

Faculty Senate Minutes
December 4, 2006

Members present: Senate Chair Anton, Senators Bartanen, Beck, Bristow, Foster, Joshi, Haltom, Hanson, McGruder, Ostrom, Segawa, Singleton, Sousa, Racine, Rowe, Ryken.

Guests: Droge, Rickoll

Meeting called to order somewhat before this scribe arrived. The undersigned struggled in just after the chair welcomed announcements but in time to hear Dean Bartanen, in response, describe the *planned* power outage over the semester break. (*Italics here meant to convey irony benefited by hindsight.*)

Old Business: Continued discussion of reports of the Senate Ad Hoc Committees on Evaluation and on Professional Standards.

Haltom MSP receipt of report from Dean Bartanen (dated Nov. 27, '06, to be appended hereto electronically) that documents the Dean's responses to recommendations included in reports from Senate Ad Hoc Committees on Evaluation (report date, January 2006) and on Professional Standards (report date, October 31, 2006). Senator Sousa asked specifically for clarification of an item in the report, observing that the FAC had no chair at present and was apparently disinclined to appoint one. Dean Bartanen reiterated that during its self-study FAC declined to appoint a chair. Senator Ostrom pointed out that the Faculty Bylaws state that all Senate standing committees are to have chairs. Bartanen opined that Senate could initiate action to amend the Bylaws. Ostrom suggested that in the meantime, the Senate Chair and the FAC should work out a way to follow the Bylaws, as it is the Senate's responsibility to make sure Bylaws are followed.

Haltom reinforced: At present given the FAC's failure to appoint a chair both FAC and Senate are indeed in violation of the Bylaws, which might be altered but have not yet been.

Student Senator Rowe asked about the makeup of the FAC and how it conducted business without a chair. Bartanen explained the current makeup of the FAC. Joshi asked from whence came the recommendation that the FAC have a chair. Foster explained the provenance of this recommendation: that all standing committees were charged with performing a self evaluation to comply with the Bylaws requirement of periodic review, and that Senate had specifically suggested that the lack of a chair for FAC be examined after the Ad Hoc Committee on Evaluation had raised this as a question.

Ostrom pointed out that in two places the Dean's report included potential charges to the Professional Standards Committee (hereafter PSC). Those are: 1) On page 2 of the Dean's response to the Ad Hoc Committee on Evaluation (hereafter AHCE) recommendation stemming from Senate's question 7 in its document on governance and 2) on page 3 of Dean's report in her response to the AHCE's recommendation stemming from Senate's question 11 in its document on governance.

*[To recap, as a public service, scribe includes the following excerpts that were under discussion via Ostrom's motion. From AHCE's April 12 report to Senate, included as Appendix B in its January report, page 17: Question # 7 **Does the FAC have the authority to request an evaluatee to submit to it directly, to become part of the evaluatee's file, materials that evaluatee elected not to include in his/her file?** ACHE answer in brief: No. AHCE Recommendation that the AVP highlight, in evaluation guidelines sent to departments, the portion of the code that directs the FAC to consult with the head officer of an evaluation "if the committee feels that additional information is needed." Dean's response in her Nov 27 report that she would happily do so at the direction of the PSC whose responsibility it is to interpret the Faculty Code and edit the "Faculty Evaluation Criteria and Procedures" document.*

*From AHCE's April 12 report to Senate, included as Appendix B in its January report, page 20: Question #11 **Is it acceptable for a faculty member of any rank to coach students to write letters against a faculty member coming up for evaluation?** AHCE response in brief: No. AHCE Recommendation to AVP similar to that above in previous question that she explain in the evaluation guidelines she distributes annually "...that inducing or inviting students to write letters or e-mails on behalf of or against faculty is unprofessional and inappropriate behavior and will likely render the evaluation process unfair and inadequate..." (p 21). Dean's response in her Nov.27 report again that she would happily "implement any further clarifying language regarding student letters at the direction of the PSC, whose responsibility it is to interpret the Faculty Code and edit the 'Faculty Evaluation Criteria and Procedures' document." (p3).]*

Ostrom MSP that the PSC be charged with revising the document "Faculty Evaluation Criteria and Procedures" as recommended by AHCE to the AVP. Senator Hanson queried when these charges would to be sent to the PSC. Answer lost to posterity or at least to this scribe.

Anton turned the Senate's attention to the overlapping or intersecting recommendations found in the reports the Senate's Ad Hoc Committees on Evaluation (AHCE) and Professional Standards (AHCPS) Senators Bristow and Foster supplied a document on intersecting convergence points which were distributed and which will be appended hereto (dated 12/4/06, titled Convergence in the reports of the AHCE and AHCPS.)

As the papers were distributed, Ostrom raised a point of order. He wished the Senate to formally welcome a new Senator, Acting Dean Of Students Mike Segawa. And it did.

Bristow and Foster shared their comparison of reports of the AHCE and AHCPS. There were four issues and two points they had found in common.

1) The issue of perceived violations of code by PSC

AHCE had much to say but no specific recommendation beyond that the Senate consider what might be done in the event that the PSC was perceived as violating the Code (Rec. #3). AHCPS had recommended that: "if the PSC is accused of violating the Faculty Code...the accuser may send a letter directly to the President." Rec. #3)

2) The possibility of creating an ombudsperson position.

AHCE had described an interpretive and consultative role for such a person. AHCPS described a role for such a person in grievance processes. Both recommended that the Senate consider creation of such a position.

3) Issue of possible division of PSC into two sub-committees: one to conduct the more usual business of ratifying departmental evaluation processes and faculty code interpretation and a second for handling of appeals and grievances.

4) Issue of the division between grievance and evaluation processes

AHCE had two concerns:

a) the adequacy of the buffer between grievances and evaluations such that a person bringing a grievance be protected from retribution during evaluation

b) the possible evolution of a vengeful, hostile or corrupt departmental culture with or without a grievance as precipitating event.

AHCPS made some particular recommendations including that the Code be modified in Chapter 1 Part d Section 4 such that grievances would be filed by the Dean. Bristow clarified that the AHCPS suggested code revision providing for the dean to file grievances (while retaining for faculty the right to do so in the event that the Dean declined) might prevent vengeance and provide protection for whistle blowers.

AHCPS' report had said, in addition, a grievance should be initiated if a colleague is behaving unfairly or unethically on the basis of personal animosity, and evaluation would stop while the grievance was pursued. This was described as holding in situations in which a colleague offered not simply a negative evaluation but one relying on half truths or deception. Recommended actions were characterized by Bristow as potentially protecting evaluatees and making evaluators who behave badly open to sanction or punishment.

Hanson noted that the AHCPS report item 1.b. is also similar in its recommendation that if allegations of unethical conduct are brought against an evaluatee during the process of an evaluation that the evaluation stop and a grievance be filed.

Bristow agreed and regretted lack of inclusion of item 1.b.

Foster covered two additional points extracted from the AHCE and AHCPS reports. Recommendation #4 of AHCPS on the perceived autonomy of FAC and PSC with regard to Senate oversight urged that the Senate consider and discuss its role in connection with supervision of these standing committees. That recommendation resonated with memos to the Senate from Share and Ostrom.

AHCE recommendation #15 relates in that it recommends that Senate charge the PSC to review all departmental evaluation documents with specific attention to identifying irregularities not congruent with the new code.

Bristow stated she would send the document prepared by Foster and Bristow, electronically, after adding to it AHCPS item 1b as noted by Hanson.

Anton queried the Senate as to how it might proceed. Hanson stated that both as senator and a member of AHCPS, he was also unsure of how to proceed.

Singleton reminded us that Sousa had wanted to attend to the “housekeeping” editing section of the AHCPS report but Sousa professed himself less than enthused for that work at this time when other substantial matters were on the table.

Hanson moved/seconded that Senate endorse the six recommendations AHCPS and forward them to the PSC for drafting of language to be returned to Senate before being forwarded to the full faculty for discussion. Discussion ensued about excluding endorsement of item d from recommendation number 6, the list of housekeeping issues for editing the Code, from the motion because the issue contained in d (substitution of “working days” for “days” in Chapter IV, Sections 3b and 4a) required further discussion. Other discussion ensued as to the optimal order of groups for discussion of the recommendations with some senators desiring more discussion on the floor of the Senate and others (Foster, Hanson) declaring themselves ready to send endorsed recommendations to the PSC and discuss them upon return. Haltom opined that item d was not merely housekeeping or could be considered housekeeping only if one accepted the one sentence rationale included.

McGruder offered that she believed the framers of the code, persons such as Margo Holm, had very good attention to detail and that there was no basis on which to assume that the modifier “working” had inadvertently been omitted. Fifteen days, equaling two weeks plus one day, would ensure that regardless of the day of the week that a grievance was filed two full weeks and weekends would pass in which to organize a hearing. Once informal resolution had failed and a grievance were actually lodged, 15 days would be a reasonable but also expedient period of time to hear the grievance.

Ostrom the seconder advised amending Hansen’s motion to exclude item d and Hanson accepted that as a friendly amendment.

Bartanen noted that a January 31, 2005 interpretation of code by PSC reported on a discussion that clarified the meaning of “days” and “working days” and specifically retained these instances of use of “days” in Chapter IV.

Haltom noted that he had promised Breitenbach, then Chair of the PSC, that inserting “working” in Chapter IV would be opposed by Haltom at level of Senate if such an action was brought there. PSC did not go forward with a proposal for insertion of “working.”

Singleton asked what would happen when a grievance is filed in summer. Hanson noted that therein lay the problem; this matter would require further discussion.

Anton queried Hanson as to which way the Senate might next proceed in discussing the documents before it, but Haltom requested a point of personal privilege pointing out that

Hanson is merely a Senator, the AHCPS having been dissolved, and that any senators might have an opinion on that question.

Joshi wished to discuss Bristow and Foster's convergence document first. Foster offered that the recommendations of AHCPS were orderly and should be gone through on their own merit and that the convergence document was informational only.

Hanson moved/seconded that Senate endorse recommendation #1a in the AHCPS report and refer this recommendation to PSC for an evaluation of the proposed language and then return it to Senate. Hanson spoke in favor of his motion saying that the issues that arose were those of separation between evaluation and grievance procedures and the problems that might arise when those processes occur together. The committee focused on the problem of professional ethical violation. The overall recommendation is that while the current grievance process may be appropriate to handle such violations, code language is "fuzzy." Hanson referred to the small print section in the report, below point c, which would be rewritten to authorize a grievance procedure in which faculty present ethical concerns to the Academic Dean (AVP) who then would decide whether to file a grievance. The faculty member who discovered what was thought to be unethical conduct would not be engaged in a one on one struggle with a colleague.

Haltom made three points:

- 1) He liked the recommendation and asked Hanson to cleave to AHCPS' report language
- 2) He thought the recommendation had the potential to resolve what has been a persistent issue whether one is an evaluatee or a colleague evaluator: The code holds Chapter 6 and Chapter 3 processes separate. Haltom said he liked the idea of invoking a changed Chapter 1, by which we would be create a new class of grievances and resolutions.
- 3) He liked the idea of the Academic Vice President as a screener, while faculty retain the right to bring forward grievances, under the recommended changes, if the AVP does not. Haltom believed this would allow some grievances to be resolved. If issues of plagiarism or other ethical violations arose it would make sense to circumvent individual faculty as these are matters of concern for the whole University community.

Joshi also agreed the recommendation was a great idea, but on issue of separating grievance and evaluation processes, she asked: What if a person is rebuffed by dean but is adamant? What happens if that adamant faculty person filed a grievance over the Dean's opposition when the Dean is always on FAC? How would this change protect the insistent faculty person? For that reason, Joshi argued, we should consider an ombudsperson.

Visitor Droge excused himself as he had come to weigh in on new business to which it appeared we might never get. Stated he would write his concerns in a memo to Senate or would return.

Student Senator Rowe asked "In event that the AVP will not file, is the University still responsible for filing a grievance or not?"

Hanson: One cannot force the University to file a grievance it does not want to file but the individual faculty member can always file.

Student Senator Rowe queried whether the grievance process is well defined.

Hanson opined that yes, formal grievance procedures were clearly conveyed in Chapter 6 of the Faculty Code.

Bristow wanted to discuss the possibility of an ombudsperson further. Would an ombudsperson have the power to decide whether to file a grievance or not?

Joshi observed that to make a clearer separation between grievance and evaluation would not be accomplished by making the typical filer the Dean, because then an insistent filer would lock horns with a necessary evaluator. In many schools the dean has neutral role in terms of evaluation.

Ostrom thought it would be better to have an ombudsperson as not all deans are as fair-minded as Bartanen.

Foster felt an ombudsperson is important to screen actually grievable offenses before Dean would file a grievance.

Hanson also sought more clarification on a potential ombudsperson's role: Would such a person be compelled to act on behalf of filer or can an ombudsperson also refuse?

Joshi offered that having an ombudsperson could or should take Dean entirely out of the process; an ombudsperson could evaluate ethics charges on behalf of the University and would bring the grievance but if the ombudsperson refused a faculty member still has the right to file.

Bartanen owned she was troubled by the word "refuses" as it carried a sense of an adversarial relationship between ombudsperson or dean and complainant.

If an ombudsperson does a first step of deciding on grievable complaints, is he or she also trying to actuate a the pre-grievance settlement conference? "Ombudsperson" was being used by Senators in different ways: advisor and process guide vs. a person who decides, files, or makes a judgment not to file.

Hanson queried to check Joshi's sense of the utility of an ombudsperson as protecting complainant against retribution.

Joshi explained (again) that as the Dean is always on FAC, retaliation toward a complainant over a grievance with which the Dean disagreed was a potential problem. Hanson did not see an inherent conflict.

Bristow offered that if an ombudsperson were involved in addition to the Academic Dean and two stages were retained informal and formal, there might be an advantage to separating those two roles, with the ombudsperson handling informal challenges and the

Dean, formal grievances. Bristow noted she was not necessarily advocating this set of position responsibilities but reporting on previous discussions and thinking aloud.

Haltom offered that this at least had the appearance of a daunting situation for a faculty complainer, if PSC ruled, sent its ruling to the Dean, and the Dean as member of FAC had already committed himself or herself to a side of an issue. If one wanted to argue about the substance of one's evaluation, because someone had made an accusation of unethical behavior, and the Dean weighed in as to whether one's complaint were grievable or not, and the PSC adjudicated a grievance or not, one might yet be anxious about the treatment one would get in the FAC given that Dean has already found against the grievance.

Hansen wondered about whether we could iron out such a complex issue at the time remaining.

Foster recommended doing so later because we could not write clear language until we took up the idea of an ombudsperson as a separate issue. She recommended that the current discussion focus only on current recommendations.

Haltom noted that Senate could postpone to a definite time; we could postpone, discuss the ombudsperson, then return to the motion on the floor.

Bartanen noted that we could mark a sense of the Senate that violations of ethics should be handled through the grievance process (as opposed to the evaluation process).

Joshi agreed with Haltom that we can agree on the principle in recommendation #1 including that of having a representative of the University, not an individual faculty member, bring ethics violation grievances and could then discuss later the exact specifications of that role or roles.

Haltom offered a procedural suggestion: We could postpone further action on the motion and make the definite time for returning to it after an ombudsperson position was discussed. This could be followed by a specific sense of the Senate motion.

McGruder noted that some of our discussion had distorted the typical sense of the word ombudsperson as one who is the companion, advisor or supporter of the person aggrieved and less powerful in the conflict. An ombudsperson who represents the University and brings charges against faculty is an odd kind of an ombudsperson.

Foster noted that we could talk about mechanics of the position at a later date.

Hanson MSP postponement to definite time of the motion on the floor, designating that definite time after the Senate had an opportunity to discuss use of an ombudsperson in the grievance process.

Bartanen MSP a statement of the sense of the Senate that questions related to violations of professional ethics should normally be handled via the grievance process.

Bristow asked whether this statement shouldn't also say explicitly "as opposed to in evaluation processes."

Bartanen thought she had not heard complete agreement on extending the motion to include "and filed by the University."

Singleton noted that Senators had wanted to leave it possible for a faculty member to file a grievance.

Anton commented that Bartanen's resolution could serve as a "place holder" to return to later

Hanson wished to add back sentence about faculty member retaining the right to file grievances.

Haltom MSP adjournment not a moment too soon.

Wearily submitted by scribe du jour,

Juli McGruder