

**MINUTES
FACULTY SENATE
OCTOBER 14, 1997**

The Faculty Senate convened at 3:30 p.m. in the Conference Room, Blume conference Center, Hankamer School of Business, with Chair Chris Buddo presiding.

Present: L. Adams, Baird, Keathley for Basden, Beckner, Bowery, Buddo, Carini, Chinn, Conyers, C. Davis, E. Davis, Farris, Genrich, Gordon, Hillman, Jensen, K. Johnson, P. Johnson, Johnston, Longfellow, Losey, McGee, Rolf, Dunn for Supplee, Stone, Tipton, Weaver, Wiley, Willis, Atchley for Yelderman, Youngdale

Absent: D. Adams

Guests: Dr. Donald Schmeltekopf, Prof. Bill Underwood

I. Invocation

Howard Rolf gave the invocation.

II. Approval of September 16 Minutes

The Senate approved the minutes of the September 16 meeting as distributed.

III. Guests: Dr. Donald Schmeltekopf, Provost and Vice President for Academic Affairs, and Bill Underwood, General Counsel

A. Dismissal Policy

Dr. Schmeltekopf wanted to focus the discussion on the dismissal policy as it has been and then discuss where the policy might be improved in the future.

By way of introduction Dr. Schmeltekopf talked about the meetings she and Bill Underwood had been having with faculty over breakfast. Approximately 75 faculty members have been to these meetings. The purpose of the meetings is to clarify dismissal procedures. The newly published faculty handbook will help everyone be informed. Dr. Schmeltekopf said the meetings have been very useful. They tried to make sure all department chairs were included, as well as other representative members of the faculty.

There is a desire by the administration to talk about procedures that would be better, and a realization that there is not as much credibility to the current procedures as hoped. The administration believes the procedures in place are fair, but, of course, not perfect. If, however, there is a perception

by faculty and staff that the procedures are not fair, that needs to be fixed. Complaints against faculty and staff are a part of life at an institution this size. 90-95% of these complaints are handled informally by Dr. Schmeltekopf or the appropriate dean. Once a complaint is made, the faculty member is given a chance to explain in writing--which takes care of the majority of complaints because there is no justification to the complaint. Some complaints (embezzlement, assault, sexual misconduct) are so serious or of a certain nature that they cannot be dealt with informally. These are handled differently. The university must be very careful to be fair to both parties involved and follow procedures correctly. In these situations help is usually requested of the general counsel's office.

At this point in the meeting, the floor was turned over to Prof. Underwood.

Serious complaints are referred to General Counsel because of legal ramifications. Even so, the large majority of these complaints are concluded not to be well founded. Sometimes there are situations where the complaint is determined to be well founded and at that point, the more formal procedures begin to be followed. Under the faculty dismissal policy, only certain people can initiate the dismissal process. Those people are the president, the provost, a dean, and the majority of faculty in a particular department. The university is the complaining party in these proceedings not the individual complainant. If it is decided that the dismissal procedure should be initiated, a written complaint is filed with the tenure committee outlining the charges. The accused faculty member then has 20 days to respond to the charges. At this point the Tenure Committee meets to consider the complaints and the response. They then decide whether these factual allegations, if proven, would warrant dismissal. If the facts would be grounds for dismissal, then the committee schedules a hearing; if they decide that the allegations would not be sufficient to warrant dismissal, then the matter is closed.

Should the facts warrant it, a hearing is scheduled. Generally, all groups involve--the University, the faculty member, and the Tenure Committee--are represented by counsel. In these proceedings, the University is the complainant and bears the burden of proof. The standard is that there must be substantial evidence supporting the allegations. Both parties may use live witness testimony or sworn statements in the proceeding. Prof. Underwood prefers live witness for purpose of cross-examination. The University presents the charges with supporting evidence. The accused faculty member has the opportunity to cross-examine any witnesses put on by the University. After the University has presented its case, the accused faculty member will present evidence/witnesses. The University may also cross-examine such witnesses. At the close of proceedings both sides make closing statements. The Tenure Committee recesses and meets

to discuss and vote by secret ballot as to whether allegations have been proven. If the Committee determines that the allegations are proven, then the second stage of the process is a determination as to whether grounds for dismissal exist. Again the University and the faculty member present evidence and/or witnesses as to whether or not there are grounds for dismissal. Both sides again have closing arguments. The Tenure Committee adjourns and votes on whether dismissal is warranted by the facts. If the Committee decides not to recommend dismissal, they may recommend other solutions. The Tenure Committee's votes on the facts and recommendation are forwarded to the president. The president is bound by finding of facts, but he is not bound by the recommendation regarding dismissal. The Board of Regents may review the process.

There is always an attempt to resolve problems through informal procedures. The dismissal process is a difficult one for everyone involved and an attempt is always made to settle the matter before implementing the dismissal policy. The best solution is always keeping the faculty member on the team.

In some situations, the dismissal policy interacts with other policies. For example, the federal government requires that the University have a policy on sexual harassment that provides some sort of internal relief to the victim. In these situations, it is the Civil Rights Resolution Committee policy that is first invoked to handle problems involving discrimination. But, in most of these types of situations that come to the attention of the General Counsel's office, the person who is complaining is not really interested in personal reconciliation. Instead, there is simply a desire to let the University know that a problem exists and that it be dealt with. But, once it comes to the attention of the University, the institution has a responsibility to investigate the matter despite what the victim wants. The University's responsibility is broader than the individual victim. After the University has investigated and determined that the situation cannot be dealt with informally with the cooperation of the faculty member, then the dismissal policy may be called into play.

Prof. Underwood said that he feels like the current policy is fair, but there is always room for improvement. Some issues that are worthy of consideration:

--shifting the responsibility for dismissal decisions from the Tenure Committee to another committee. The Senate had suggested that the University Hearings Committee might be the appropriate venue. Prof. Underwood said that the problem with that suggestion is that that Committee is already charged with hearing individual complaints against faculty. Should they be hearing the same information again at a dismissal

proceeding when they have already heard the complaint at an earlier stage in the process? Prof. Underwood suggested a standing dismissal committee or procedure for an ad hoc dismissal committee. One question to consider if there will be a new committee for these situations will be how the committee is to be selected. There are a wide variety of models in use at other universities that can and should be studied. The current committee at Baylor hearing dismissal cases, the Tenure Committee, is selected half by the President and half by the Senate. At some institutions all members of the dismissal committee are selected by the faculty senate, some have a standing pool of faculty members who may be selected. The administration is willing to work with the Senate to come up with a satisfactory procedure.

--what hurdles must be cleared before dismissal hearing occurs? Prof. Underwood thinks the hurdles in our policy are fairly high--selected number of people can bring charges, the Tenure Committee has the power to stop process without review by president. Some say there should be a requirement for some sort of informal attempt to resolve any problem. Prof. Underwood would be willing to write this requirement in although it takes place anyway.

--who makes the final decision? There are no policies at other private universities where the president is bound by the recommendation of a dismissal committee. At Baylor, findings of fact made by the Committee are binding on the President, as is the Committee's decision about the need for a hearing.

--what constitutes "cause" for dismissal? There has been concern that the language is vague--there is not a laundry list of reasons for dismissal. This probably will not change--the law just works that way.

At this point, Prof. Underwood opened the floor for questions.

Q. Who pays for the tenure committee's attorney?

A. The University pays, but the committee selects the attorney

Q. Who pays for the accused faculty member's attorney?

A. That faculty member--there would be an ethical problem for the attorney if he were paid by someone other than the person he is representing.

Q. Who does the questioning during the hearings?

A. Generally, it is the attorneys for the different parties who do statements and examine witnesses during proceedings although the faculty member may if he/she so desires.

Q. When may the regents review the decision about dismissal?

A. The procedure for hearings allows the faculty member to request review by the regents.

Q. Should a faculty member who is being investigated automatically hire an attorney?

A. This assumes that the General Counsel's office is an adversary and Prof. Underwood doesn't see his position that way. An investigation does not automatically mean that there will be a hearing. 95% of the investigations result in a determination that charges were groundless.

Q. When does a faculty member get access to material that the University has collected?

A. The accused faculty member is provided with witness statements, documents to be introduced, witness lists before the hearing.

Q. When is a faculty member notified about accusations made?

A. Prof. Underwood said "pretty quick." After an allegation is made, his first step is to call the faculty member in to hear the other side of the story.

Q. The BUPP 705(m) allows the President to issue individual policies not inconsistent with the BUPP. Who determines what is inconsistent?

A. The President.

Q. What Tenure Committee decisions are binding on the President and what are not?

A. The decisions on holding a hearing and the Tenure Committee's finding of facts at the hearing are binding.

Q. Why isn't the recommendation made by the Committee binding?

A. Shared governance issue--some decisions the President has the final word on, some decisions the faculty has final word.

Q. If a faculty member denies the allegations, but the process gets to a dismissal hearing anyway is there still a possibility for resolution before the Committee makes a decision?

A. Yes.

Q. Are the allegations, as they are presented, dealt with individually or as a whole? Or in other words, can the university bring a bunch of serious charges--that cannot be proven--and one minor one--that can be--and then dismiss the person based on the one minor charge?

A. The Committee is not asked to judge a faculty member on an incident by incident basis; most often it is the culmination of several incidents that result in the total harm.

Q. Is there a possibility that there be some sort of veto power for the faculty if the President decides not to follow the Committee's recommendation?

A. There is very little chance of that happening.

Q. What does the President know about the investigations and when?

A. Prof. Underwood answered that he tries to keep the President out of the initial investigation.

Q. What does the Committee actually vote on? Is there a list of allegations?

A. The Committee uses a worksheet to help them make their decision. They can alter the language of the worksheet if they aren't happy with the wording.

Q. Is there a chance for different charges to be brought up? Or can the charges change between the time of notice and the hearing?

A. There can be amended charges filed, but there never have been. If there were going to be an amendment to the charges, then the accused faculty member would have 20 days to respond just like when the original charges were brought.

Q. If a faculty member gets a call from the General Counsel's Office, should he come alone or bring someone with him?

A. The practice has been for the faculty member to come alone--primarily due to privacy concerns, since most of these allegations prove to be unsubstantiated.

Q. What is the status of the grievance procedure policy that was forwarded to the General Counsel's Office?

A. The General Counsel's Office has some problems with the procedures--not philosophically, but mechanically.

At this point, Dr. Schmeltekopf reiterated that the General Counsel's Office is not representing the administration against the rest of the university.

Q. Why has outside counsel been called in for some of these hearings?

A. A matter of the expertise of people in the General Counsel's Office.

When there were no more questions for the guests, Dr. Schmeltekopf asked about the plan to proceed with reviewing procedures. Buddo said that the best place to start might be McGee's meeting with Underwood and then proceed to the Executive Committee of the Senate. There was general agreement with this suggestion.

At the conclusion of all discussion, Prof. Underwood and Dr. Schmeltekopf left.

Follow up was suggested on the grievance policy situation and it was suggested that Senators Wiley and Baird and former Senator Robinson meet with Underwood.

Want to continue one on one discussion with the administration about the membership of any committee that will be hearing dismissal cases.

Distribution of the faculty handbook to Senators. Buddo thanked Kathy Hillman and Jeter Basden for their hard work on the handbook.

IV. Report from the Committee to Study the Senate Constitution and Bylaws

Karen Johnson, chair of the Committee presented the recommendation of the Committee.

Article II, § 2: (Last paragraph; recommended changes shown in bold) If a Senatorial vacancy occurs, the Secretary shall contact the runner-up in the previous election for that academic unit to determine the willingness of that faculty member to serve. If willing, that faculty member shall be invited to complete the unexpired term. If that person does not wish to serve, the Secretary shall contact the next runner-up in like fashion. Special election for vacancies will be called only when no one on the ballot of the previous election is willing to serve or when there is a tie for a runner-up position and all candidates are eligible.

Article II, § 4: Current wording: By a two-thirds vote, the Faculty Senate may declare a Senatorial vacancy in a case of a Senator who is unduly absent. "Unduly absent" shall be construed to mean that the Senator has missed one-third or more of the regularly scheduled Senate meetings, without sending a substitute in his or her stead. Such substitute shall have the right to vote the proxy of the absent Senator, as directed by the absent Senator.

Recommended wording: A Senator who will be absent from a regularly scheduled meeting is expected to send a substitute from the same academic unit in his or her stead. Such substitute shall have the right to vote the proxy of the absent Senator. A Senatorial vacancy will exist when a Senator has missed four of the regularly scheduled Senate meetings in a given academic year. In the case of a Senator who anticipates an extended absence due to illness, sabbatical, or other reason, the Senator should submit a letter of resignation to the Secretary.

There was a motion to amend the suggested language in Article II, § 4 to clarify the fact that a Senator who sent a substitute would still be counted absent.

Article II, § 4: Recommended wording (with amendments approved at the October 14 meeting shown in bold italics): A Senator who will be absent from a regularly scheduled meeting is expected to send a substitute from the same academic unit in his or her stead. Such substitute shall have the right to vote the proxy of the absent Senator. A Senatorial vacancy will exist when a Senator has missed four of the regularly scheduled Senate meetings in a given academic year for any reason, regardless of whether the absent Senator has been represented by a substitute at any or all of the missed meetings. In the case of a Senator who anticipates an extended absence due to illness, sabbatical, or other reason, the Senator should submit a letter of resignation to the Secretary.

The motion to amend carried. The amendment will be voted on at the November 18th meeting.

V. Committee/Liaison Reports

A. Faculty Committee on Academic Freedom, Responsibility, and Environment--Dan McGee, Chair

The committee was going to look at the question of how to mesh tenure issues and scholarly expectations and then report back to the Senate. The committee will be meeting with Dr. Schmeltekopf about reconciling the "Proposed Faculty Workload Policy" with the "Statement on Scholarly Expectations."

B. Faculty Committee on Enrollment Management--Howard Rolf, Chair

No report.

C. Faculty Committee on Physical Facilities--Joe Yelderman, Chair

No report.

D. Faculty Committee on Student Life and Services--Gary Carini, Chair

Concern had been raised over the fact that dorms are closing Tuesday evening for students, so students who are not planning to leave until Wednesday would be displaced. Carini reported that due to cost concerns

the plan is to go ahead with the dorm closures. Every attempt would be made to accommodate those students who still needed a place to stay.

E. Staff Council Liaison--Linda Adams

No report.

VI. Other Items or Announcements

The Continuing Education Committee sent over a proposed list of committee members. The proposed members are Preston Dyer, Chair, Chuck Delaney, Michael Rogers, Carol Hanks, William Cooper, William Mitchell, Pat Cook, Michael Jacobson, Phil Jones, James Moshinski, Lynn Tatum, and David Uber.

The list of proposed members was approved unanimously.

A request was made to the Senate that Alvin Larke (an ACE Fellow) be allowed to visit a Senate meeting. Approval was given for Dr. Larke to attend.

A request had also been made that there be an attempt to use the Distance Learning technology that is available through the Business School so that the Nursing School Senator will not have to travel. After some discussion, it was decided to try out the technology for the November and December meetings. Next month's meeting will be in Cashion 303.

All business having been completed, Senate Chair Buddo declared the meeting adjourned at 5:45 p.m.

Respectfully submitted,

Beth Youngdale, Secretary

November 17, 1997

TO: Chris Buddo

FROM: Bill Underwood

RE: Faculty Senate Minutes

Thank you for the opportunity to comment on the proposed minutes from the Faculty Senate meeting I attended in October. The minutes are obviously not intended to be a verbatim transcript of my remarks and constitute only a general and imprecise summary. Perhaps the two most significant points that require emphasis and clarification are the following.

First, the process for resolving a civil rights complaint brought by one member of the University community against another is entirely separate from the process for resolving a charge brought by the University against a faculty member. Even though both processes might in some circumstances evolve from the same course of conduct, there are different complaining parties, there are different procedures, there are different standards applied to evaluate the conduct, there are different committees, and the remedies are different. This is because the processes serve entirely different functions. Neither process requires that the other proceed first. Thus, presentation of a complaint to the Civil Rights Resolution Committee need not occur prior to the University presenting a charge arising from the same course of conduct to the Tenure Committee. Indeed, presentation of a complaint to the Civil Rights Resolution Committee need not occur at all for the University to present a charge to the Tenure Committee. Likewise, presentation of the University's charge to the Tenure Committee need not precede presentation by an individual of a complaint arising from the same course of conduct to the Civil Rights Resolution Committee.

Second, attorneys are frequently paid by persons other than their client. This is the case when insurance companies pay attorney's fees as part of the obligation to provide a defense under a standard liability insurance policy. What would be unusual, and present a real ethical problem, is an attorney's fees being paid by a party opposing his or her client.

Should the Faculty Senate like further clarification on these or other issues, please feel free to call.
