

**MINUTES
FACULTY SENATE
THE UNIVERSITY OF ARIZONA®
April 7, 2003**

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1. CALL TO ORDER

The meeting was called to order by Vice Chair and Presiding Officer Wanda Howell at 3:06 p.m. in the College of Law, Room 140.

Present: Senators Borden, D. Davis, G. Davis, Erickson, Garcia, Green, Hancock, Heinrich, Howell, Jenkins, Jones, Kiefer, Larson, Likins, Morris, O'Brien, Oxnam, Powell, Schlager, Silverman, Spece, Swanson, Szilagyi, Tatman, Warburton, Warnock, Willerton, Witte, and Zwolinski. Robert Sankey served as Parliamentarian.

Absent: Senators Arabyan, Bales, Bixby, Burd, Caldwell, Chandler, Dahlgran, Esparza, Farney, Flores, Hartz, Impey, Joens, Lynch, Miesfeld, Mishra, Mitchell, Pintozzi, Rainer, Songer, Sweazea, Timmermann, Vierling, Weinand, E. Wright, Wright, and Wysocki.

2. OPEN SESSION

Dr. Cornelius Steelink – Dr. Steelink, University of Arizona Retirement Association's Official Observer to the Faculty Senate, distributed a report indicating that University employees will begin to pay 5.7%, up from 2.49%, into the Arizona State Retirement System beginning July 1, 2003. The increase is expected to remain in place for about five years, and could even go higher, in order to maintain a sound retirement system in the face of projected underfunding.

3. REPORTS

3A. ASUA President Doug Hartz

No report.

3B. GPSC President Peter Morris

GPSC President Peter Morris reported that he is confident in the senior administration's commitment to protect teaching assistants from tuition increases and that President Likins, Provost Davis, Vice President Powell, and Dean Pivo will try to protect research assistants as well. Morris pointed out that UA is the only institution in the state that is committing resources to deal with need-based issues created by the tuition increase for graduate students. This commitment will help UA remain a leader in competitive recruiting for graduate students. Graduate student childcare remains on the GPSC's agenda to improve graduate student quality of life. The UA remains the only Pac-10 school without an on-campus childcare facility, and at present, only \$50,000 childcare assistance funding for student parents is available. Morris thanked ASUA President Doug Hartz and his colleagues for ASUA's support of graduate students and for working to create an extremely collegial and effective working relationship this year. GPSC elections have begun and Morris expects this will increase representation. Morris presented President Likins with a boomerang, to remind him that every investment in graduate education at UA will come back.

3C. Vice Chair of the Faculty Wanda Howell

Vice Chair of the Faculty Wanda Howell announced that online voting in the Faculty General election ended on April 4, 2003 and that Diana Archangeli of Linguistics won the run-off for SPBAC and that Merrill Garrett of Psychology and Cognitive Science and Debra Tomanek of Molecular and Cellular Biology won the run-off for Senators-at-large. While 11% of faculty voted in the primary election, only 5.5% voted in the runoff election. In May, the Faculty Senate will elect new members to the University Committee on Ethics and Commitment, the Committee on Conciliation, the University Hearing Board, and the Senate representative to the Senate Executive Committee. Secretary Mitchell will preside at the May 5, 2003 meeting since Vice Chair Howell will be out of town.

3D. Secretary of the Faculty Robert Mitchell

No report.

3E. Chair of the Faculty Jory Hancock

Chair of the Faculty Jory Hancock thanked Senator Shirley O'Brien, who is retiring this year, for over twenty years of service on the Faculty Senate. He acknowledged Doug Hartz and Peter Morris for extraordinary student leadership this year. Plans for a "Faculty Club/Lounge" in the new Student Union Memorial Center are being discussed with VP for Campus Life Taylor and Dan Adams of the SUMC. The traditional model for such a facility may be unaffordable, so it may be that an area like the Redington Room would be

designated for a certain period of the workday, such as 3-7PM. SPBAC is completing the next iteration of the Strategic Plan in response to a list of specific issues from ABOR for its July meeting. None of the reorganization proposals involving transfer of faculty or program eliminations have come forward yet for Senate review, as some proposals were incomplete, some are pending the President's decision, and some are still in a very deliberate negotiation process. None of the proposals requiring review by the advisory committees and the Senate will be acted upon during the summer. In the state's budgeting process, the governor is expressing strong advocacy for higher education, which provides some hope against further devastating budget cuts to the universities. Speaking at the recent Governor's Arts Awards, Governor Napolitano publicly expressed, "We cannot and will not compromise our long term interests in order to address short term problems."

3F. Provost George Davis

Provost Davis acknowledged Doug Hartz and Peter Morris for extraordinary student leadership and vision for the University this year. Turning to budget concerns, Provost Davis expressed the difficulties in planning for the next academic year while facing an uncertain budget. He noted that the 22:1 enrollment-based state formula funding has been a constant for a number of years, and that the University needs to find a way to serve the students in a robust way to maintain the enrollments that generate the much-needed student FTE's. Current enrollment applications are up 8% for resident freshmen, 3% for non-resident freshmen, up 3% for resident transfers, and down 5% for non-resident transfers, and for freshmen applications by ethnicity, African-Americans remain constant with last year's statistics, Hispanics are up 4%, Native Americans are up 29%, and Asians are up 57%. Admissions are up 8% for resident freshmen, down 3% for non-resident freshmen, up 1% for resident transfers, and down 23% for non-resident transfers. These numbers may be reflective of the national economy, and the administration plans to involve the Cabinet along with Distinguished and Regents' professors in a telephone enrollment campaign to recruit top scholars and underrepresented minorities. The Office of Undergraduate Education and the Provost's Office have been working with deans and department heads to address the needs, in a more timely manner, for the foundation Tier I and II courses and GTA workload issues. Regarding Focused Excellence, the President and Provost have been reading absolutely every proposal and attached materials, emails, letters, and other feedback that has been communicated to them about the reorganization proposals. None of the proposals requiring review by the advisory committees and the Senate will be acted upon during the summer. Financial Bulletin #24, an update on programmatic elimination proposals that were identified in Bulletin #20, will probably be released this week. None of the reorganization proposals involving transfer of faculty are yet complete. When they are complete, Chair Hancock will have to first determine if both the program elimination's faculty and the receiving department's faculty are approving of the transfer. If all of the faculty approve the transfer, there will not be a need for an advisory review committee or the Senate's review.

3G. President Peter Likins

President Likins continues to keep the Senate advised in the areas of budget, tuition/financial aid, admissions, and Focused Excellence. ABOR voted last month to increase tuition according to the presidents' recommendations and will consider changes to admissions policies beginning in 2006 that will still admit the top 25% of residents (Regent's Graduates), will continue to prescribe minimum standards for all incoming freshmen and transfer students, and will give the universities greater discretion over the remaining admissions to manage enrollment and shape the student body. The governor's 2004 budget proposal shows stalwart support for higher education, the senate's proposal will probably be less supportive, and the house's proposal may be onerous. President Likins also observed that the war in Iraq is creating enormous stress in university life and that the administration will strive to manage healthy campus dissent.

4. QUESTION AND ANSWER PERIOD

Senator Silverman asked Provost Davis whether any reorganization decisions will be implemented during the summer months when the Faculty Senate is on hiatus. Provost Davis responded that the due deliberations thus far have pushed the process beyond the original timeframe, and so the reorganization process will resume in the fall.

Senator Schlager asked whether differential student fees to maintain certain professional programs are being considered for undergraduate students. Provost Davis responded that in the past three years, the three Arizona universities have taken deliberate actions to bring the concept and proposals for differential fees for professional programs to ABOR's attention. The traditionally conservative ABOR mindset may embrace this concept for undergraduates, if the fees can be justified by consideration of the national market, such as in business and law, the potential compensation for graduates, and a consideration of financial aid issues for a population of students who would be impacted by additional fees. ABOR will be considering extending differential fees for undergraduate professional programs at this month's meeting. If such a fee is approved by ABOR, it is understood at UA, that about 15% would be set aside by the college for financial aid for those students, and 10% would go to central administration, and the rest would go to the college to be used in accord with the proposal. When such proposals have previously gone to the Board, they have been with very strong support from the students.

Senator Witte asked faculty leadership to speculate on the reasons for low voter turnout in the recent online faculty elections. Chair Hancock responded that the reasons may be that this election fell during a time campus-wide concerns about budget cuts, or that faculty are simply used to having a mailed ballot in hand, which therefore reminds them to vote, and that student online voter turnout increased, perhaps due to students' increased comfort levels with online activities. Vice Chair Howell added that the large number of uncontested seats in this election may also have contributed to the low turnouts. Senator Witte offered two other hypotheses, that faculty are satisfied with shared governance and believe it is working well, or that faculty are so dissatisfied that voter apathy prevailed.

Senator Willerton indicated that technical issues may have frustrated some faculty because he had difficulty establishing a Net ID. Faculty leadership will pursue the question of voter turnout.

Senator Silverman inquired whether any consideration is being made to try to accommodate the student war protestors' desire to establish a 24-hour presence on the campus. President Likins responded that the Office of the Dean of Students and the administration are gently enforcing campus-wide rules to manage healthy dissent and to protect, advance, and encourage civil rights, free speech, freedom of expression, and academic freedom. A request to set up a tent city on the mall was denied because of a regulation prohibiting camping on the mall. A similar regulation exists against camping in the library, although students have been permitted to establish a 24-hour presence there, including sleeping bags. While this action is a violation of the Student Code of Conduct, it is not a violation of the law, and such constraints are necessary to preserve the University from becoming a haven for the homeless. The administration is hearing about confrontations on campus and even in classes where faculty members may be expressing personal opinions. Senator Witte asked whether the administration will be sensitive enough to the difference between civility and civil rights to protect faculty and students' rights to dissent. President Likins responded that others will have to judge the degree of sensitivity.

5. **APPROVAL OF THE MINUTES OF MARCH 3, 2003**

The minutes of March 3, 2003 were approved.

6. **DISCUSSION AND ACTION: GRIEVANCE POLICY AND PROCEDURE REVISIONS (attachment)**

Senator Kiefer said that APPC was charged with considering three changes requested by the University Attorney's Office (UAO), to the Faculty Grievance Policy and Procedures that were approved by the Faculty Senate on March 4, 2002, but have not yet gone to a vote of the entire faculty. APPC has forwarded three seconded motions to the Senate. The first change is to the "Grievance Principles contained in the Faculty Bylaws, Article VI, Section 2, t, which reads, "No faculty member should be disciplined unless there is clear and convincing evidence of all facts predicate to the discipline. Otherwise the standard of proof shall be by a preponderance of the evidence." The UAO requested that the passage be changed to read, "The applicable standard of proof shall be by a preponderance of the evidence." Because this issue involves a point of law, Senator Kiefer invited the two senators from the College of Law to attend the APPC meeting. Senator Spece attended the meeting and explained the three legal standards of evidence. "Preponderance of the evidence" is the lowest standard of proof, and that a person will be found at fault if the allegation is more likely than not, true, which equates numerically to over 50 %. The highest standard is "beyond a reasonable doubt," is applied in criminal cases, and equates numerically to over 98%. Between these two lies the standard, "clear and convincing evidence," which equates numerically to about 75%. This standard is applied in civil cases involving potential loss of important interests. Recently some state courts have begun applying this standard in cases involving misconduct charges against doctors and lawyers. Senator Kiefer noted that the Senate's recently approved "Policy and Procedures for Investigations of Misconduct in Scholarly, Creative and Research Activities" adopted the standard of "preponderance of the evidence," as used by the federal research regulating agencies. The APPC, however, unanimously agreed to apply the higher standard of proof for cases involving a faculty member's reputation, loss of pay, or career. As such, the APPC declined to move the UAO's request for amending the Bylaws, and instead moved [Motion 2002/02-29] to delete the second sentence of the Bylaws, Article VI, Section 2, t, as follows: "No faculty member should be disciplined unless there is clear and convincing evidence of all facts predicate to the discipline. ~~Otherwise the standard of proof shall be by a preponderance of the evidence.~~" Chair Kiefer commented that, although the ABOR Policy Manual subscribes to the lower standard of proof, "preponderance of the evidence," ABOR is not necessarily always wise or just, and that the real question is what's the right thing to do for the faculty? Senators' questions and comments included: 1) It could be a conflict of interest for the UAO to be advising faculty governance committees, because the attorneys have the administration's best interest at heart, not the faculty's. 2) If this motion passes, ABOR would retain the lower standard of proof for cases involving the greatest sanctions: dismissal or suspension without pay, while lesser sanction cases would require the higher standard of proof. Can the University have a higher standard of proof than ABOR? Lynn Wood of UAO responded that the University cannot adopt a higher standard of proof than ABOR's Conditions of Faculty Service" for cases involving the sanctions of dismissal or suspension without pay. 3) The Faculty Senate should ask our three representatives to the Arizona Faculties Council (AFC) to bring to the AFC and ultimately to ABOR, the issue that the standard of proof should for dismissal or suspension without pay be raised to clear and convincing. 4) If we pass this motion, it is possible that an administrator in a CAFT case involving a lesser sanction offense may try for the greater sanction against the faculty member, because the standard of proof is lower, and thus easier to prove. President Likins responded that it is utterly illogical to have dismissal or suspension without pay sanctions determined by preponderance of evidence, while lesser sanctions have a higher standard of proof and that even if the Senate passes this motion, the Bylaws are subject to the president's approval, and he will not approve such illogic in our laws. To petition the AFC and ABOR to change its standards is appropriate, but to change the standard at this intermediate level of policy places the president in the hostile position of having to overturn a Senate or a faculty recommendation. No one will understand that because most faculty will have no understanding of the complexities of this issue. 5) Despite the illogic and the legal morass, we can start making things right in small ways. ABOR's Policy Manual is typically only changed when it is challenged and receives an outside ruling from a court. This is the right thing to do for the faculty. Chair Hancock responded that he would rather go to ABOR with a rationale that allows "preponderance" to work in less serious cases so that we might seem to have reason on our side. 6) Preponderance of evidence has some advantages for the faculty, in that if a case is cleared, the preponderance of evidence says the faculty member is not guilty, whereas with clear and convincing, there might be a 60-70% chance that guilt exists, but wasn't able to be proven. 7) A faculty member could waive his/her right to clear and convincing, if s/he wanted that protection. Faculty deserve this standard of proof as a protection for dissenters and unpopular views. 8) What does "Otherwise the standard of proof shall be by a preponderance of the evidence" mean, exactly? Motion failed. Senator Likins moved [Motion 2002/03-30] to amend the Bylaws, Article VI, Section 2, t, to read, "The applicable standard of proof shall be a preponderance of the evidence." Motion was seconded. Senators' questions and comments included: 1) The ABOR policy may be unconstitutional because it represents a denial of equal protection for faculty who are

professionals like doctors and lawyers. This lower standard of proof is also a threat to academic freedom because a 51% false accusation of misconduct can damage a professor's reputation. 2) A vote in favor of this motion represents a vote to discomfort the faculty rather than to discomfort the president. 3) To defeat this motion would erase the issue and allow the committee to go back to the drawing board and make the whole system logical and consistent. Chair Hancock said a first step is to create a Senate resolution asking the Faculty officers to petition ABOR to change the standard of evidence. Senator Likins commented that he cannot imagine that the federal standard of preponderance of evidence required for investigations of research misconduct are unconstitutional. Senator Spece responded that actions of our federal administrative bodies are sometimes unconstitutional. 4) The clearest way to proceed is to defeat this motion as well, and petition ABOR to change. Motion failed. Senator Spece moved [Motion 2002/03-31] to table this issue and adopt a resolution urging the Board of Regents to adopt an across-the-board standard of clear and convincing proof for all professional disciplines. Motion was seconded and passed. Senator Kiefer presented another seconded motion [Motion 2002/03-32] from the APPC, to amend the Bylaws, Article VI, Section 5, b, v, by adding a sentence to the end of this passage to read: "Within 15 days of receipt of the respondent's position statement, the grievant and respondent will receive written notification from the Chair of the Grievance Clearinghouse Committee as to which committee will hear the case and a statement of procedures of that committee. THE CHAIR OF THE GRIEVANCE CLEARINGHOUSE COMMITTEE SHALL NOTIFY THE CHAIR OF CAFT (OR THE APPROPRIATE COMMITTEE) OF THE CASE ASSIGNMENT AT THE SAME TIME. APPC voted unanimously to accept this change. Motion passed. Senator Kiefer presented the last seconded motion [Motion 2002/03-33] from the APPC, to amend the Bylaws, Article VI, Section 5, b, vi, by adding a sentence to the beginning of this passage to read: "THE CHAIR OF CAFT WILL APPOINT A HEARING PANEL WITHIN TEN (10) CLASS DAYS OF A CASE ASSIGNMENT. The Chair of the CAFT panel will set a hearing date in conjunction with all parties involved in the case. The hearing should . . ." Senators' questions and comments included: 1) In CAFT, many cases arrive at the beginning of summer, and does this change take the university's schedule into account." Senator Kiefer said he did not have any direct knowledge about CAFT's scheduling difficulties. Motion passed.

7. SECOND READING AND POSSIBLE ACTION: "MODEL FOR IMPLEMENTATION OF NEW P&T/CS REVIEW PROCESS" (attachment)

Senator Kiefer directed senators' attention to a revised version on their desks of the "Final Draft 4/7/03 Model for Implementation of New P&T/CS Review Process." The APPC met twice to consider previous versions and to recommend changes in language to the Vice Provost for Academic Affairs. Senator Kiefer reported that agreement on that language was not reached until last Friday, so the APPC forwards this version of the document for Senate approval as a seconded motion [Motion 2002/03-34]. Senator Kiefer explained that changes requested by the APPC sought to clarify "dean's office" and to provide an alternative for overburdened college P&T committees, in a passage requiring departments to submit P&T/CS section of annual reviews of any probationary faculty whose progress toward P&T/CS is not satisfactory to the "dean's office" and to the college P&T/CS committee. The amended language reads "TO THE DEAN and to the college P&T/CS committee OR ITS EQUIVALENT." Motion passed unanimously.

8. FIRST READING AND POSSIBLE ACTION: "INTERIM POLICY ON THREATENING BEHAVIOR BY STUDENTS" (attachment)

Senator Jenkins reminded the Senate of the Undergraduate Council's Policy on Administrative Drop With Prejudice, and described a simultaneous effort to create an Interim policy on Threatening Behavior by Students, from the Campus Emergency Response Team (CERT) of the Vice President for Campus Life's office. Since the Senate passed the UGC policy on February 3, 2003, Senator Jenkins has been working with Vice President Taylor's committee to draft a single, combined policy. Vice President Taylor distributed a version of an Interim policy on Threatening Behavior by Students, marked 4-3-03. Senator Jenkins displayed an overhead with revisions agreed upon by the Senate leadership and the Threat Assessment Task Force, requiring the Dean of Students to confirm with the sender, the receipt of a student code of conduct complaint form within 24 hours, and to communicate the outcome of an investigation within ten (10) calendar days to the person who was the object of the threat. Senators' comments and questions included the following: 1) Section A. should add the word "physically" in the last sentence, to read, ". . .intent to PHYSICALLY harm." This is stated earlier in the passage and should be repeated here, to prevent the policy from being used for legitimate political dissent. 2) Are guns permitted on campus, in classrooms? Steve Adamczyk of UAO responded that the Student Code of Conduct prohibits guns and other weapons on campus and should be reported to the Dean of Students. There are exceptions for law enforcement officers and other persons who have received exemptions from the President or the Chief of Police. 3) Psychological harm should be added to the final sentence of section A. 4) While stalking and intimidation can be very disconcerting for faculty, they do not constitute physical harm. As time ran out Chair Howell asked for additional feedback to be directed to Vice President Taylor or Senator Jenkins.

11. ADJOURNMENT

The meeting was adjourned at 5:02 p.m.

Robert P. Mitchell, Secretary

Appendix*

1. Open Session: University of Arizona Retirement Association Report to Faculty Senate, April 7, 2003, "University Employees to Pay Higher Retirement Contribution Rates"
2. DRAFT (with revisions) October 10, 2002 Bylaws of the General Faculty of the University of Arizona.
3. "Final Draft 2/20/03 Model for Implementation of Streamlined P&T/CS Review Process"
4. "Final Draft 4/7/03 Model for Implementation of Streamlined P&T/CS Review Process"
5. Current Web-posted version of "Interim Policy on Threatening Behavior by Students"
6. "Interim Policy on Threatening Behavior by Students 4-3-03"
7. Overheads on Revisions to Interim Policy on Threatening Behavior still sought by Senate Leadership
8. Overheads on Grievance Policy and Procedures Revisions

*Copies of material listed in the Appendix are attached to the original minutes and are on file in the Faculty Center.

Motions of the Meeting of April 7, 2003

Motion 2002/03-29 Seconded Motion from the Academic Personnel Policy Committee to delete the second sentence of the Bylaws, Article VI, Section 2, t, as follows: "No faculty member should be disciplined unless there is clear and convincing evidence of all facts predicate to the discipline. ~~Otherwise the standard of proof shall be by a preponderance of the evidence.~~" Motion failed.

Motion 2002/03-30 Motion to amend the Bylaws, Article VI, Section 2, t, to read, ""The applicable standard of proof shall by a preponderance of the evidence." Motion failed.

Motion 2002/03-31 Motion to table the issue of standards of proof in Bylaws, Article VI, Section 2, t, and adopt a resolution urging the Board of Regents to adopt an across-the-board standard of clear and convincing proof for all professional disciplines. Motion passed.

Motion 2002/03-32 Seconded Motion from the Academic Personnel Policy Committee to amend the Bylaws, Article VI, Section 5, b, v, by adding a sentence to the end of this passage to read: "Within 15 days of receipt of the respondent's position statement, the grievant and respondent will receive written notification from the Chair of the Grievance Clearinghouse Committee as to which committee will hear the case and a statement of procedures of that committee. THE CHAIR OF THE GRIEVANCE CLEARINGHOUSE COMMITTEE SHALL NOTIFY THE CHAIR OF CAFT (OR THE APPROPRIATE COMMITTEE) OF THE CASE ASSIGNMENT AT THE SAME TIME. Senator Kiefer noted that the APPC voted unanimously to accept this change. Motion passed.

Motion 2002/03-33 Seconded motion from the Academic Personnel Policy Committee to amend the Bylaws, Article VI, Section 5, b, vi, by adding a sentence to the beginning of this passage to read: "THE CHAIR OF CAFT WILL APPOINT A HEARING PANEL WITHIN TEN (10) CLASS DAYS OF A CASE ASSIGNMENT". The Chair of the CAFT panel will set a hearing date in conjunction with all parties involved in the case. The hearing should" Motion passed.

Motion 2002/03-34 Seconded motion from the Academic Personnel Policy Committee to approve a revised version of the "Final Draft 4/7/03 Model for Implementation of New P&T/CS Review Process." Motion passed.

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