

MINUTES OF THE MEETING OF THE FACULTY SENATE OF THE UNIVERSITY OF ARIZONA
 Monday, April 4, 1988 Room 146, College of Law

The Faculty Senate convened in regular session at 3:00 p.m. on Monday, April 4, 1988, in Room 146 of the College of Law. Forty-nine members were present. Presiding Officer of the Senate Thomas R. Rehm presided.

SENATE MEMBERS PRESENT: Aleamoni, Atwater, Austin, Carranza, Cartee, Chase, Chen, Cosgrove, Cusanovich, Daly, Dickstein, Epstein, Ewbank, Fahey, Fenstermacher, Figler, Fleming, Ganapol, Goetinck, Hersenberger, Hetrick, Irving, Jones, Koffler, Krutzsch, Larson, Logan, Mautner, McConnell, J. O'Brien, S. O'Brien, Peterson, Phipps, Reed, Rehm, Ridge, Roemer, Rollins, Ruiz, Silverman, Smith, Sobelman, Steelink, Stender, Streitmatter, Swaim, Witte, Woodard, and Woolfenden.

SENATE MEMBERS ABSENT: Andreas, Aquilano, Bayless, Beigel, Billo, Bootman, Boynton, Brown, Butler, Chisholm, Consroe, Cunningham, Drake, Fagan, Fulginiti, Hasselmo, Horak, Marcus, McCullough, McGraw, Mishel, Paplanus, Parsons, Patterson, Sander, Snarkey, Sigelman, Smerdon, Stedman, Tollin, Tomizuka, Tuchi, Watson, Weiss, and Wilkening.

MINUTES OF MARCH 7, 1988: There being no requests for changes or additions to the minutes of March 7, 1988, Dr. Rehm declared them approved as distributed.

REPORT FROM THE PRESIDENT OF THE UNIVERSITY: President Koffler said he wanted to take this opportunity to express publicly his admiration for our basketball program, and for its successes this past season. "I suspect that I am speaking for all of us. It has been a rare pleasure to enjoy such a winning season with victories over well-regarded opponents, a PAC-10 championship, and progress to the Final Four. Pleasure is an inadequate word; I prefer the word admiration. I have had the opportunity to observe our program, not only through the eyes of the media, but in person at national tournaments. I've just returned from one. Our players and coaches have shown themselves to be exceptional representatives of the University of Arizona. They have reminded the nation and the national higher education community of a fact that has often been lost in college athletics. They have shown us that winning records at the highest levels of athletic competition are not incompatible with such admirable human qualities as decency, wholesomeness, a sense of humor, and grace under pressure, both on and off the court. Our University community is indebted to Coach Olson, his staff, and his players for providing us with such a splendid object lesson.

"Next, I want to turn to the harsher realities of budgets, salaries and taxes. It now seems likely that in the near future the State Legislature will be able to turn from the impeachment trial to routine state business, such as university budgets. As you know, and as Regent Shropshire reminded the Senate at its last meeting, our prospects for next year are clouded by the budget deficit that Arizona is facing. This year again, for the fourth time in six years, the budgets for state agencies were cut in mid-year. It is becoming ever clearer that the problem is tied not to economic cycles but to a basic structural defect in the state's tax system. The costs of regular, routine state services grow faster than state revenues because our tax arrangements fail to ensure

that revenues expand at the same rate as our state economy. We hope that the budget for 1988-89 will provide the University with the funds for a full continuation budget, for adding the salary increases, and for Decision Packages that expand our activities in selected areas. It is becoming increasingly clear that these hopes rest on the need for tax increases, a difficult problem for any Legislature in an election year, and an especially difficult problem for the Arizona Legislature in this particular year. I join Regent Shropshire in saying that, if we believe this is the year to grasp the nettle and put Arizona's finances on a sounder basis, it is up to each of us individually to remind our senators and representatives that they have our support in this matter.

"I want to comment briefly on one additional matter, and that is an item on this afternoon's agenda. The Research Policy Committee is proposing that we establish or clarify our policies in several areas. I agree that this is a good idea but I have serious reservations about two aspects of the committee's proposal. First, I notice that the proposed Policy on Research Fraud limits itself expressly to misconduct in research in science. Speaking as a scientist myself, I do not question the need for clear arrangements to handle such problems. But speaking as an administrator, I regret to say that scientists share all their human frailties with economists, philosophers, engineers, artists, and others. I think we would be much better served by a more generic policy that covered misconduct in research, in scholarship, and in creative endeavors.

"Second, the proposed procedures for looking into allegations of misconduct in research are exceptionally complex. In an individual case we could require no fewer than seven steps and involve four separate, sequential investigations by different individuals or groups. Not only would this be prolonged and costly, it would create a bureaucratic nightmare in an area that is sensitive both legally and personally.

"We can do an equally thorough job and still meet federal requirements in a much simpler fashion. Unfortunately, both Vice President Wilkening and Provost Hasselmo are out of town today. I want the Senate to know, as it discusses this matter, that an alternative proposal will be forthcoming, but in the absence of the individuals involved, not today."

REPORT FROM THE PROVOST: No report.

REPORT FROM THE CHAIRMAN OF THE FACULTY: Dr. Rehm announced the results of the General Faculty Elections:

Secretary of the Faculty: George Ridge.

Committee on Academic Freedom and Tenure: Carol N. Larson, Kenneth J. Ryan and Susan Steele.

Committee of Eleven: Robert Chiasson, J. D. Garcia, Marlys Witte, Michael Drake, and Dimitri Kececiloglu.

Faculty Senators:

Agriculture: Robert Chiasson, Dennis Larson, Shirley O'Brien and Franklin Rollins.

Architecture: No Candidate.

Arts & Sciences: Bruce Barrett, Clement Chase, William Conway, Robert Gall, J. D. Garcia, Jean Goetinck, Elizabeth Roemer and Joaquin Ruiz.

BPA: Nicholas Aquilano.

Education: Lawrence M. Aleamoni and Charles Brainerd.

Engineering & Mines: Barry Ganapol and Gerald R. Peterson.

Law: Andrew Silverman.

Medicine: Victor M. Bernhard, Timothy C. Fagan, Samuel H. Paplanus and Stephen H. Wright.

Non-College: Douglas Jones, Karen Williams and Merri Hartse.

Nursing: Jacqueline Blank and Carrie Jo Braden.

Pharmacy: J. Lyle Bootman.

Dr. Rehm said new Senators will be seated at the May Senate meeting. Elections for the Senate Executive Committee and for Presiding Officer will occur at that meeting, and nominations should be submitted by Friday, April 29, to the Faculty Center or to any member of the Senate Executive Committee. Dr. Rehm reported that at the next Senate Executive Committee meeting, members will be selected for the 1988-89 Senate standing committees, and nominations for membership on those committees should also be submitted to any member of the Senate Executive Committee or to the Faculty Center.

REPORT FROM THE SECRETARY OF THE FACULTY: No report.

REPORT FROM THE PRESIDENT OF THE ASSOCIATED STUDENTS: Senator Carranza said that, like President Koffler, he wanted to thank the Wildcat basketball team, and cite the University's pride in that team as well as the other sport clubs and teams on campus.

He invited each Faculty Senator to attend the inauguration of newly elected ASUA officials on April 13.

Senator Carranza said this would be his last Senate meeting as ASUA President. He thanked his fellow students who served this year in the Senate for the fine job they did and the commitment they have shown. He also thanked Senators for taking time, as faculty members, to listen to students and to consider the issues they raise. He said he believed that the raising of issues by students is a part of their responsibility, and that it's not done from a negative point of view, but rather, by providing effective and constructive criticism and recommendations, to improve the quality of their education. A number of important endeavors would continue far past his tenure, he believed, and the tenure of the next couple of student body presidents. He reiterated his request that faculty support those endeavors, and that they remain open to student concerns: assessment of the quality of education, student involvement in learning, institutional support, and, something that is very important to him personally, ensuring that teaching receives the reward that it deserves in the merit, promotion and tenure processes. Senator Carranza said that at the May meeting nine new students will be introduced who will be prepared to serve with this body.

REPORT FROM THE ACADEMIC PERSONNEL POLICY COMMITTEE: Senator Jones said that at the March 7 Senate meeting, APPC was asked to look at the wording in section 4.10.03, UHAP, regarding fourth-year reviews for Professionals. Revised wording had been placed on Senators' desks today. The committee had reviewed comments from the March 7 meeting, and also discussed the matter with Dr. Hasselmo, who found this wording satisfactory:

UHAP, 4.10.03: Before the end of their second, fourth, and sixth years of service continuing-eligible professionals shall be informed by their department head that they are being recommended for: a) successive

reappointments for each of the next two years; b) continuing status, with or without promotion; c) non-renewal; or d) a terminal year appointment. This does not preclude consideration for promotion at other times, nor does it preclude a decision of non-renewal prior to or at the next biennial review. Reappointment in rank at the end of two and at the end of four years may be made without review at the college and university levels but must be based on an evaluation made by the departmental standing committee on continuing status and by the department head. The continuing-eligible professional shall receive from the department head a written report with a summary of the evaluation of the departmental standing committee and the department head's own evaluation, which shall include reference to any problem areas which may preclude the granting of continuing status. Before the end of the sixth year in rank, a continuing-eligible professional shall be reviewed according to the rules and procedures outlined in Section 4.11.

A question arose at the March 7 meeting regarding eligibility of Professionals to apply for certain types of grants. He said he had been contacted by several individuals after the Senate meeting regarding this subject. APPC has agreed to ask Dr. Wilkening to speak with the committee on the background of this matter.

Senator Jones thanked all past and present APPC members, as well as all members of the Senate, for their diligence and patience in the hard work of reviewing Chapters 3, 4 and 5 of the University Handbook for Appointed Personnel.

Dr. Rehm asked if the revisions to Chapter 4, section 4.10.03 would require a vote. Senator Jones said the committee had been asked to revise the wording, but the substance had not been changed.

REPORT FROM THE BUDGET POLICY COMMITTEE: No report.

REPORT FROM THE INSTRUCTION & CURRICULUM POLICY COMMITTEE: Senator Atwater said an announcement regarding the symposium "Teaching and Its Role in the Reward Structure" had been placed on Senators' desks; the symposium will be held on April 26, 3:00-4:15 p.m., in the Main Library, Room A-313. Some survey results, now being tallied, may not be complete; if that is the case, follow-up statistics will be provided later. The committee surveyed faculty and department heads' perceptions on how teaching is evaluated for merit and for promotion and tenure.

REPORT FROM THE RESEARCH POLICY COMMITTEE: Senator Witte indicated there would be no report in view of its major agenda item today.

REPORT FROM THE STUDENT AFFAIRS POLICY COMMITTEE: Senator Swaim said the committee is in the process of preparing a booklet which will be made available to all faculty members indicating what kinds of opportunities already exist for out-of-class interaction between faculty and students. She said the committee had a very effective and pleasant dialogue with student representatives to Faculty Senate regarding mutual responsibilities in creating an environment of excellence in undergraduate education. The committee plans to participate in the Provost's Symposium April 26, co-sponsored by the Instruction & Curriculum Policy Committee.

APPROVAL OF CURRICULAR MATERIAL: It was moved and seconded (motion 87/88-35) to approve Curriculum Bulletin Vol. 12, No. 7, Section I, and unanimously approved on a voice vote. It was then moved and seconded (motion 87/88-36) to approve Section IV, and unanimously approved on a voice vote.

CONTINUED DISCUSSION AND ACTION ON RESEARCH POLICY COMMITTEE RECOMMENDATIONS:

Because Senator Witte received a communication late last week that the President's Council was concerned with certain aspects of the Research Fraud document, she suggested the following steps for today's discussion: (1) summarize the philosophical guidelines established at the March meeting; (2) proceed to the Motion to Create a University Committee on Ethics and Commitment; (3) then move forward to the Conflict of Commitment and Facilities Use policies; (4) conclude with the Fraud in Research Policy and the alternative recommendation from the President's Council. Senator Witte said all four documents come to the Senate from the Research Policy Committee as seconded motions.

At the March meeting, she said, there was general consensus that there was indeed a problem regarding research fraud, conflict of commitment, and facilities use and misuse, and that these matters were not addressed by current University policies. She said the Senate also agreed these were, indeed, matters of faculty business, and that there should be fairness in the protecting of accusers and accused in all these policy guidelines.

Senator Witte called for questions on the seconded motion (motion 87/88-37) for the creation of the **University Committee on Ethics and Commitment**, noting that no changes had been made to this document since the March Senate meeting. There were no comments. A voice vote indicated unanimous approval as follows:

"The University Committee on Ethics and Commitment, a University-wide standing committee, is composed of 6 members of the General Faculty, serving staggered three-year terms, elected by the Faculty Senate from nominations by the Committee on Committees. The University Committee on Ethics and Commitment deals with questions of fraud in research, conflict of commitment, and facilities misuse. The Committee may, in consideration of individual cases or issues, expand itself by no more than three additional General Faculty members having expertise in the subject matter of the case(s) being investigated. In its deliberations, the Committee shall use the current versions of the University policies on research fraud, conflict of commitment, and facilities misuse. The Committee will report annually to the Faculty Senate on the nature and number of cases investigated."

Senator Witte then turned to the **Conflict of Commitment Policy**, which would be inserted in Chapter 2 of the University Handbook for Appointed Personnel as section 2.06.08, a continuation of other conflict of interest statements. She called for comments on this seconded motion (87/88-38).

Senator Mautner commented on the first and second lines of the second paragraph, "he or she, or the unit in which they work", and after some discussion there was consensus to accept Senator Epstein's revision: "University employees who feel that they, or the unit in which they work, are being..."

Senator Woolfenden said another problem appears in the first sentence: a literal reading would indicate "the appearance of conflict" creates the conflict. He suggested striking "or appear to interfere" in the second line.

A prolonged discussion of the meaning of the first two sentences followed. Senator Hetrick suggested changing "can arise" to "may arise." Senator Austin said he agreed with Senator Woolfenden's point, that the conflict arises when outside activities interfere, not when they may interfere. Regarding comments on "disclosure", Senator Witte indicated that the first paragraph of this document refers to current policy, and the second to recommendations of the Research Policy Committee. Senator Peterson said that it appeared to him the first sentence in the first paragraph was intended to define conflict of commitment as it differs from conflict of interest, already defined in this section of Chapter 2. He said he agreed with Senator Austin about the need for a clear definition here: "can" and "or appear..." should be struck. Senator Witte said these were points well taken, and she believed the committee would be willing to accept this change.

After clarifying with Senator Witte that these two paragraphs are in addition to the Conflict of Interest policies existing in Chapter 2, Senator Steelink asked if the intent of "conflict of commitment" was to deal with situations where absent faculty caused others to handle, for example, their advising. Senator Witte responded affirmatively, adding that it deals largely with Technology Transfer; it is now in the Arizona statutes, she said, that Technology Transfer activities should not interfere. She said other faculty should make sure that someone else's conflict of interest is not a conflict of commitment, as well, reverberating on the rest of the faculty to handle more than their fair share. She said this point is not addressed at all in the Handbook; the Research Policy Committee considers this one of the major issues.

Senator Fleming asked about outside activities that were not compensated. Senator Witte said she didn't believe compensation should be a requirement. Senator Patterson suggested eliminating "for a faculty member", since that phrase appears twice.

Senator Goetinck: "Conflict of commitment is such a vague, philosophical idea that I wonder what the value is of the whole paragraph? How can you judge or evaluate anyone's commitment?" Senator Witte: "Only when it reverberates back on the rest of the faculty. If someone has such a conflict of interest in an outside activity that the teaching, research and other functions of the department are not being equitably handled, then the committee can be approached to look into the matter to determine whether there is some validity and, if so, what can be worked out, if administrative routes are unsuccessful." Senator Goetinck: "Someone can be totally committed and be a total disaster."

Senator Steelink said he wondered whether the University's disclosure policy had ever been enforced. Dr. Rehm called on Dr. Jack Cole, Acting Vice Provost, who said: "If you are talking about enforcement of penalty, no, not to my knowledge. If you are discussing individuals who may have over-stepped the boundaries of conflict of interest and/or conflict of commitment, yes, there has been some discussion with faculty members encouraging them to cease and desist, and they have cooperated, so therefore there was no necessity. To my knowledge we have not penalized anyone because there has never been a necessity to do so."

After obtaining permission to speak, Dr. William Cosart, sitting in for Dean Smerdon, suggested adding the word "potential" in the last sentence of the first paragraph, to read: "An annual review of potential conflict of

commitment..." Senator Witte said she believed that would be acceptable to the committee.

Senator Goetinck requested a reading of the revised first sentence of each paragraph. Dr. Rehm complied: "In addition, a conflict of commitment for a faculty member arises when outside activities interfere with his or her primary obligations to teaching, research and service." Senator Witte read the revised last sentence in the first paragraph: "An annual review of potential conflict of commitment for all persons who have filed such Disclosures is made and filed with the Provost and the Vice President for Research." Dr. Rehm read the first sentence, second paragraph: "University employees who feel that they or the unit in which they work are being adversely affected by another employee's outside activities may bring the matter to the attention of the University Ethics and Commitment Committee."

Senator Steelink asked what alternatives exist under current policy for complaint against an individual, and Senator Witte indicated there were none specified, but that individuals could go to a dean or to the campus newspaper.

The question was called, and a voice vote on motion 87/88-38, to approve the Conflict of Commitment Policy as amended, indicated unanimous approval.

Senator Witte then turned to the **Facilities Use Policy** (seconded motion from the Research Policy Committee, 87/88-39) which had been changed from Facilities Mis-Use. She noted that the first sentence of the second paragraph should be changed to read "The unit administrator (Department Head, Dean, Director) is responsible for the proper use of facilities within guidelines set by higher administration."

Dr. Cosart commented that since the first sentence says the unit administrator is responsible, that the second sentence of the paragraph should be changed to end as follows: "...faculty or professional staff members on approval of the department head and dean or director.", and the third sentence would read: "Such arrangements will be reviewed periodically to ensure ..." Senator Witte said this change would be more difficult to handle. The committee had sent these documents through Dr. Wilkening and the President's Council, so she was not sure how to respond. Senator Austin said this did present a problem, because the first sentence suggests that a unit administrator is responsible; the second sentence suggests a faculty member is responsible; and the third suggests the Vice President for Research or the Provost is responsible. Senator Witte responded that one of those sentences discusses who is responsible for department use, the second discusses who can arrange to use it, and the third looks at the arrangements for use. She added that the review by the Vice President for Research and the Provost would be after the fact. Senator Patterson believed that the third sentence indicated that once arrangements had been approved by the department head and dean or director, documents would be forwarded to the Provost's office for final approval and review; he suggested adding something to the effect "and reviewed by them". Senator Witte said she believed it is particularly important that these reviews occur to ensure policies are observed, and she suggested "Such arrangements will be reviewed by them."

Senator Roemer wondered whether the sentence that begins "Such arrangements" could begin with "Individual faculty or professional staff members can make arrangements for the use of such facilities..."; since it is the unit

administrator who gives the first approval, it could be next ratified or reviewed by the higher administration. Senator Hetrick suggested making the second sentence read, "The arrangements...can be proposed by individual faculty..." Senator Witte said, using Senator Roemer's language, "Individual faculty or professional staff can propose arrangements for the use of such facilities..." Dr. Cosart suggested adding to the end of that sentence "...upon approval by the unit administrator, the Vice President for Research and the Provost." Then the third sentence could be clarified, he said, without the approval part, because that would be in the second sentence, and could read "Such arrangements would be reviewed periodically by the Vice President for Research and Provost" to ensure that this does not interfere. Senator Witte asked Senator Roemer if this change was acceptable to her. Senator Roemer had no objection. Senator Steelink said, in the same sentence, it reads "for purposes of technology transfer"; he wondered if this was the only case the committee was considering. Senator Witte said no, and the committee considered dropping that--it had been dropped in one of the other documents, in favor of a more general statement.

Senator Witte then read the revised second paragraph: "The unit administrator (Department Head, Dean, Director) is responsible for the proper use of facilities within guidelines set by higher administration. Arrangements for the use of such facilities can be made by individual faculty or professional staff members upon approval of the unit administrator and the Vice President for Research and Provost. Such arrangements will be reviewed periodically by the Vice President for Research and the Provost to ensure that this use does not interfere with the primary purposes of the institution." She said this does not disallow review by the dean as well.

Senator Hetrick believed something should be added in the second paragraph, perhaps "technology transfer or similar types of activities." Senator Peterson said there seemed to be another problem in this paragraph, "arrangements for use of such facilities"--such as what? He then moved (motion 87/88-40) to table this motion, so it could be sent back to the committee to be reworked; paragraphs two and three were so unclear that he believed the Senate could not proceed further this afternoon. Senator Peterson's motion was seconded. Senator Witte said the committee would prefer a mandate, and to correct the English itself later. Senator Peterson said he believed the document needed more input from the committee before it came to the floor of the Senate again. Senator Steelink agreed with Senator Peterson, and suggested two or three examples be provided as to what is meant by lab use: teaching, research, service, or technology transfer. A voice vote on the motion to table was taken, and the motion was approved. Senator Witte asked Senator Peterson to contact her or any member of the committee, perhaps within the next week or two, to guide them on specific questions. Senator Peterson agreed to do that.

Senator Witte next turned to the **Policy on Research Fraud** (seconded motion from the Research Policy Committee, motion 87/88-41). She said she thought a copy of the President's proposal was to have been placed on Senators' desks today; that not being the case, she distributed copies of a summary of the proposed policy and the alternative policy proposed by the President (see attached summary as interpreted by Senator Witte).

Senator Witte said a number of items had been agreed upon at the March meeting, and that the committee responded to Dr. Hasselmo's concern that existing university mechanisms be used where possible, specifically the Committee on

Academic Freedom and Tenure (CAFT). The activities of the University Committee on Ethics and Commitment (UCEC) were separated into inquiry and investigative panels which report to the Vice President for Research. The issue of sanctions is dealt with at the CAFT level, thereby preserving the CAFT involvement in the area of sanctions up to and including suspension and dismissal. Senator Witte said the committee had read all available university procedures and had reviewed many of the fraud cases. The committee recommended a standing committee rather than one that was appointed ad hoc, to keep the inquiry as confidential as possible, and to protect the whistle-blower.

In reference to a remark about his proposal, President Koffler responded: "I just want to point out that this was a preliminary proposal which you received. The committee will receive a more complete proposal." Senator Witte said she understood this would be distributed today. President Koffler indicated it was not. Senator Witte: "I think we can discuss it anyway because the principles will be the same."

Senator Witte said the comment made by President Koffler in his report, regarding changing the word "science" to "research" is clearly appropriate, and the committee will make that change in paragraph one, line one, page 3. Regarding his second comment, his concern that this was a nightmare in bureaucracy, that it would be expensive and inefficient, she said she didn't believe there is essentially any difference between the two policies in terms of their steps. The only difference is that in one instance a faculty committee receives the charges, and in the other instance an administrator receives the charges and either conducts the inquiry him/herself or has a panel appointed for that particular inquiry--this would not be a standing panel. She added that the Vice President's office would then appoint an investigative panel. "The difference is that one is a faculty-elected committee that can receive and process complaints, and the other is an administrator and administration-appointed committee. I don't think that the second procedure fulfills the guidelines that this is faculty business and that we must protect the accuser and the accused. I think it would be very difficult in that context to do, and it's no less convoluted. So I would like to begin a discussion of both the proposals. What is being put to you right now is the original motion of the Research Policy Committee unanimously approved by it, and the procedure which is being proposed as an alternative."

Senator Peterson said that the Chronicle article attached to the draft policies states "Both require the institution first to conduct an informal inquiry and then a more formal investigation if there is sufficient evidence...and once the formal investigation has been completed, the results should be reported to the sponsoring agency", and that both flow charts show a report goes to the agency after the inquiry. Senator Witte said the article may be incorrect, because federal guidelines mandate that after an inquiry has been completed and it is felt that the charge has merit although it hasn't been proven, before the investigation is undertaken the sponsoring agency must be notified by the Vice President for Research. Then, results must be reported after the investigation is completed, whether or not the charge is true, and how serious it is. The federal agency does not require, she said, the sanctions that the university imposes. It becomes university procedure as to what sanctions will be imposed. Senator Hetrick said he understood another important difference between these two proposals is that the investigative panel might recommend sanctions. Senator Witte agreed that is another difference, and that in the President's proposal, the investigative panel

appointed by the Vice President for Research could recommend sanctions. She said the Research Policy Committee had decided to separate the imposition of sanctions from the investigative committee so that it could move more quickly. The investigative panel could then act as expert witnesses in CAFT regarding the facts. The committee believed this procedure offered much more in the way of due process. Senator Hetrick said he believed deans would be much happier with the procedure if it was initiated by an elected standing committee. He also supported the concept of sanctions being initiated in a CAFT hearing process. Senator Witte noted that the President would receive the report of the investigative panel before it went to CAFT, presenting a real problem with due process. Senator Hetrick: "Let me reiterate that point: I think that's a fatal flaw." Senator Witte also noted that in the alternative proposal, the personnel file of the individual gets a statement after each step; in the Research Policy Committee proposal, there would be nothing in the personnel file, basically, until CAFT. Senator Epstein asked if there is any place where the dean or department head would be notified that such an action was occurring. Senator Witte responded that paragraph four reads "Initial charges can be made to the immediate supervisor of the person charged; and if the charges of misconduct appear to be based in fact and are not explained by the charged person to the satisfaction of the immediate supervisor..." She said the complaint could be made to the dean, who might notify the department head, who could report it to the committee, but the committee wouldn't necessarily notify the dean or department head unless it was appropriate, because there might be issues of confidentiality involved.

Senator Hershberger asked if, on page 5, at the end of the first paragraph, something was missing from the document. Senator Witte said she would have to check.

Senator Mautner said the second paragraph on page 4 indicates there can be alternative routes: either directly to the immediate supervisor or to the committee. Senator Witte responded that there are many units and various ways individuals would deal with the problem and the particular case, and that both alternatives are available; she said many of these cases can potentially be solved at a lower level. Senator Patterson suggested that individuals meet with the supervisor first, so the supervisor is aware of it. Senator Witte said that because of particular situations, there has to be an alternative way to provide safeguards in the whistle-blower situation; in some cases, the department head is the accused.

Dr. Rehm reminded Senators that on the summary sheet, which compares the President's proposal with the Research Policy Committee proposal, the upper structure pertains to the Research Policy Committee's proposal, and the lower structure to the administration's, which is not in its final form. He indicated that if substitutions are to be made, now is the time to do it, because a vote will be taken on the Research Policy Committee's proposal.

Senator Goetinck asked if it was necessary to split UCEC into an inquiry panel and an investigative panel. Senator Witte responded that it was; there may be an option that both panels must interview the same individuals, and the committee would prefer that not be the case, but it's possible it could be.

Senator Hershberger asked if the Senate would be asked to vote on this matter today, in the absence of final copy for the alternative proposal. Dr. Rehm responded yes. Senator Witte said she would like to point out that this policy

has been two and a half years in the making, with the Research Policy Committee involved at each stage of this policy; the philosophy and guidelines in the alternative proposal appeared to be contrary to the committee's proposal, in that they substitute an administrator or administrative-appointed committee for a faculty committee in a matter pertaining to faculty business.

Senator Peterson said one part worries him: the committee is making an assumption that a faculty committee will protect the interests of a whistleblower better, and he said his experience controverts this assumption. In response, Senator Witte emphasized the value of a committee elected to handle this general subject matter as opposed to a committee selected within a limited amount of time to deal with a specific case.

Senator Patterson asked if Dr. Burke could explain the rationale behind the President's proposal. Dr. Burke said he understood that the draft material supplied to Senator Witte was very informal, and he was surprised to see the summary on Senators' desks this afternoon. Senator Witte said she had been told Friday the proposal itself would be distributed to Senators at this meeting, and she was surprised to learn it had not. Dr. Burke said the version she had received was only one possibility, not the proposal itself. Dr. Cole said that he believed the alternative proposal was indicative of a dean's responsibilities, ensuring that there was indeed something to be examined prior to instituting formal proceedings. He said it appeared possible under the committee's proposal that the accused could go through the procedure without involving the supervisor until the final step.

Senator Aleamoni moved (motion 87/88-42) to table the motion concerning Policy on Research Fraud until the Senate had enough information on the alternative proposal to make a decision. That motion was seconded, and a hand vote indicated 18 in favor, 15 opposed. Senator Witte requested that the final version of the alternative proposal be sent to the Research Policy Committee within the next ten days.

CONSTITUENT REPORT: Senator Steelink introduced Dr. William S. Bickel, Professor of Physics, and requested permission for him to speak with the Senate on a matter introduced at the March meeting under New Business.

Dr. Bickel said he was present to speak on behalf of a colleague, Dr. Tien Wei Yang, a member of the Department of Biological Sciences from 1969 to 1975.

"Since most of you have received two packets of material on this matter I sent to you in October and November of last year, I shall not repeat what you already know. At the last Senate meeting, Dr. Steelink asked to have included in the Minutes a statement from Steelink and Bickel regarding the Yang case. That statement now appears on the last page of the March Faculty Senate Minutes, distributed last Friday to all members of the faculty.

"In the statement, we stated three outstanding facts in support of offering Yang a hearing. Here are the three facts:

1. Yang dropped his Superior Court lawsuit in 1982 in exchange for a promised hearing. But the top University officials and the Regents did not give him a hearing after accepting his withdrawal of the litigation.

2. Former Liberal Arts Dean Herman Bleibtreu told the Regents on December 13, 1985 that he had approved Dr. Yang's termination in 1975 based on what he now believed to be false information.
3. Former Superior Court Judge William Druke, the duly appointed fact-finder of the Regents, recommended to the Board on March 21, 1986 that Dr. Yang be given a hearing.

"Today I want to focus on the third fact presented in our statement in support of giving Dr. Yang a hearing after all these years.

"In December 1985 former Judge William Druke was appointed by the Board of Regents as its official fact-finder to come up with a solution to the Yang case. This appointment was the direct result of a great deal of public protest over the way Dr. Yang had been treated over the years. After three months of investigation, Judge Druke recommended that Yang be given a hearing. The Druke conclusion was unambiguous and definitive. Quoting from the Druke report dated March 20 and 21, 1986, Judge Druke recommend(ed) that the Board of Regents either (a) reconsider the motion made by Regent Chandler at the Board meeting in March 1984, or (b) direct Board Counsel to enter into a stipulation with Counsel for Dr. Yang to set aside the previous dismissal, with prejudice, of Pima County Superior Court Cause No. 1555195. If any of you are interested in seeing a copy of the Druke Report, I have it; contact me in Physics.

"The Druke recommendation was apparently not what the top officials of this administration of this University had expected. They, therefore, set out to try to change Judge Druke's mind. At a special meeting arranged by the Board on May 9, 1986 in Tucson, Provost Hasselmo, two University attorneys, and the chief counsel of the Regents made an extraordinary attempt to pressure Judge Druke to change his original recommendation. But the former Judge was not persuaded. He stood by his March recommendation for a hearing by a special panel or a reinstatement of the Superior Court lawsuit Yang had dropped in 1982.

"This afternoon, I called Judge Druke and told him that I was going to go before the Faculty Senate today and comment on the Yang case and on his recommendation to the Regents. I asked if he still stood by his decision. This is what he said: 'From the facts I had seen, I came to that decision. I made that recommendation and reported it to the Regents. Since then nothing has occurred to change my mind, and I still stand by that decision.'

"After having failed to change Judge Druke's mind, the two top University administrators persuaded the Regents to circumvent the Druke recommendation entirely. The outcome was a special resolution adopted by the Board of Regents in its May 30, 1986 meeting. This resolution was rejected by Dr. Yang because it fails to guarantee him any hearing at all. The resolution limits the possibility of a hearing in Federal Court only to a single issue. It denies entirely any hearing on the other fundamental issues raised in Dr. Yang's Superior Court action. These other issues were never heard or resolved, as stated by Judge Druke in his 1986 report.

"Again and again, the University administration and its supporters have been saying that Yang has already had his share of hearings, with estimates ranging from 50 to more than 100. If this kind of allegation were true, why did Judge Druke stand by his original recommendation on May 9, 1986, after more than two

hours of high-pressured lobbying by Provost Hasselmo, Attorneys Ives and Wood, and Regents Chief Counsel Schneider?

"These are the questions that you must ask yourselves. You must arrive at your own conclusion as to whether or not you can accept the administration's position that Yang has had all the hearings he is entitled to have. What I am urging you to do this afternoon is to set up a panel to listen to the presentations from both sides of this case, and then recommend to the full Senate at its next meeting, whether or not to offer Dr. Yang an impartial due process hearing by the faculty of this University.

"I hope that this statement can be included in the Minutes of the Senate meeting. Thank you very much."

Dr. Rehm: "Two remarks that I would make pursuant to this. The Senate in its structure is not a forum for conducting hearings. It can make a recommendation that an appropriate body handle a hearing, but the Senate itself does not operate in that way. That's not its mandate. We also have present a representative, Mr. Drew Ives, from the University Attorney's Office, so if there are questions that you may wish to ask of him, that is your prerogative. Or questions may be addressed to Dr. Bickel or Senator Steelink."

Senator Peterson asked why, if Dr. Yang is convinced that he has been treated in an improper fashion, he didn't go to court? Dr. Bickel: "Dr. Yang was convinced that if he dropped his lawsuit in Superior Court he would be given a hearing. When the lawsuit was dropped, it was dropped with prejudice, which means it cannot be reinstated again. Dr. Yang signed that. This was a grave error on his part for two reasons: one, he didn't quite understand what the idea of prejudice meant, but more important than that, he dropped the lawsuit with the promise that he would be given a hearing. This is what Judge Druke said is important. Now, there was no hearing, and that lawsuit in Superior Court cannot be reinstated." Senator Peterson: "I'm no lawyer, but it would sound to me like if he can prove that he was promised a hearing and didn't get it, then it would invalidate the dropping with prejudice. Could the University attorney comment on that?"

Mr. Ives: "It's more complicated than covered so far. There were actually two different lawsuits: one in Federal Court, one in State Court. In the State Court hearing, in addition, there was a hearing on the merits, an appeal to the Court of Appeals, in which Dr. Yang lost on all issues. It was returned to Superior Court on some remaining issues that he raised for the first time in the Court of Appeals. That was when he agreed to dismissal of prejudice. The Federal Court case was brought after the EEOC conducted an investigation and gave a 'no cause' finding that there was no reason to believe that the allegations of Dr. Yang that race had been a factor in any of those decisions affecting him. He disagreed with that, filed the Federal Court case, failed to serve it timely, and subsequently the statute of limitations ran, and he was unable to ever have it litigated on the merits of that concern. What the Arizona Board of Regents agreed to do at the May 1986 hearing, because in their judgment that was the only issue that had not been addressed on the merits, was to permit it to reopen on that issue, if inclined to do so. For background, for those of you who haven't had the opportunity to follow this case as it has progressed since the first of five CAFT hearings in 1974, there has additionally been review by petition to the Arizona Supreme Court, which declined to accept jurisdiction, there has been a review by Provost Hasselmo, who is not

here today, but perhaps can speak to that issue, as to what he did and found, all of which preceded this May 1986 decision by the Arizona Board of Regents. I have available for any of you who would like it a chronology of all the major events in this matter, and the 115 most critical documents, as well as boxes of other documents." (In a telephone conversation a few days after the Senate meeting, Dr. Terence Burke said the minutes require correction regarding Mr. Ives' statement, because the Yang records are not public domain. A copy of the chronology is on file at the Faculty Center.)

Senator Witte: "It seems to me the issue isn't what the University has to do, it seems the issue is what we at the University and faculty want to do, what we think is right. I personally feel that we should grant Dr. Yang a hearing, and follow Judge Duke's judgment, not because we have to but because I think perhaps we should." Dr. Rehm: "What kind of hearing are you referring to?" Senator Witte: "We could decide that later." Dr. Rehm: It cannot be a hearing before the Senate. Senator Witte: "Yes, but perhaps Dr. Bickel could guide us as to what type of hearing the faculty could provide."

Senator Patterson: "I'm curious about the charge of the dropped lawsuit in exchange for a promised hearing. And secondly, why has Judge Duke's recommendation not been acted upon?" Mr. Ives: "In answer to the first, my understanding of what transpired in the first matter, the dropping of the lawsuit in exchange for a promised hearing, is that Dr. Yang has consistently contended that was his understanding of what transpired. He agreed to dismiss the lawsuit in exchange for a hearing. The lawyer who represented the Arizona Board of Regents, not myself, had no such understanding, obtained his signature on the dismissal of prejudice, and was surprised when he wanted to recant the whole thing after he just agreed to dismiss the matter."

Senator Hetrick: "I think I probably should speak, having been Chairman of the Committee on Academic Privilege and Tenure, as it was known, at the time these hearings took place. There were a number of cases in progress at the time, so I was not personally involved. I know at least some of the people that were involved are no longer on this campus. I would certainly see no objection to the reopening of this case in view of all the confusion and all the possibilities that he was, at best, misled. And I would endorse that completely if I had the answers to this question: What is it about those CAFT or CAPT hearings which apparently was so defective that Judge Duke said they should be disregarded? If I had the answer to that question, I might be inclined to endorse the request for a hearing. Can Dr. Bickel speak to that?"

Dr. Bickel: "It's hard, sir. I don't have as much documentation as the lawyers do. When Dr. Yang was about to drop his lawsuit, he came to see me, and I asked him why he was dropping it. He said 'They promised me a hearing. I don't want to sue the University.' It was dropped, not under his recommendation, with prejudice; that's the document that was drawn up by the lawyers. Dr. Yang signed that. First off, he wouldn't have cared if it was with prejudice or without prejudice--that didn't bother him, because he was going to get a hearing because he was promised it. But, he missed it. He should have said, no I won't sign this with prejudice because if I don't get my hearing, then I will pursue my lawsuit again. But that's over and done with. So, with or without prejudice, it's finished. So now let's go to the hearing."

Senator Hetrick: "I'm sorry, but that doesn't answer my question."

Dr. Cole: "I've been here forever, and I would like to speak along the same lines as Senator Hetrick spoke. I have seen most of the documents at one time or another because everybody was asked at that time. I think before any recommendations of this body to another faculty body to conduct such a hearing, I think it is incumbent on all of you to go back, and I don't know if they're confidential records or not, but you ought to read how the whole case developed, because it isn't necessarily as simple, and I'm not arguing any of the things that have been brought in today, I'm saying you go back and look at what happened originally, what Dr. Yang's status was at the University, what took place, and look at the CAFT reports, and I don't know, they may be confidential, but what the CAFT had to look at. I think you might have a better perspective of what this is all about so that before we recommend anything, I would recommend strongly that you get the original documentation for this case."

Senator Steelink: "I'd like to give the guy a hearing, and I'd like to then move that this body appoint two members who are lawyers, on the faculty here, to at least look through the files and come back and report to the Senate, with a recommendation on action which should be taken by the Senate." Senator Steelink then moved (motion 87/88-43) that the Presiding Officer of the Faculty Senate appoint a minimum of two people who are lawyers to investigate and report back to the Senate; that motion was seconded.

Senator Mautner asked if the attorneys who will be appointed will be unconnected with either side. Senator Steelink: "Faculty Senators."

Senator Cusanovich: "The issue that's been raised here is a simple one. What was wrong with the first five CAFT hearings? Until I hear that something was wrong with them, I'm not interested. If they want us to do something, they ought to come back and tell us that the first five hearings were bogus or something." Senator Mautner: "What about Judge Druke's opinion?" Senator Cusanovich: "Judge Druke isn't in the academic community, and I have no idea what data he had available. A faculty committee, CAFT, acted five different times on this case." Senator Irving: "Where can one get information on this case? It's fifteen years old. Is there a summary?" Dr. Rehm: "I have a summary from 1969 on, eleven pages long." Senator Irving: "Is that obtainable? May I have a copy?" Dr. Rehm: "Yes, it is available. But CAFT records are not available." Senator Epstein: "Are there comments available, on the decision? Is there a rationale?" Dr. Rehm: "Comments are available in the chronology, but a rationale is not." Mr. Ives: "I can provide you all those conclusions, all the CAFT reports." Dr. Rehm: "But are they available for this body to look at?" Mr. Ives: "I see no reason why they shouldn't be." Dr. Rehm: "I also have available a 9-page summary of the action, as well." Mr. Ives: "We have Judge Druke's testimony, and a transcript from his appearance before the Board of Regents." Senator Hetrick: "Does that testimony speak to those hearings?" Mr. Ives: "Not directly. He mentions in the questioning that he, unfortunately, did not have until the day of the report to the Board many of the documents that underlie the decisions."

Dr. Rehm: "The motion before us is to have two members of the Senate who are lawyers to look into the matter and come back to the Senate and indicate as a result of a review of the material what action might be appropriate for the Senate to take, if any." The question was called, and a voice vote indicated unanimous approval.

NEW BUSINESS: Senator Atwater asked that there be a committee appointed that looks into facilities use, not for technology transfer, but to examine decisions imposed by the administration on departments, which infringe on access to faculty offices, access of students to their classes and classrooms, and events such as the planned, but now recently canceled, schedule for Jesse Jackson for six hours in McKale Center on Wednesday; the Spring Fling, which displaced 200 or more students; athletic events that have locked people out of their building; and concerts. Senator Atwater said there is a need for some committee to examine policy. Dr. Rehm said the Faculty Senate Executive Committee will take that under advisement.

The meeting adjourned at 5:12 p.m.

George W. Ridge, Jr., Secretary

MOTIONS PASSED AT MEETING OF APRIL 4, 1988:

- 87/88-35 Approval of Curriculum Bulletin, Vol. 12, No. 7, Section I.
- 87/88-36 Approval of Curriculum Bulletin, Vol. 12, No. 7, Section IV.
- 87/88-37 Approval of motion to create University Committee on Ethics and Commitment.
- 87/88-38 Approval of Conflict of Commitment Policy as amended.
- 87/88-39 Motion to approve Facilities Use Policy.
- 87/88-40 Approval of motion to table Facilities Use Policy.
- 87/88-41 Motion to approve Policy on Research Fraud.
- 87/88-42 Approval of motion to table Policy on Research Fraud.
- 87/88-43 Approval of motion to appoint special committee to investigate facts and make recommendation to Faculty Senate regarding Dr. Tien Wei Yang's request for a hearing.

MATTERS SCHEDULED FOR ACTION AT MAY MEETING:

Continued discussion on Facilities Use Policy and Research Fraud Policy.
 Preliminary report from the Subcommittee on Drug Testing.
 Report from the University Calendar Committee regarding Martin Luther King Day.
 Report from Subcommittee on Constituent
 Report from Senate Executive Committee on Request for Appointment of Special Committee.

DOCUMENT ATTACHED TO THESE MINUTES:

Summary of Research Fraud Policy and Procedures: Comparison of Research Policy Committee and President's/President's Council drafts.