

## **Faculty Senate Minutes September 24, 2001**

**Senators present:** D. Bahar, D. Balaam, K. Bartanen, W. Breitenbach, T. Cooney, J. Hanson, K. Hummel-Berry, M. Jackson, C. Kline, J. McGruder, H. Ostrom (chair), G. Tomlin, R. Wilson

**Visitors:** W. Barry, W. Beardsley, N. Bristow, P. Loeb, T. Mace, K. Maxwell, M. Pickard, M. Warning

**Approval of Minutes.** Ostrom called the meeting to order at 4:03 p.m. The minutes for the meeting of May 14, 2001, were approved with the following corrections: under "Announcements" the name Hansen is changed to Hanson; under "Library, Media, Academic Computing Committee" the name Operation of Information Systems is changed to Office of Information Systems.

**Special Orders.** Bahar asked faculty senators to make the following announcement in their classes: students who have an interest in serving on faculty standing committees should contact David Bahar by email.

### **Continuation of the Discussion of Proposed Code Revisions.**

*The Process.* Ostrom explained that the Senate is helping the Ad Hoc Committee (Bristow, Mace, and Maxwell) craft specific language for resolving the three issues identified by the faculty-trustee Conference Committee. When the Senate is satisfied with the proposed revisions, the agreed upon language will be transmitted through the Ad Hoc Committee to the Conference Committee. Jackson asked if the full faculty would be involved before the revisions go to the Conference Committee. Cooney suggested that the full faculty should permit the Conference Committee some discretion in its negotiations; the appropriate moment for faculty involvement would come when the faculty representatives to the Conference Committee report back to the faculty. Ostrom noted that the Senate should aim to approve only such language as it believed the faculty would be likely to accept.

*Issue Two: The Hiring Process.* Bristow reported for the Ad Hoc Committee on this issue. She distributed a side-by-side copy of chapter two of the Code, with one side showing the proposed amendments sent by the faculty to the trustees and the other side showing the Ad Hoc Committee's recommended revisions to that faculty-amended version. Bristow said that the most important changes were in section 3, "Initial Appointment Procedure." The Ad Hoc Committee's intention was to retain the current hiring principles but remove from the Code specific details about hiring procedures. These details would be transferred into a set of guidelines on recruitment to be prepared by the Professional Standards Committee and the dean of the university. Any changes in the guidelines would need the approval of both the Professional Standards Committee and the dean of the university. Accordingly, the Ad Hoc Committee recommended that subsections c, d, e, f, and h be excised from chapter two, section 3. Subsections a and g in the faculty-amended version would be retained because they describe the initiation and conclusion of the recruitment process. Subsection b would be rewritten as follows: "When the dean has approved the search, faculty recruitment will proceed according to guidelines prepared by the Professional Standards Committee and the dean of the university. Changes in these guidelines require the approval of the Professional Standards Committee and the dean of the university."

Tomlin asked if the current recruitment procedures as described in the deleted subsections would be incorporated into the new guidelines. Bristow answered that it would be up to the Professional Standards Committee and the dean to decide. Cooney said that he assumed that the current procedures would continue as a framework for the new guidelines. Some problems with current procedures, including problems identified by the faculty, would likely be corrected, but he did not expect that there would be fundamental changes in the recruitment process. Tomlin asked about the process of transition: would the new guidelines be in place at the moment

when the details about hiring procedures were excised from the Code? Cooney suggested that implementing legislation for Code amendments could stipulate that changes would take effect at the end of an academic year, which would give the Professional Standards Committee time to prepare guidelines before the next recruitment season.

Hanson expressed some concerns about current Code language regarding the role of head officers in the hiring process. He inquired if it would be appropriate for the Senate to propose further amendments now. Cooney urged that the Senate not generate new issues that the faculty as a whole had not raised; he thought it important to allow the Conference Committee to resolve the three identified issues without introducing new elements.

Ostrom asked senators if they were ready to vote on the Ad Hoc Committee's proposed revisions. Breitenbach requested, and the Senate agreed, that a vote be delayed until senators have had a chance to read carefully the materials distributed by Bristow.

*Issue Three: Evaluation Procedures as set forth in chapter 3 of the Code.* Maxwell reported for the Ad Hoc Committee. He distributed a document containing five general recommendations and flow chart containing an initial "rough cut" of language that might be used to revise the amended version of chapter 3 that the faculty has submitted to the trustees. The five general recommendations by the Ad Hoc Committee are these: (1) no limits on the evaluatee's right to seek legal recourse at the conclusion of the Code process; (2) create more opportunities for the evaluatee, the department, and the Faculty Advancement Committee to settle disputes by mutual agreement; (3) give the evaluatee more access to the process (primarily at the "transition" points) so that concerns may be raised and possibly settled during the process itself; (4) provide for appeal earlier in the process (between the FAC and the president); and (5) provide for a limited appeal before the president forwards a negative recommendation to the Board of Trustees. Maxwell stated that these recommendations were designed to correct problems along the way, often by mutual consent, rather than in one final big hearing. Disputes would be resolved at each point of transition, so that subsequent appeals would be limited to new issues and so that the president would receive a clean, untainted file before making a decision.

Maxwell turned to the flow chart showing the Ad Hoc Committee's suggested alterations and additions to the faculty's amended version of the Code. These are the suggestions: (1) When the file is still at the departmental level, variations of procedure would be permitted by mutual agreement of the evaluatee, head officer, dean, and (possibly) the Professional Standards Committee. (2) Before the file and departmental recommendations are forwarded to the dean and FAC, the evaluatee has three days to notify the head officer in writing of concerns about the departmental process and the contents of the file. The head officer and the evaluatee shall attempt to resolve issues informally. A record of the evaluatee's concerns, and the results of the informal resolution process shall be included in the evaluatee's file and forwarded to the FAC. (3) Once the FAC receives the file and begins to determine whether the file has received adequate consideration, the FAC must give due weight to concerns raised in writing by the evaluatee at any previous stage. (4) If the FAC has concerns that prompt it to consult with the department, the evaluatee is to be informed of those concerns and that consultation. The evaluatee may respond to FAC concerns and suggested remedies. The evaluatee is given copies of the departmental response to the FAC. At this stage, the evaluatee, department, FAC, and dean may resolve concerns by mutual agreement. (5) The evaluatee has five days after meeting with the FAC to initiate an appeal as provided in section five. This appeal is limited to alleged Code violations during the evaluation process at the departmental and FAC levels. The FAC must hold in abeyance the forwarding of the file and recommendation to the president until the hearing has concluded and the hearing board has made its decision. The decision of the hearing board will be limited to procedural issues affecting fairness, completeness, and adequacy of consideration. If the hearing board finds that the Code has been violated, the remedy will be to remand the matter to the appropriate level (department or FAC). The decision of the hearing board is final and binding on all parties to the appeal—evaluatee, department, FAC, and dean (i.e., it is not a recommendation only). The decision is final and binding only with respect to further proceedings pursuant to Chapter III of the Code and does not preclude seeking recourse in a court of law. (6) If the president's recommendation is negative, the evaluatee has a limited appeal for code

violations occurring after the file leaves the FAC. Issues of department and FAC violations cannot be adjudicated in this “final stage” appeal.

Maxwell pointed out that the biggest change would be to move the hearing board appeal earlier in the process, so that the president receives a clean file. Loeb wondered if the trustees might object because of the potential for a proliferation of disputes and hearing boards at each point of transition. Maxwell replied that the hope was that little problems would be resolved along the way so that they would not later come up as issues for appeal. Beardsley, who is a member of the Conference Committee, judged that the trustees would approve if they thought that the revisions would eliminate trivial issues being raised at the end of the evaluation process.

McGruder noted that the Ad Hoc Committee’s suggestions allowed a limited appeal on new issues after the president had made a negative recommendation but before the trustees had been given the recommendation. She wondered what possible issues might be raised at that stage. Breitenbach offered as an example a president who violated the Code by basing a decision on evidence outside the file. Jackson asked what remedy would be possible in appeals of presidential error; after all, the matter would be remanded to the president to decide again. Maxwell characterized the situation as asking someone to “forget that you saw the horse.” Beardsley noted that such a situation differs little from the current one, in which a hearing board can, in effect, tell a president to “forget that you saw a contaminated file.”

Cooney expressed a concern about stage 2 in the flow chart, because it seemed to establish new procedures without clear ground rules. He applauded the effort to resolve problems at the level at which they occurred, but he thought that should mean that departmental problems would be resolved at the departmental level, even if that meant a hearing board appeal, rather than passing a corrupted file on to the FAC. Maxwell indicated that the Ad Hoc Committee had hoped to consolidate departmental appeals and FAC appeals into one stage at the FAC level in order to reduce the number of hearing boards. The Committee hoped that many problems at the department level could be cleared up by informal agreement between the evaluatee and the department. Cooney demurred, preferring a hearing board at each transition point. He stated that he would vigorously oppose, and urge the trustees to reject, any procedure that permitted the evaluatee to negotiate with the department about the contents of the departmental letter. Loeb expressed his misgivings about informal resolutions, saying that he thought it problematic to expect untenured faculty to negotiate with their departments. Hanson and Beardsley expressed concerns about timing and urged the Ad Hoc Committee to be sure that deadlines meshed, so that any challenges would be settled prior to the date that action must be taken at the next level.

Beardsley noted that permitting three hearing boards (at the departmental, FAC, and presidential levels) might strain the system; it is hard enough now to constitute just one hearing board at the end of the evaluation process. Maxwell replied that the proposed procedures would not mean that every evaluatee would have three hearing boards. The appealable issues would narrow at each successive stage; only new violations from that stage could be appealed. Cooney observed that the proposed procedures might have the benefit of spacing the hearing boards throughout the evaluation schedule rather than heaping them all at the end.

Discussion turned to stage 4 of the flow chart. Loeb and Maxwell supported the attempt to open up the secrecy of evaluation wherever possible. One way to do so is to let the evaluatee know if the FAC has concerns and has gone to the department with them. Beardsley thought it good to allow the FAC to make objections to a department’s handling of an evaluation because an evaluatee might lack courage to do so. Cooney noted that in some cases the FAC wants the department to correct problems that the evaluatee could not know existed; in other cases the FAC wants things that the evaluatees themselves failed to supply. Tomlin asked if there would be a written document itemizing what the concerns were. Cooney suggested that there be a single statement inserted early in Chapter III, section 4, calling for written documentation throughout the evaluation process.

Bartanen summarized the discussion thus far: If the evaluatee has a concern about the departmental level, it is resolved by a hearing board before the file goes to the FAC. If the evaluatee has no concern, the FAC begins to determine “adequate consideration.” If in doing so, the FAC perceives a problem, it works with the department to resolve the problem, and the evaluatee is informed. If the evaluatee then has a concern, it is addressed by a hearing board at the transition from the FAC to the president.

Loeb suggested that the reference to seeking recourse in courts of law (in stage 5 of the flow chart) might be viewed as inflammatory by the trustees. Beardsley concurred, saying that if the phrase "did no work" it should be removed.

Loeb noted that stage 5 of the flow chart limits hearing boards to a consideration of procedural issues of fairness, completeness, and adequacy of consideration. He wondered about fairness as a substantive issue. Maxwell replied that the Code primarily sets up procedures, so appeals center on procedures. Beardsley predicted that the trustees will be pleased because the Ad Hoc Committee's suggestions specify and limit the kinds of procedural issues that can be raised in appeals; the trustees' concern has always been about appeals over "trivial" procedural violations. Bristow noted that fairness does enter into appeals if the evaluatee can show that procedural violations of the Code affected fairness. Cooney stated that faculty and trustees are in accord on this point. Hanson observed that this wording provides no remedy for unfairness that does not violate Code procedures; someone could decide against an evaluatee because he hates the evaluatee, but still follow the procedures perfectly. Cooney said that the problem with permitting appeals about substantive fairness is that such appeals would turn the hearing board into a second FAC. He thought the remedy should be to raise issues of fairness at the departmental and FAC levels, where those issues of fairness are relevant.

Jackson expressed his hope that hearing boards at the transition from FAC to president be permitted to return to issues originating at the departmental level. Cooney strongly objected, stating that he would want issues resolved at the level of origin. He remarked that after negative tenure decisions by the FAC, disappointed evaluatees frequently go back to comb through the departmental evaluation, searching for appealable issues. Breitenbach did not find that to be surprising. He noted that most evaluatees view the evaluation process hopefully. Even if they have received a less than unanimous recommendation from their department, they likely expect the FAC to agree with the departmental majority. Given the risk of offending departmental colleagues with whom a person expects to spend a career, it would be the rare individual who demanded a hearing board because a minority of his department opposed the majority recommendation. Cooney acknowledged the difficulty, but observed that the culture might have to change if we shift to an evaluation system in which problems are settled at the level of origin.

### **Modifications of the Curriculum Statement.**

Ostrom closed the discussion of the Ad Hoc Committee's report so that the Senate could act on modifications to the Curriculum Statement that have been proposed by the Curriculum Committee. Dean Barry described the four changes: (1) In paragraph two of "General Considerations" the word "vocation" is replaced by the word "career" so that the sentence reads "Such an education should prepare a person to pursue interests and ideas with confidence and independence, to meet the demands of a career, and to cope with the complexity of modern life." (2) In item F of "Graduation Requirements" add the sentence "Courses taken pass/fail will not fulfill University core requirements." (3) In item I of "Graduation Requirements" add the sentence "Courses counting toward the major may not be taken pass/fail unless they are mandatory pass/fail courses." (4) In the section "Sequence of Core Courses" the heading "The First Year Experience" is replaced by "The First Year: Argument and Inquiry." **ACTION: Bartanen M/S/P to accept the aforesaid four changes to the Curriculum Statement.**

McGruder asked Barry how many core courses may be transferred in. Barry answered that Connections and the two first-year seminars must be taken at UPS. Because the size of the core has been reduced, the faculty has voted to reduce the number of core courses that may be transferred in. He directed McGruder to the Curriculum Resources page of the University's web site for specific details.

At 5:20 p.m. Hummel-Berry M/S/P to adjourn.

Respectfully submitted,

William Breitenbach

