

Faculty Senate Minutes
January 22, 2007

Members Present: Senate Chair Anton, Senators Anderson-Connolly, Bartanen, Bristow, Foster, Joshi, Haltom, Hanson, McGruder, Ostrom, Rowe, Ryken, Segawa, Singleton, Sousa

Guests: Sherry Mondou, Liz Collins, Bryan Smith, Lorraine Toler

Chair Anton welcomed Richard Anderson-Connolly who will be taking the place of Senator Terry Beck Spring Semester 2007.

Announcements

Anton encouraged all Senators to attend the Faculty Meeting of January 29.

New Business

Bristow made a motion to receive the reports from Senator Ostrom (dated November 29, 2006) and from Professor Share (dated December 4, 2006). The motion was seconded. The motion passed.

Liz Collins presented information regarding four candidates for honorary degrees. After some discussion a motion to approve the four passed with 2 abstentions (Bartanen, Rowe).

Dean Bartanen summarized the Budget Task Force (BTF) process. Sherry Mondou summarized the revenue sources for the coming year emphasizing the degree to which the university is tuition dependent. Mondou noted that the full text of the BTF report is available on the WEB. Mondou pointed out that income from investments, gifts and grants is up 28% from last year. Mondou also noted a trustee decision to augment next year's revenue with \$700,000 from the endowment to fund the coming capital campaign and the associated expansion of alumni programs. Brian Smith discussed anticipated expenses. He noted that funding all requests made to the BTF would have required a 7.9% tuition increase which was deemed untenable. The Faculty Salary Committee requested a 4.5% across-the-board salary increase. The 5% pool increase in faculty compensation the BTF recommends would fund a 3.9% across-the-board increase after steps and promotions have been funded. Smith noted that this increase is above both the regional and national CPI.

Mondou assured Senator Anderson-Connolly that the 6.13% tuition increase (recommended in the BTF report) will likely be in line with national averages. Mondou responded to Senator Rowe that the proposed tuition increase is also within the range of recent increases at UPS.

Minutes of the December 4, 2006 Senate Meeting were approved (with editorial changes suggested by Senator Foster).

Old Business

Discussion of the recommendations contained in the reports of the Ad Hoc Committee on Professional Standards (AHCPS) and the Ad Hoc Committee on Evaluation then continued from the last Senate meeting.

Ostrom spoke in favor of four reforms suggested in both reports: creating an ombudsperson, developing a procedure to deal with PSC code violations, splitting the PSC in two (one group to consider all non-grievance related matters and one group to consider grievances), and removing the Academic Dean from the PSC.

Bristow suggested various possible roles for an ombudsperson including acting as an advisor regarding various processes.

Foster suggested the ombudsperson would be an advocate for faculty.

Rowe asked if committees and individuals recommending the idea of an ombudsperson had researched the way that the role of an ombudsperson operates at other institutions.

Bristow and Sousa responded that they had not.

Foster noted that ombudspersons were not uncommon.

Haltom asked Bartanen to describe her former role as Sexual Harassment Ombudsperson.

Bartanen explained that her role included providing information regarding process, reporting allegations, acting as an advisor and guide and as a supportive person.

Haltom suggested that variety of ombudsperson is less than we want in this capacity. He suggested a stronger role – an ombudsperson that could offer faculty some level of protection, an ombudsperson that could get faculty off the limb.

Bartanen noted that the new Campus Policy Prohibiting Harassment includes multiple support persons.

Joshi suggested that the ombudsperson should be that person (not in an evaluative position) who could monitor ethical standards and behavior at the university.

Bristow suggested that the ombudsperson could bring grievances.

McGruder expressed concern that the full faculty will respond to the Senate's recommended reforms with the attitude if it ain't broke, don't fix it. Further, she recalled

that the ACHPS was created by the Senate with a mandate to determine if the PSC had made any mistakes (including violations of the faculty code) in recent grievance proceedings. McGruder urged that such specific findings are necessary to convince the full faculty that there are problems with the grievance process that must be addressed. Consequently, McGruder made a motion to *accept* Ostrom's report. (Anton/Haltom clarified that *acceptance* of the report would indicate the Senate agreed with the findings and the recommendations included in the report.)

Joshi noted that Ostrom's report at various points presents several possible alternative reforms for the Senate's consideration. Therefore, she suggested, it would be premature to *accept* the report without selecting specific recommendations.

McGruder withdrew her motion indicating her real intent was to encourage the Senate to engage with Ostrom's report.

Ostrom indicated that he just wants acknowledgement that mistakes were made, that the PSC had a bad year, so the faculty will know where the Senate's recommendations are coming from.

Hanson indicated that he felt it was sufficient for the faculty to know that the recommendations coming from the Senate were based on perceived flaws in the system as revealed by the investigations of the AHCPS. He suggested that attempting to make judgments about wrong doing in past grievance cases was unnecessary (and possibly counterproductive).

Bristow also indicated that we need to fix problems with the system rather than attempt to adjudicate.

Haltom indicated that he agreed with Hanson to a point - what does it (specific findings of wrongdoing) matter? The overriding concern is to fix the process. However, Haltom said there is one exception – some colleagues had a cynical assurance that the Senate would do nothing to discipline a rogue PSC. Haltom urged that if the Senate does nothing about the 2003-2004 PSC, if the PSC members believe they will never be held accountable, our recommendations and reforms of process mean nothing.

Sousa responded that the adoption of reforms recommended by the AHCPS will hold the PSC accountable. (The AHCPS recommends a mechanism for dealing with accusations that the PSC has violated the Faculty Code.) Sousa indicated the mistakes were made but his understanding is that the Senate's intent was for the AHCPS to create a forward-looking report.

Foster noted that the Senate has dedicated much time to the year when the perception exists that mistakes were made – so the Senate has reacted and has been responsible – in dealing with systemic problems.

Ryken agreed with Foster and expressed her feeling that rather than focusing on substantive issues, the Senate has been hijacked by those with concerns regarding the PSC. As a newcomer to the Senate she feels this tension at every meeting.

Rowe reiterated Ryken's concerns.

Anton reviewed the circumstances giving rise to the formation of the AHCPS – specifically the plagiarism crisis and the concern that the process described in the Faculty Code may be not be adequate to the challenge.

McGruder conceded that Sousa was likely correct about the Senate minutes and the intent of the Senate to create a forward-looking ad hoc committee but she urged that the Faculty need to know the specifics. The recommendation of the AHCPS to change 15 days to 15 working days needs to be understood in context. The 2003-2004 PSC postponed a hearing on a grievance by wrongly interpreting 15 days to mean 15 working days.

Hanson asked if this (interpretation) was an error? He urged that we don't need to know if this was a misinterpretation because change is needed regardless of what the PSC did – the case for working days vs days stands on its own.

Haltom asked why we wouldn't do both - understand what happened in 2003-2004 and resolve the situation. One system flaw, Haltom contended, was that no one ever owns ups to anything. The grievance was delayed too long. Haltom characterized the 2003-2004 PSC as a little fiefdom that did as it pleased. It is important for civic education, Haltom opined, to have a little truth and reconciliation. He noted that forty days is not fifteen days. He said we cannot permanently embrace amnesia.

Rowe asked what is wrong with providing some (specific) historical context for our recommendations?

Hanson suggested he views the AHCPS's approach as tactical. The Senate's main concern is to make some changes. Efforts to establish specific historical context will mire the Senate and the Faculty in recrimination.

Joshi urged that Senate oversight of the PSC is an issue. She suggested the Senate take up specific recommendations in the two committee reports considering the historical circumstances giving rise to each recommendation as needed. She also urged further consideration of Professor Share's recommendations.

Bristow supported Joshi's suggestion but noted that the historical circumstances behind each recommendation are complex. The committee interviewed many people, some with quite different versions of that history. Bristow suggested that the historical circumstances should be developed without reference to particular personalities.

Singleton stopped scribbling long enough to agree with Bristow and to suggest the Senate would need to hear from all the parties involved in a PSC process in order to adequately understand the circumstances that gave rise to particular decisions.

Ostrom contended that the Senate has received his report and therefore has a record of the events that transpired.

Ostrom made a motion that the Senate take responsibility for the mistakes made by the PSC in 2003-2004. (I believe this motion was seconded by McGruder.)

Joshi then moved to adjourn. The Senate passed this motion. Chair Anton indicated that Ostrom's motion would be considered at the next regular Senate meeting.

Respectfully Submitted,

Ross C. Singleton

November 29, 2006

Dear Senate Chair Barry and Colleagues on the Faculty Senate:

You might say this document is an exercise in civil disagreement, one that I hope isn't overbearing. Thank you in advance for your patience.

As you know, on October 31, 2006, the ad hoc committee appointed by the Faculty Senate sent to the Senate the committee's report concerning "faculty professional ethics and academic honesty." The report contains three sections: "Introduction"; "Background Information"; and "Recommendations." It doesn't include the conventional section on "Findings."

In the report and at our meeting on November 6, the committee asserted that its approach was to look forward and not to look back. From such an investigatory report, however, we've come to expect both: looking back (findings) and looking forward (recommendations).

The committee has given us a remarkable set of recommendations, many of which have already been praised by Professor Share, who may have more experience on the PSC than anyone on the faculty.

In my opinion, however, the absence of a conventional "Findings" section creates problems for the Senate, in spite of how good the recommendations are. I hasten to add, however, that in deciding not to include a "Findings" section, the ad hoc committee did not, in my opinion, intend to create problems for the Senate.

My concern, then, lies solely with the absence of a "findings" section in the report, not with the "recommendations" section in general (although particular recommendations will, of course, require further discussion), and certainly not with the members of the committee or with their exhaustive work.

Indeed, the absence of "findings" in the report has created some difficulty already for the Senate with regard to how some members of the faculty perceive us. Some colleagues who have spoken to me about the report were perplexed by the absence of "findings." Some went so far as to speculate about a "cover up" of past PSC practices and to deride the Senate.

My view is that although the committee chose to limit the report to recommendations, it did not, of course, deliberately engage in any kind of cover-up. Nonetheless, I'm not sure the Senate can disregard altogether those readers who conclude from the absence of a "Findings" section that the Senate is engaged in a cover-up of specific PSC practices. Nor, I think, can we disregard altogether readers who conclude from the absence of a "Findings" section that the Senate may be excessively reticent about its oversight-role in relation to standing-committees, a role established in the *By Laws*.

In connection with this second issue (oversight), in the Senate meeting of November 14, 2005, Senator Sousa observed (correctly, in my opinion) the following:

“Sousa agreed with a point made by [Alex] Israel, that student and faculty plagiarism were very different. He also noted that the PSC is a committee of the Senate, yet often we can't know what it does due to issues of confidentiality. He admitted that Wimberger ‘may have his finger on something’ in that prospective action requires a retrospective look. Sousa noted that in his brief time on the Senate he had noted a pattern of ‘agency loss’ between the Senate and PSC. Haltom relished the idea of ‘agency loss’ appearing in the minutes, a term and sentiment duly noted here by a scribe that doesn't fully understand either.” (Senate *Minutes* from November 14, 2005, online.)

In my opinion, questions about the perception of a cover-up and about a “loss of agency” between the Senate and the PSC are not entirely out of bounds in connection with this report. I don't necessarily agree with all of the criticisms of the Senate I have heard, but I think such questions are worth the Senate's consideration. To some degree, at least, the integrity of the Senate is at stake, and so is the faculty's faith in the PSC.

Senator Wimberger noted the following in the meeting of November 14, 2005, a meeting that concerned topics the ad hoc committee might investigate: “Wimberger reiterated that the *Faculty Code* addresses the issues of academic honesty but may not be adequate. The way to determine what is wrong with the *Faculty Code* is to find out what worked and what didn't work. Later he added that we can't work proactively without knowing and learning from what happened in the past.” (Senate *Minutes* from November 14, 2005, online.)

Indeed, if the Senate seeks to improve the grievance-process and insure the integrity of the hearing-board process, then the whole Senate, not just the ad hoc committee, must know something, at least, about what is being improved upon, even if obviously confidential information needs to remain confidential. Except for instances in which the committee looked, for example, at language from the *Code*, the report does not seem to communicate fully to readers what the basis for the recommendations is.

To avoid the appearance of a cover-up and to fulfill its responsibilities, the Senate does, I believe, need in some instances to work from a set of findings as it considers recommendations about how the PSC operates in grievance-cases and in other important matters, such as hearing boards.

Working from findings is, however, also a matter of practicality and common sense, in my view. In search of potential solutions (recommendations), one proceeds from apparent, alleged, or possible problems (findings): this is the most conventional approach. (I admit that it may even seem to be a pedestrian approach.) The committee has effectively and productively identified some problems in the language of the *Code*, but other problems may be related to specific cases in the past.

The ad hoc committee has produced recommendations that are impressive in both number and substance. The committee made a judgment-call about leaving out “findings,” and I mean no disrespect to David, Nancy, and John or to the judgment they made.

The chief purpose of this document, then, is not to denigrate in any way the ad hoc committee’s work, the result of which includes numerous valuable recommendations which the Senate will consider and to which Professor Share has already responded. As the Senate moves forward, however, having specific findings available may, in some instances, assist its work.

The chief purpose of this document, therefore, is practical. In practical terms, the Senate needs to know procedural facts about past cases the PSC handled. The Senate does not need to become obsessed with such past cases, nor does it need to highlight the names of individuals. As I compiled these findings, I focused on processes, not on personalities, and I expect the Senate will do the same. No substantive information from past grievances or hearing-boards is discussed herein. I hold to the letter and the spirit of the *Code* with regard to confidentiality. The Senate is attempting to look at problems and fix processes, not to fix people. The Senate cannot undo past wrongs, but it may, as needed, reflect on past wrongs, or on specific procedural mistakes, while crafting recommendations that might help prevent future wrongs and future mistakes.

Also, the current Senate can—and, in my opinion, must—take responsibility for mistakes the PSC made in 2003-2004.

Before I present the following findings, I would ask readers to try to put aside considerations of personality or motives and to try to focus on certain **processes** and certain **procedures required by the Code**. None of this is personal—with the possible exception of my last recommendation on page 12, but even there I merely suggest that the Senate apologize to at least two (former) colleagues.

Finally, I would respectfully ask readers to ask themselves this: “If I were the person involved with this grievance, hearing board, or evaluation, how would I want my case (not my personality) to be treated, and how would I want the PSC to function? To what extent would I want the Senate, our elected body, to take responsibility for the PSC’s actions?”

Readers who are members of the untenured faculty obviously will want to ask such questions of themselves, but so should members of the tenured faculty who are interested in the fair treatment of all colleagues, tenured and untenured, obstreperous and mild, who might go through a grievance-process, an evaluation, or a hearing-board process.

Some of the language in the findings below may seem legalistic or technical, and some details may be hard to grasp at first reading, but if readers will put themselves in the shoes of the persons affected, the issues may seem less technical and more pressing. That is, if we were in similar situations, the impact of technicalities would probably hit us immediately and hard; the impact could conceivably include the loss of employment.

Whether the Senate wishes to consider the following findings is, of course, entirely up to the Senate.

Findings

After each finding, I list “Known Effect(s)” and/or “Possible Effect(s)” of how the PSC proceeded. These “effects” are intended to suggest why the Senate might want to consider the findings as it looks ahead to recommendations. That is, it may not be enough just to point to a possible problem; to fully contextualize a recommendation, the Senate may also need to consider known, likely, or possible effects caused by or at least correlated to the problem. After each finding, I also list “Evidence,” which is meant to begin to answer the following reasonable question: “What is the evidence for this alleged finding?” In almost every instance, there is documentary evidence.

- In 2003-2004, the PSC postponed a hearing on a formal grievance provided to the committee by the Academic Vice President. The PSC postponed the hearing by “interpreting” the fifteen-day limit in *The Faculty Code* to mean “fifteen **working** days.” There is no reason to assume that, in the *Code*, the use of “days” (as opposed to “working days”) is a mere oversight; indeed, we may want to assume that those who wrote and approved the *Code* intended to distinguish between “days” and “working days.” Even if we don’t consider the intent of those who wrote the *Code*, we would do well, as practiced readers of English, to distinguish between terms that appear to be plainly different: “days” vs. “working days.” In any event, the PSC then identified a PSC meeting that may have occurred within fifteen working days as the first session of the hearing of the grievance despite the absence of both parties (the initiator of the grievance and the respondent), the electronic recording required by the Code for hearings, and any authority. (To reiterate: no electronic recording of this supposed “first hearing” exists.) The PSC appeared, at least, to decide retroactively to identify a routine PSC-meeting as the first session of a hearing.
- A grievance filed on the **3rd of December** was heard on the **9th of February**. It does not appear possible to make 9 February 2004 fall within twenty working days (let alone days) of 3 December 2003. Therefore, with regard to the timeliness required by the *Code*, the PSC seems certainly to have violated the *Code*, even if one were to pretend there is no difference between the terms “days” and “working days.” The PSC seems also to have misrepresented the nature of one of its meetings, identifying it retroactively and inaccurately (apparently), as a first session of a hearing.

Known effects: The respondent to the grievance mentioned above had selected “counsel,” as is allowed by the *Code*. This counsel, a faculty colleague (and not “counsel” in the sense of an attorney) was selected in part because of his extensive previous experience on the PSC. Because of the postponement, the counsel was out of the country by the time the PSC heard the case; the chief

witness that the respondent wanted to call before the PSC was out of the country by January but would have been available in December (that is, within the limit specified in the *Code*); the respondent became convinced that the PSC would do as it pleased, regardless of what the *Code* stated, and thus he withdrew his own grievance, related to the topic of plagiarism. Because this grievance was never heard by the PSC, the substance of it is not confidential, as defined by the *Faculty Code*. Nonetheless, I see no reason to go into the substance of the grievance here. For the purposes of this document, to know that the substance was connected in some way to plagiarism is enough.

Ultimately, the PSC found in favor the respondent (although complications arose in the document that expressed the PSC's judgment; see below); however, to claim that "all's well that ends well" is to justify the means by the ends. Regardless of what the PSC ultimately decided, the PSC was still obligated to follow the *Code*. Moreover, all did not end well; the respondent's confidence in the PSC's attitude toward the *Code* was, apparently, shaken, and why shouldn't the respondent's confidence have been shaken? Because the PSC did not adhere to the time-frame set out clearly in the *Code*, the respondent was unable to use counsel and unable to call an important witness.

Possible effects: The respondent became exasperated with the PSC; his exasperation led him to question the PSC and especially its chair concerning deviations from the *Code*; the respondent's reaction *may* have led members of the PSC to become irritated, perhaps leading the PSC, in turn, to include gratuitous material in a letter that communicated the PSC's judgment in the grievance.

Evidence: Email-correspondence between the PSC and the respondent. These emails establish key dates, and they point to what appears to be a convenient reinterpretation of "days" to mean "working days," as well as to a retroactive characterization of a regular meeting as a first meeting of a hearing. Additional evidence: a time-line.

- The PSC provided parties to the formal grievance that it heard in Fall 2003 copies of its report to President Thomas but refused both parties to the formal grievance heard in February 2004 the same courtesy.

Possible effect: The sense that the PSC inconsistently follows procedures.

Evidence: Recommendations of the PSC relayed by President Thomas to the parties involved.

Note: The ad hoc committee has proposed a recommendation that would require a report to be sent to all parties in a grievance.

- Having ruled in favor of the respondent in the grievance heard on February 9, 2004, the PSC gratuitously characterized the conduct of the respondent in terms

that made his vindication an empty victory. That is, because of the nature of the PSC's response, the ostensible main purpose of which was to communicate his vindication, the person vindicated ended up being put in harm's way by the PSC's document. This gratuitous characterization survived into President Thomas's response to the recommendations of the PSC.

What does "gratuitous" mean, however, in this context? It means that, in a letter to the respondent and others involved in the grievance, the PSC articulated its decision (finding no basis for the grievance) but then included a section that admonished the respondent concerning the tone of his correspondence and other interaction with the PSC. A copy of this letter was transmitted to the respondent's department, and references to the letter (the admonishment-section) appeared in negative evaluation-letters about the person in his third-year review. **Professor Share, a current member of the PSC who has served multiple times on the PSC, regards this passage, which he has read, as gratuitous and believes the PSC does not have the authority to "editorialize" in a letter that is communicating the result of a grievance-process. He has given me permission to represent his view here.**

Even if one were to disagree with Professor Share and to support the inclusion of an admonishment, one would have to acknowledge that the PSC would be obligated to provide evidence for its decision to admonish the colleague. That is, whenever the PSC reaches a decision, it needs to provide the evidence for the decision. Therefore, even if one were to regard the admonishment as appropriate, the form it took was inappropriate because no evidence was included.

Possible effects: The PSC muddied the waters by including an admonishment to the respondent in a document that, according to the *Code*, had a single purpose: to convey the judgment of the PSC. The PSC—perhaps unwittingly, I must add, to be fair—may have provided material harmful to the respondent in his subsequent third-year review. Please note that whether the admonishment was somehow "justified" or not, its appearance in the document was nonetheless inappropriate and gratuitous; moreover, references to the admonishment probably should never have found their way into the third-year evaluation, particularly when the PSC had ruled in favor of the respondent. That is, one net result of the supposed favorable ruling may, ironically, have been not just unfavorable but harmful.

Evidence: Recommendations of the PSC relayed by President Thomas. Notes taken by the respondent concerning letters in the third-year review file.

- The PSC did not, that the respondent in the February 9 grievance could discover, create the report of testimony, witnesses, and exhibits/evidence that *The Faculty Code* requires.

Possible effect: The apparent violation, by the PSC, of the *Code*.

Evidence: Recommendations of the PSC relayed by the President constituted the *only* document the respondent received. That is, the respondent received a document that represented the very end of the process but did not receive a report from the PSC that would represent the middle, as it were, of the process.

- In the midst of what he regarded as expedient, inconsistent, and unjust procedural and substantive rulings by the PSC and acts of intimidation by others, the respondent in withdrew his formal grievance against a colleague. As a result, the PSC never addressed possible evidence that a faculty-member may have seriously and repeatedly plagiarized in a paper written with a Puget Sound student.

Known effect: A considerable public controversy over plagiarism erupted when the *Trail* ran a series of articles on the topic of faculty-plagiarism. Obviously, the public controversy cannot be traced back solely to the actions of the PSC; no doubt numerous factors converged to create such a controversy. Nonetheless, the PSC was probably a key link in one chain leading to the public controversy.

Possible effects: Had the respondent retained confidence in the PSC's capacity to handle grievances correctly, the matter that erupted publicly may have been handled entirely within the processes of the PSC. Also, the matter may have been handled thoroughly and professionally, with whatever appropriate professional closure the PSC deemed necessary.

On the other hand, given the PSC's handling of the other grievance that year, one cannot say with total confidence whether the issue would have been handled correctly; that's the problem.

In any event, to this day there seem to be lingering questions about how alleged instances of plagiarism, as discussed in the *Trail*, were handled.

Evidence: Statements by the respondent concerning his reaction to the way the PSC handled a grievance. The way the PSC handled the grievance can be known through examination of documentary evidence.

Whether the respondent was justified in losing confidence in the PSC is an arguable question; however, the respondent's loss of confidence does seem rooted in some questionable practices by the PSC, as noted above.

Additional evidence: numerous articles and letters in the *Trail*.

- With no apparent authority and contrary to recommendations from a hearing board (2003), the PSC assumed control of an evaluation file and fashioned its own "remedy." When both the evaluatee and the chair of the hearing board protested the PSC's actions, one or more members of the PSC warned the evaluatee and the hearing board to comply with the PSC or to remain silent.

Known effects: If the PSC assumed control of the hearing board, then the PSC violated the *Code*. In no place (at least no place I can find) does the *Code* authorize such assumption of control. The hearing board did not finish its work. The appellant never received a full hearing; we know this in part because the required electronic recording of a full hearing does not exist. In warning the evaluatee and the chair of the hearing board to remain silent, the PSC may have been misapplying the notion of confidentiality, for the evaluatee and the chair of the hearing board were in no way constrained by the *Code* to remain silent about *procedural* issues.

Possible effects: The PSC may have turned a process intended to be neutral and fair into one that ended up being unfair—prejudiced against the appellant. Also, there are lingering questions about the Senate’s willingness and capacity to oversee the PSC, particularly in emergency-situations, such as one in which a hearing-board process appears to be botched because of PSC-intervention.

It is unclear what role, if any, the Faculty Senate of 2003-2004 played in this conflict between a hearing board and the PSC, although one must assume that at least one senator knew about the conflict. I do know that the progress of the hearing board never resumed; there are plenty of data to support this fact, one datum being that no electronic recording (as required by the *Code*) exists for a hearing in this case. There is no evidence of, or even a suggestion that, a recording once existed but was destroyed. One may deduce, then, that a full hearing never took place. It is also unclear what role, if any, the Academic Vice President at the time played in the grievance-issues and the hearing-board issues.

At any rate, one possible effect of all this is lingering doubt about the question of “agency” raised by Professor Sousa with regard to the Faculty Senate and the PSC. In my opinion, the Faculty Senate had good reason to intervene in 2003-2004, first for a practical reason: obviously, the PSC and the hearing board were not communicating well, and this miscommunication was costing the person who had asked for a hearing-board. By “costing,” I simply mean this colleague was not getting the hearing to which she was entitled. How that hearing would have turned out, I do not know, but the result of the hearing is not the point. Practical arbitration was necessary, at any rate, to keep the hearing-board process going, and I believe the Senate is in a position to provide such helpful arbitration, which is hardly heavy-handed. Second, because the PSC reports to the Faculty Senate, the Senate has the authority to check on the PSC from time to time; in this case, “check on” might have meant that the Chair of the Senate, for example, could have sat down with the chair of the PSC and the chair of the hearing board and found a way to get the hearing-board process going again. Third, the Senate is the only elected faculty-body charged with interpreting the *By-Laws*, so it is given the authority to determine, particularly in such an emergency, when the PSC may be exceeding its authority.

As noted, one way to view the relationship between the Senate and the PSC is with regard to agency or power. However, another way to view the relationship is one of oversight that is *welcomed* by the PSC and not seen as a struggle for agency, power, or autonomy.

Indeed, Professor Share's view is that the PSC should welcome oversight from the Senate in the same way lower-court judges welcome, rather than dreading or resenting, higher-court reviews of their decisions. If a judge makes a critical mistake, the next court will likely catch it. If a judge has decided well, the next court will reaffirm the decision. In borrowing Professor Share's analogy, I'm not suggesting that the Senate review each ruling by the PSC or otherwise constantly stay in the PSC's business. I am saying that we have an opportunity to make our system work better by changing custom. In rare moments of procedural crisis, such as when the PSC and a hearing board disagree or when a grievance-hearing process gets knotted up, perhaps it should be the custom for the PSC Chair and the Senate Chair (and other parties, if necessary) to sit down and figure out the best solution. In extreme and rare cases when the PSC may violate the *Code*, then the Senate, I believe, needs to take responsibility for the apparent violation.

Ironically, the PSC's allegedly having assumed control of a hearing board happened soon after the faculty and trustees had changed the *Code* to allow for hearing boards at different stages of the evaluation-process. Indeed, the ad hoc committee praises this aspect of the *Code*, an aspect that allows for hearing boards at different stages of the evaluation-process. That is, precisely when hearing boards could be used more often and more flexibly, the perception of how effective and fair hearing boards might be may have been damaged.

Evidence: Letter from the PSC to the hearing board, the appellant, and the respondent. Letter from the hearing board to the PSC. Multiple members of the hearing board believe the PSC precipitously and inappropriately assumed control of the hearing board. The required electronic recording of the hearing board's formal deliberations does not exist; therefore, one might reasonably conclude that the hearing board never reached that part of the process—an actual hearing, which would have been recorded, as required by the *Code*. What the PSC ended up doing after it took over the process from the hearing board is a tale best left for another day. We can say for sure that the hearing board never completed its work; otherwise, an electronic recording of such work would exist.

Note: The conflict between the PSC and the hearing board concerns procedure, not the substance of the hearing. The substance of what would have been the hearing, of course, remains confidential, and neither members of the PSC, nor members of the hearing board, nor anyone else, has violated that confidentiality, as far as I know. From the Senate's point of view, the conflict we need to focus on is related to **authority** that is *not* granted to the PSC by the *Code* and to **procedures** that *are* defined by the *Faculty Code*. In this regard, we do not need

to know the substance of what would have been the hearing, nor do we need to speculate about the outcome of the hearing.

How To Proceed

Concerning this document, the Senate need not proceed at all. I am neither an official nor an unofficial committee-of-one, and the Senate already has a report from the duly appointed ad hoc committee that has reported to the Senate and been dissolved. I am merely a senator. I acknowledge that I am imposing upon senators by sending this document to them.

It seems that the Senate has the following options, at least:

1. Ignore this document and evidence related to it.
2. Formally receive this document and address it, finding by finding, looking painstakingly at evidence to which I have access and to which the ad hoc committee has access.
3. Formally receive the findings, at least in terms of their broad outlines, if not every single detail or every allegedly known or possible effect. If the Senate receives the findings, in their broad outlines, the Senate cannot reasonably be accused of engaging in a cover-up of mistakes the PSC made. This will, I believe, be a good outcome for the Senate and will only strengthen its position as it proceeds to consider recommendations. By the same token, if the Senate receives the findings, if only in their broad outlines, it *may* refer to them—but *only* as necessary, and *without* focusing on or even using the names of individuals—as it discusses and revises recommendations from the ad hoc committee. In other words, with regard to recommendations related to grievance-hearings and hearing-boards, we do not need to focus on persons or personalities; we *may* need to refer to certain past procedural facts, mistakes, and consequences as we revise recommendations—but that is all. Tactically, we may need to look at past mistakes. Strategically, we need not belabor such mistakes, focus on individuals or names, or polarize ourselves.

Obviously, I hope the Senate does not choose option one; otherwise, I wouldn't have written and sent this document. If the Senate does choose option one, however, I won't take the rebuff personally. If the Senate chooses option 1, however, it leaves itself open to the charge of engaging in a cover-up, and the absence of a "findings" section in the ad hoc committee's report may continue to perplex many of our colleagues on the faculty. Choosing option 1 leaves the Senate open to derision. Whether that's fair to the ad hoc committee and the Senate is an arguable point; nevertheless, perplexity will persist.

I dislike option 2 almost as much as I dislike option 1, but if the Senate chooses option 2 and desires to go through the evidence painstakingly, I won't take that personally, either. If the Senate chooses option 2, however, it will almost

certainly get bogged down in questions of “multiple narratives,” “mitigating circumstances,” minutiae in documentary-evidence, personalities, and opposing “camps.” I don’t want this to happen, for I would rather focus on basic findings about which we can agree, at least in their broad outlines, so that we may contextualize recommendations.

Indeed, if the Senate chooses option 3 (receiving the findings in their broad outlines), it is agreeing to agree only to the following propositions:

- A. In 2003-2004, the PSC certainly violated the *Faculty Code* at least once, with respect to a timely grievance-hearing. A grievance filed on the **3rd of December** was heard on the **9th of February**. More than two months went by; that’s a fact. Were there mitigating circumstance? I don’t know. Maybe. Procedurally, it doesn’t matter. With regard to following the *Code* in terms of a timely hearing, the PSC strayed.
- B. In 2003-2004, the PSC incorrectly and inappropriately identified a meeting as a “first hearing.”
- C. In 2003-2004, the PSC communicated ineffectively with a hearing board and inappropriately stopped the progress of that hearing board; the PSC made a bad judgment and probably exceeded its authority, as defined by the *Code* and the *By Laws*. If some senators choose to use the words “may have” to replace “probably” in the preceding sentence, that’s fine with me because we can still agree that something went wrong, that we need to craft recommendations with such an example in mind, but that we need not waste time with a formal interpretation of the *By Laws*—unless a majority of senators wishes to do so. Our overall strategy remains this: get to the recommendations in a timely, responsible way.
- D. The Faculty Senate of 2006-2007 should take responsibility for the above mistakes made by the PSC. **To a large extent, the Faculty Senate of 2006-2007, and especially the ad committee, has *already* begun to take responsibility by recommending good changes to the *Faculty Code*.** We do not know what, if anything, the Faculty Senate of 2003-2004 did with regard to the PSC, the grievances mentioned above, and the hearing board mentioned above. I am not convinced we need to know what, if anything, the Faculty Senate did then with regard to the PSC. I do know that the Senate of 2006-2007 can step up and take responsibility, in its capacity as an elected body to whom standing-committees report. By taking responsibility, the Senate would, I believe, be doing the right thing, but we would also rightly be taking some of the “heat” directed at the PSC’s actions that year, and we would be assisting the process of moving on and, in the words of the ad hoc committee, “looking ahead.” At this moment, with over two years having gone by since most of these specific issues arose, the Senate this year is in the best position to take responsibility.

Recommendations

The first two recommendations are wholly unoriginal; chiefly they reinforce the spirit of the recommendations made by the ad hoc committee. The third and final recommendation is new.

1. As it considers the recommendations from the ad hoc committee, the Senate will *sometimes* need to look back at particular cases, chiefly as a way to answer this practical question: What can the Senate do to insure that similar mistakes, miscommunications, and personality-conflicts don't erode PSC-related processes in the future? This question is what the ad hoc committee's recommendations have already begun to address.
2. The Senate should consider an efficient, effective way to act when the PSC is alleged to have violated the *Code* or is in the process of violating the *Code*. The ad hoc committee has already advanced at least one recommendation in this regard. At the Senate's meeting on November 6, Professor Share suggested alternatives that do not include only sending a letter to the President at the end of the process. As we heard, Professor Share regards sending a letter to the President in such a case as an ineffective remedy. The Senate *rarely* needs to mind the business of the PSC, but every so often, the Senate may need to assert itself. Standing committees report to the Senate.
3. The Senate should consider authorizing the Senate Chair to write short general letters of apology to Dash Goodman, Karen Porter, and others concerning the extent to which their cases (two grievances; a hearing board) were handled inappropriately by the PSC. Such letters will, of course, be only symbolic, but they will demonstrate that the Senate takes responsibility for mistakes made by the PSC in 2003-2004. Obviously, those mistakes did not occur on the watch of the 2006-2007 Senate, but I believe the current Senate should step up and take responsibility for those mistakes, and I suggest that the Senate do so in what I acknowledge to be an old-fashioned manner: apologize. Although letters of apology may rightly be perceived to be mere gestures, they can contribute, if only in a small way, to the process of moving on, regardless of the personalities involved. The Senate has an opportunity to demonstrate reasoned leadership that neither dwells on nor denies the past.

Thanks again for your patience, and thanks especially to the ad hoc committee for its hard work and recommendations.

Sincerely, Hans Ostrom

2/12/2007

Dear Senators:

It appears that Professor Ostrom's memorandum regarding the ad hoc committee on Professional Standards will generate some discussion and debate within the Senate. As one who has served on the PSC a great deal (I was an untenured member on the PSC in the 1980s, have served under three deans, and have twice been PSC chair), I thought I would add some perspective to the debate. I once again offer these comments as a faculty member, and not in my capacity as PSC chair.

I should make it clear that I was not a PSC member during the year in which the PSC is alleged to have violated the Faculty Code. I have seen some public documents, most of which are referenced in Professor Ostrom's memorandum, but there is much that I cannot know about those incidents. That said, I agree with Professor Ostrom's conclusions that the PSC appears to have acted improperly in some instances.

In my many years on the PSC I have never witnessed any collective PSC attempt to violate the code. However, I have observed a tremendous variation in PSC members' knowledge about the Code and their commitment to procedure. This is to be expected given the fact that PSC members are not "Code" professionals, are often burdened by a heavy PSC agenda, and are often confronted very suddenly with unforeseen questions and issues. I have also noted that while every PSC that I have witnessed works very hard to get things right, each PSC has a unique dynamic to it that might be explained by a whole host of factors. When one considers the additional fact that the Code is very poorly written in many areas (extremely specific in some areas, hopelessly vague in others, and strangely silent on many key matters), it should be expected that some PSC decisions are likely to be contestable and contested.

Given the above, and given the importance of the PSC (as keeper of the Code and adjudicator of grievances), it would make sense for the Senate to expect the PSC to at least occasionally make mistakes. It seems to me that the best the Senate can do is to think long and hard about implementing some safeguards and checks on the PSC. The ad hoc committee has done a tremendous service in beginning that process. Professor Ostrom's memorandum suggests that there may be some additional measures that the Senate should consider as it reviews the Bylaws governing Senate committees.

In my statement before the Senate I proposed some areas where the checks on the PSC could be improved. In response to Professor Ostrom's memorandum I would suggest that the Senate consider three issues:

1. It might be a good idea to require that the PSC summarize for PSC members all PSC business conducted outside of PSC meetings (inquiries from chairs, communications with parties to grievances, etc.), and to include such a summary in PSC minutes. Such a provision would ensure that PSC members know as much as possible about what is being done in the name of the PSC. It also serves as a sensible check on the PSC chair, since an entire PSC is less likely to overlook a possible deviation from Code procedure than a single individual.

2. I know that based in part on concerns expressed last year the once “Kremlinesque” PSC minutes have become vastly more detailed and comprehensive. Ironically, having more detailed minutes actually makes the PSC work better since it creates an historical record upon which future committees can draw. It might be worth specifying in the Bylaws that PSC minutes should contain detailed summaries of deliberations, much like evaluation summary letters, without violating confidentiality.

3. The Senate should have a serious discussion about the composition of the PSC. Is it desirable, for example, for there to be more than one member of any department on the PSC at one time (the last several Committees have had two members from one department, and the last two PSCs have had two sets of members from the same department)? And, to parallel the discussion the Senate has undertaken with regard to the FAC, should the PSC contain untenured members? I have previously noted that I think the Dean should be excluded from participation in grievance hearings because of multiple conflicts of interest. Does the Senate wish the Dean to be a regular member of the PSC? I feel like I can raise this issue comfortably at this time since Dean Bartanen has been entirely professional in her participation on the PSC. However, I have enough experience to say that this has not always been the case with her predecessors, and we should not assume that it would necessarily be the case with future Deans. I am aware that the Dean brings valuable expertise and experience to the PSC, and that the Committee often depends heavily on those resources. However, the Senate may wish to consider whether such reliance is desirable. Moreover, it may be possible to design a system where the Dean is “on call” for consultation with the PSC during the PSC meeting time.

Finally, I strongly endorse Professor Ostrom’s point that any attempt to establish and evaluate the historical record should be focused on processes and not individuals. In any complex institution things will go wrong. In response to such occurrences it is sensible therefore to establish procedures with built-in checks. I see no harm in documenting past procedural violations in order to better design checks that might prevent future problems.

Sincerely,

Don Share