turned to PSC Chair Carolyn Weisz who contextualized the issue by pointing out that major code revisions occurred in 2003 and that the PSC has been working this past year on issues that came up in that review concerning the appeals process and other issues, some controversial, and others merely housekeeping items. She said that at the December 6, 2005 faculty meeting some concerns were raised about some of the proposals the PSC brought to us last October. Since December the PSC has consulted with the Faculty Senate and today has some further questions for our consideration.

Regarding section III.6.d.(2-4), having to do with the time limit for reporting the decision of the Hearing Board to the evaluee, **Weisz M/S/vote reported later "to replace the amended language proposed in October**

(2) Within ten (10) working days of receipt of the respondent's response and any dissents, the hearing board shall determine, based on its review of the written materials, whether there exists probable cause for an appeal.

(3) If two (2) or more members of the hearing board determine that probable cause for an appeal exists, a hearing shall be held by the hearing board pursuant to Chapter III, Section 7.

(4) If the hearing board determines that probable cause for an appeal does not exist, it shall so notify the appellant, the respondent, the dean, and the chairperson of the Professional Standards Committee. The hearing board's written determination of no probable cause shall be included in the evaluation file, along with the appellant's list of alleged code violations, the respondent's response, and any dissents. The evaluation file, with these items included, then moves to the next stage of the evaluation process.

With the following:

(2) Within ten (10) working days of receipt of the respondent's response and any dissents, the hearing board shall determine, based on its review of the written materials, whether or not there exists probable cause for an appeal and shall so notify the appellant, the respondent, the dean, and the chairperson of the Professional Standards Committee of the decision.

(3) If the hearing board determines that probable cause for an appeal does not exist, the hearing board's written determination of no probable cause shall be included in the evaluation file, along with the appellant's list of alleged code violations, the respondent's response, and any dissents. The evaluation file, with these items included, then moves to the next stage of the evaluation process.

(4) If two (2) or more members of the hearing board determine that probable cause for an appeal exists, a hearing shall be held by the hearing board pursuant to Chapter III, Section 7."

Bill Haltom asked what the PSC's reasoning was for the language that includes the PSC chair in the notification list. Weisz said that the PSC felt it would be a good idea for the PSC chair to be aware of whether or not a hearing board planned to conduct a hearing. Haltom responded that the idea of the hearing board consulting with the PSC was troublesome because this isn't what the code says or authorizes. He said he thinks this creates the potential for problems and that it makes more sense for the five members of the hearing board to make procedural decisions rather than getting rulings on the fly from the PSC or the PSC chair. Weisz argued that the PSC chair does already play a role in calling hearing

boards, and the PSC chair might need to know when a hearing has concluded. She said the PSC envisions that folks might find the code cryptic and that it is desirable to open the door for a potentially useful conversation with PSC *before* a problem arises with procedure, rather than after. Florence Sandler added that the language simply calls for notifying the PSC chair, and that isn't the same as consulting the PSC chair.

Bob Matthews said that once the hearing board is under way it acts more or less independently and that he had no problem with the hearing board notifying the PSC chair as a courtesy. Ted Taranovski said he had no problem with simply keeping the PSC chair informed and that the same language exists in the following section of the code, 7.i. He said the PSC chair has no role of approval and is simply being notified. Weisz agreed, but pointed out that the language in Section 7 that Taranovski referred to was also being proposed by the PSC as an amendment to the code so that whatever objections exist regarding 6.d.2. probably also exist regarding 7.i.

Bill Beardsley asked why the Faculty Senate chair should not be notified on the same grounds, since the Faculty Senate chair and the PSC chair together convene the hearing board. He said his worry was that we would be "sneaking in" a role for the PSC that isn't in the code. Breitenbach said that this isn't an essential item and that he would be happy either to add the Faculty Senate chair or eliminate the PSC chair. He said the only purpose for including one or both is for someone who is not a party to the appeal one way or the other to have the information that the process is moving along as it is supposed to move along; nothing more serious than that is intended. He said that if we don't feel this is essential, we should strike it.

Ken Rousslang said that when he served on a hearing board, he would like to have notified the PSC they were making progress, but instead he was unsure whether he could even do that.

Matthews then M/S/P to amend the motion on the floor by adding the chairperson of the Faculty Senate to III.6.d.2. Taranovski said that if we add the Faculty Senate chair to 6.d.2. we should also add the Faculty Senate chair to other sections for consistency. Weisz said that the PSC will ensure there is consistency in the document ultimately brought to the faculty for approval. John Hanson noted that we had earlier agreed that the overall document would go back to the PSC for consistency after we've made any changes we're concerned about.

The Matthews motion passed on a voice vote.

The original Weisz motion then passed on a voice vote.

Weisz then moved us on to a discussion of the topic of the confidentiality of hearing board matters. She projected onto a screen the three options being presented to us today:

The three options for the statement on confidentiality are:

1. Amendment to Chapter III. Section 6.c.(8) This is the amendment currently before the faculty: Hearing board members are to treat the proceedings as confidential.

2. Existing code language (from Chapter III. Section 7.i. in the current code). No person involved in the hearing shall make public statements, directly or indirectly, about matters presented in the hearing.

3. New proposal: Any person who learns information as a result of the appeal or hearing process should not communicate that information to others who do not have a legitimate need to know.

Weisz said that option number 3, the new proposal, is broader than the other two in that it applies to any person, not just those involved in the hearing, and is not limited just to information presented at the hearing but also to information related to the substance of a review or appeal that might be learned in other ways. This breadth was designed to protect the privacy of the evaluee. She said the PSC recognized that some faculty members were concerned about the freedom of an evaluee to talk and that in the new proposal the evaluee is free to talk about those things not learned at the hearing. Breitenbach added that the new proposal improves previous statements in three ways: by getting rid of "public;" by getting rid of "directly or indirectly; and by using the word "communicate" to cover not just oral statements but all forms of communication.

Cannon argued that something the evaluee learns in the hearing that was not known before is the verdict of the hearing and that the evaluee should be free to communicate this to whomever he or she wishes, but would be prevented from doing so by the language in option 3.

Taranovski said that the more he hears about this topic the more he is happy with the existing code language. He argued that even under the new language someone will want to debate, for example, "who gets to decide who has a need to know." He said this will cause problems and that the more we try to fix things the more problems will result. Cannon argued that "competent bodies can decide who has a need to know."

Haltom said he liked some of the language in option 3 ("learns information as a result of the appeal or hearing process") and that he proposed moving that language into option 2 (the existing code language in III.7.i). He said he would like to hear "what the evil is that we are trying to deal with" by proposing a change to existing code language. He said he hadn't yet heard any good purpose in doing away with "public" in favor of "legitimate need to know."

Breitenbach asked Haltom if he could come up with language that would result by introducing the option 3 phrase ("learns information as a result of the appeal or hearing process") into option 2. Haltom did so: "No person involved in the hearing process shall make public statements, directly or indirectly, about information learned as a result of the appeal or hearing process." Breitenbach asked if Haltom were making a motion to this effect and Haltom responded that he was not; that he was offering this up for consideration. Rousslang said he liked this because it eliminated the word "should." McGruder asked what the purpose was in retaining the phrase "directly or indirectly" in Haltom's combined language. Haltom responded by saying "I can neither tell the Tribune nor have my mother tell the Tribune."

Judith Kay asked if by this language Haltom meant to deny "the accused" the means to go public and Haltom responded that he would prefer not to deny "the appellant" (not the accused, after all) this right and that he was trying simply to work toward language we can agree to. Weisz said that allowing the evaluee to go public might create a problem if the evaluee then targets someone, a department chair for example, who cannot respond. She argued that the evaluee should in fact be restricted from talking publicly.

Taranovski said he liked the new Haltom language because it does not refer to things that occurred before the hearing board process started, nor to discussion that may occur afterwards, and because it protects the confidentiality of the process itself from being bandied about.

Cannon said that this worry about the other side having equal time to respond to an evaluee's public statement was misplaced. Deans might be embarrassed, he said, "but what kind of protection do they need?" More narrowly, he doesn't see what information the evaluee is going to learn as the result of the hearing he or she couldn't have "blabbed about" before except the outcome of the hearing. He said it was ridiculous for the evaluee not to be able to talk about the outcome of the hearing. Haltom responded that experience shows that "there is stuff the appellant might learn at the hearing that was not evident before."

Matthews said he liked option 1 best, the amendment currently before the faculty, because it was simple and straightforward. He said by this language the issue of the evaluee speaking publicly is avoided because the evaluee is not a member of the hearing board.

Weisz argued that the PSC's reasoning for expanding the restriction to everyone who learns anything, including the evaluee, is to address a desire expressed by some faculty members to keep confidential matters confidential. Beardsley argued that we can't restrict the right of speech of someone not involved in the appeal process. Weisz argued that perhaps concerns of junior faculty "trump" this right of speech. Beardsley countered that nothing trumps the right of speech except perhaps national security. Terry Cooney said we really don't have authority to restrict people who have no part in the hearing, including Haltom's mother. Kay asked Haltom to come up with some example of making public statements indirectly that did not involve his mother. Haltom suggested that "a grisly example would be somebody who uses students to get the information out."

Weisz suggested that at this point in the discussion we might consider whether (1) we have potential language (Haltom's amalgamation of options 2 and 3) that might be better than what's currently in the amendment, or (2) we might decide not to vote and let the PSC could come back with the amalgamation "nicely typed up" for consideration at the next meeting.

Beardsley suggested we include in the code no language at all concerning confidentiality; that we strike existing language with no replacement so that we would have to start from scratch by laying out the purpose of including any such language.

Weisz suggested that the purpose of the code is to both "guide and grieve." She said the problem is that we don't always know how we can say something in a way that guides that cannot also be grieved.

Terry Beck argued that restricting everyone but the appellant makes things more fair "because deans already have an inordinate amount of power." Dean Bartanen said that this whole issue has come to the fore since the code added the ability of someone to appeal at the department level. She said it isn't always just a pre-tenure person who might appeal something. Imagine, she said, that there is a conflict at the departmental level with senior faculty appealing in a way that implicates junior faculty participating in the review. Confidential letters, for example, might come into the hearing board process so that if things aren't treated with confidence, the letters become public which could create problems. She said we should also keep in mind that persons on the hearing board are faculty members, so the issue of confidentiality is not just a matter affecting deans.

McGruder suggested that "cause to be made public" replace "directly or indirectly" in the new language the PSC will work up and will bring back to the faculty.

Taranovski said we need to strike a balance between conducting unpleasant business and being as fair as we can and that we won't find perfect language to accomplish this. We shouldn't provide someone too much license to disclose or allow someone to be destroyed in the name of confidentiality; "we need to find something in the middle." That ended discussion of this issue for now.

Weisz then moved us to discussion of section 7.j. about what happens to the file immediately following a hearing board's finding that there has been a violation of the code. Weisz's query #1 was:

> If a hearing board determines that there have been code violations in an appeal at the FAC level, shall a hearing board
>
> a) have the <u>option to return the file to the FAC</u> before it moves to the President,
>
> b) <u>always return the file to the FAC</u> before it moves to the President, or
>
> c) <u>always move the file on to the President?</u>

Query #2 was the same, but at the departmental level:

> If a hearing board determines that there have been code violations in an appeal at the department, school, or program level, shall a hearing board
>
> a) have the <u>option to return the file</u> to the department, school, or program for correction of deficiencies,
>
> b) <u>always return the file to the department, school, or program</u> before it moves to the FAC, or
>
> c) <u>always move the file on to the FAC?</u>

Taranovski said there could be a problem if the file is sent back to the department and the department says they don't see any problem with it. He said there needs to be some level of enforcement to ensure that the problem gets fixed. Weisz pointed out that the code says currently it's the FAC that has this responsibility, but reminded us that the question came up at the last faculty meeting about the president's responsibility.

Matthews favored option (b). He asked if the president has the authority to return the file to the FAC and President Thomas said yes.

Haltom said it would be ill advised to have the president involved in this process since the file eventually goes to the president. He added that the FAC has to be independent of the president, but the president does not have to be independent of the FAC and should be guided by the deliberations of the FAC.

Cooney said there had been "hundreds" of examples of departments being asked to correct some deficiency and that departments invariably do so. He said there is no history suggesting people aren't inclined to correct deficiencies, and he agreed with Matthews that option (b) makes the most sense. Weisz asked if we also feel that option (b) is best when we look at the things from the department level. Breitenbach said that some code violations are irremediable, such as having missed a deadline, so in some instances the hearing board could determine there have been code violations and that there's nothing to be gained by turning the file back to the department.

Sandler argued that we aren't worried about little violations, but about situations where there's something materially wrong with the process. She said it doesn't make sense to send the file back to the same parties that caused the problem in the first place. She said we're looking for accountability—who in the institution is able to hold to account the whole evaluation? Dean Bartanen said that the FAC has this responsibility at the department level, so option (a) is best for appeals of departmental process.

Cooney said that a good percentage of what happens at the department level is pretty reasonable and that involving the FAC would add a couple weeks to the process in situations that in most cases won't require a lot of thought, so (c) is probably not the preferred option.

Taranovski argued that there are departments who do things consistently wrong and that in those cases it's better to send to departments and then have the file go to FAC which acts as an enforcer. He said we should fix problems at the level where they occur, which is often at the department level.

Weisz thanked us for our comments and said that the PSC would keep working on language to bring back to us.

Taranovski M/S/P to adjourn and we did adjourn at 5:29 p.m.

Respectfully submitted,

John M. Finney
Secretary of the Faculty