

**UNIVERSITY OF IOWA FACULTY SENATE 2000-2001
MINUTES**

Tuesday, January 30, 2001
Old Capital, Senate Chamber

Members Present: S. Aquilino, S. Armstrong, Z. Ballas, J. Berg, C. Berman, D. Bills, R. Bork, D. Brown, M. Browning, J. Carlson, S. Collins, C. Colvin, J. Cowdery, J. Cox, K. Ephgrave, B. Fallon, A. Gratama, R. Hurtig, J. Jew, T. Judge, B. Levy, D. Liddell, C. Lynch, K. Marra, A.M. McCarthy, J. Menninger, G. Milavetz, R. Miller, S.A. Moorhead, J. Moyers, W. Nixon, I. Nygaard, T.O'Dorisio, G. Parkin, M. Pincus, C. Porter, M. Raymond, C. Ringen, J. Ringen, P. Rubenstein, H. Seaba, R. Slayton, C. Sponsler, W. Stanford, L. Troyer, R. Valentine

Officers Present: Carolyn Colvin (President), A. Bhattacharjee (Vice President), J. Carlson (Past President), Teresa Mangum (Secretary)

Members Absent: K. Abdel-Malek, N. Bauman, J. Bertolatus, F. Boos, R. Cohen, G. El-Khoury, L. Geist, L. Hunsicker, M. Klepser, P. Kutzko, J.P. Long, (Emeritus), A. Morris, P. Muhly, B. Muller, J. Polumbaum, P. Pomrehn, J. Soloski, C. Stanford, A. Steinberg, B. Thompson, J. Tomkovicz, S. Vincent, E. Wasserman

Members Excused: D. DeJong, B. Doebbeling, C. Doebbeling, V. Grassian, R. Hohl, S. Larsen, D. Manderscheid, W. Stanford, B. Thompson, R. Zbiek

Guests: Lee Anna Clark (Office of the Provost), Joyce Crawford (Office of the Provost-Faculty Senate), Jon Whitmore (Office of the Provost)

I. President Colvin called the meeting to order at 3:35 p.m.

II. Approvals

A. Meeting Agenda

Prof. Lynch moved, and Prof. Nixon seconded the following.

Motion 1: That the Agenda be accepted as written. *The motion carried.*

B. Minutes

There being no corrections, the Minutes of December 5, 2001 were approved by consensus.

C. Committee Appointments

Pres. Colvin called for a motion to approve an external reviewer to join the committee currently reviewing the Provost. Prof. Carlson so moved, and Prof. Jew seconded.

Motion 2: That the Faculty Council approves Dr. Lee L. Huntsman, Provost and Vice President of Academic Affairs at the University of Washington-Seattle, as an external reviewer for the review of the Provost. *The motion carried.*

III. Announcements

Senate Election Committee—presented by David Bills, Chair

Prof. Bills presented the ballots for upcoming elections to the Senate, noting that he sought approval conditional upon a number of changes. These changes reflect updated information about faculty members who have moved into administrative positions or retired as well as names of people with split appointments, which were inadvertently duplicated. He also noted that the new ballot will reflect two name changes: the College of Liberal Arts and Sciences and the Tippie College of Business.

Prof. Liddell moved, and Prof. Berman seconded the following:

Motion 3: That the Faculty Senate approves the ballot for faculty elections with corrections. *The motion carried.*

IV. New Business

A. Report by the Governmental Relations Committee—presented by Jim Torner, Chair

Prof. Torner reminded the Senate of the goals his committee has set for the year: to be vigilant in keeping abreast of legislative discussions and actions, to educate legislators and Iowans about the University's contributions, to expand outreach, and to improve communication and liaison with the legislature. He noted that at the state level, the Legislature is currently debating the budget. Though not all of the University's funding requests have been endorsed, Governor Vilsack has asked the Legislature for full funding of salaries. For more information about the work of the committee and the efforts of others on campus to promote the welfare of the University, Prof. Torner invites Senators to consult the following websites: Governmental Relations Committee www.uiowa.edu/~facsen/fsqrc1.html#top UI Office of Governmental Relations www.uiowa.edu/~vpr/wash/index.html He also notes the following useful addresses:

Iowa Legislature www.legis.state.ia.us/

Iowa Governor www.state.ia.us/governor

Prof. Torner invited all Senators to attend the upcoming Governmental Relations School, led by Mark Braun, on Friday, February 2.

The Governmental Relations committee members and representatives of the Office of Governmental Relations have been speaking to groups at the Medical School and in local communities. Jane Hoshi, the Assistant Director of Special Projects and Outreach, has designed an Outreach web site www.uiowa.edu/outreach/ and she is also developing the Speakers' Bureau. Prof. Torner encouraged those who are interested in meeting with organizations to share information about the University to contact Ms. Hoshi by phone (384-0017), by e-mail (jane-hoshi@uiowa.edu), or via the Speakers' Bureau web site www.uiowa.edu/speakersbureau. The Governmental Relations Committee is planning a day-long visit with Lt. Governor Sally Petersen in the spring and a meeting with legislators early in the fall.

Prof. Hertig asked that the Committee and other branches of the University involved in publicity provide more coverage of the contributions made by Liberal Arts and Sciences faculty members. Much of the information shared with groups outside the University focuses on health care. Prof. Porter expressed interest in the Governmental Relations School program and hoped that in the future these programs might be offered at different times of the week and day. Prof. Colvin thanked Prof. Torner and his committee and encouraged Senators and other faculty members to make themselves available to meet with legislators and interested groups around the state.

B. Report by the "Unfitness" Ad Hoc Committee—presented by Jeff Cox, Chair

Pres. Colvin introduced the policy by referring everyone to the draft statement, noting the renaming of the policy. It is now called the "Unacceptable Performance of Duty" policy. The acronym UPOD will be used hereafter.

Pres. Colvin opened discussion of the policy by reminding the Council that the committee, including Jeff Cox, Margaret Raymond, Ekhart Ziegler, Betsy Altmaier, John Paul Long (Emeritus representative), Jon Carlson (1999-2000), and Carolyn Colvin, has been at work on this policy for two academic years. She also noted that at a recent meeting of CIC governance leaders, many participants indicated that their universities were also attempting to create policies to address the problem of faculty members who were not meeting minimal requirements for their jobs. In addition, Pres. Colvin pointed out that in response to public criticism of tenure and increased calls for accountability, many schools have attempted to clarify the requirements for tenure and for post-tenure. Consequently, this issue has drawn attention as colleges and universities have begun conducting regular, rigorous reviews of tenured faculty. While incidents of alleged unfitness are rare, Pres. Colvin acknowledged, faculty members need to address problems

when they arise in a responsible fashion, rather than leaving this difficult matter to administrators.

Pres. Colvin then turned the meeting over to the committee chair, Prof. Cox. She explained that the committee wished to inform Senators of the progress of their discussions and to solicit Senators' suggestions before undertaking further revisions of the policy.

Ultimately, Pres. Colvin recommends that the policy should be presented to the university community in the context of campus-wide discussions about both the role of tenure and the rights and responsibilities attached to tenure in the twenty-first century. Two meetings have been scheduled:

- ◆ Monday, February 19, 10-11:30 a.m. in Seebohm Conference Room, Eckstein Medical Building
- ◆ Monday, February 26, 2-3 p.m. in Pappajohn Business Building, W401

Prof. Cox began by explaining that the document in Senators' hands is the second major draft of the policy. After the Council asked the committee to reconvene this past fall, they consulted with the AAUP and with the General Counsel, Mark Schantz, before producing this second version of the policy. The Committee was first appointed at the suggestion of Mark Schantz, who was concerned about the fuzziness of the language in the Unfitness Policy as described in the Operations Manual (the policy under which we are still currently laboring). The appointed Unfitness Committee first reviewed the entire Operations Manual. They were surprised to find, in different parts of the manual, numerous instances in which tenured faculty could be fired. These included the present Unfitness Policy. On the other hand, the Committee was also pleased to find a clear statement on tenure and freedom of speech (III.10.1.[a] 2, Operations Manual)—drafted by former Pres. Sandy Boyd.

Turning to the UPOD draft document, Prof. Cox said the committee recommends that if this policy is accepted by Central Administration, the Senate, and the Regents, it should be placed at the end of the section on tenure in the Operations Manual. The document proposes a new section 10(1)C Termination of Tenured Faculty. Part I of the document states the General Rule for invoking the UPOD policy. Part II brings together from different parts of the Operations Manual all of the conditions for termination. Next, the draft proposes a replacement for the current Unfitness Policy. The new policy would appear as III. Human Resources. Section 29.8 Unacceptable Performance of Duty. This UPOD policy outlines the procedures for the initiation of termination procedures and the mandatory grievance process that would follow.

The new policy clarifies the procedure and who will initiate it, introduces standards a dean must show to explain the action, and strengthens due process. It mandates automatic grievance with the burden of proof on the administration (the Provost), introduces exclusive references to academic freedom (the administration must show that no rights were violated by the proceeding), and grants the accused faculty member the right to appeal directly to the Regents. The document also changes the name from Unfitness Policy to Unacceptable Performance of Duty. Prof. Cox noted that many of the concerns expressed by AAUP have already been incorporated into the draft. One key difference remains, however. The AAUP proposes the creation of a single document to cover every form of dereliction of duty that might result in the nonconsensual rearrangements of faculty work. The UPOD committee strongly recommends maintaining a clear separation of the regular review process and negotiations it may entail, on one hand, and termination procedures in response to long-term, significant neglect of duty, on the other.

Prof. Cox then invited questions. Prof. Cowdery asked whether accused faculty members would have to pay for their own legal counsel. Yes, they would. Prof. Collins asked why the committee decided to revise the document rather than leaving it as it reads currently. Conceding that leaving well enough alone is sometimes the best policy, Prof. Cox said that the committee was convinced by events at other campuses, such as the University of Minnesota, that if faculty members themselves did not take responsibility for clarifying the process that others might fill that void. Prof. Carlson said that he had raised this question with Mark Schantz and was persuaded that currently the office of the General Counsel cannot respond in an effective way when a DEO believes action should be taken.

Prof. Carlson then read a statement from Senator Paul Muhly, who was unable to attend the meeting. Prof. Muhly urges the committee to create a separate procedure specifying mechanisms for dealing with faculty who are under performing but not “unfit” before instituting the UPOD policy. He also urges that faculty members be involved at every level of the process, from the decision to charge someone with unacceptable performance, throughout the review, and culminating in oversight of the grievance procedures. Regular reviews would not raise the issue of termination, but should outline a number of possible remedies—from reallocation of workload to medical or psychological support. These remedies could be implemented by the dean or DEO. Prof. Muhly further urged that reasonable efforts be exercised through peer review, merit pay decisions, PTEAP, and reassignment to solve such problems. Moreover, Prof. Muhly argued, when matters reached a point at which the UPOD policy needed to be invoked, the decision and the process, as noted above, should involve consultation with faculty members at every point. In this way, the gravity of academic unfitness would be retained, but no administrator would be tempted to use the policy or the threat of the policy inappropriately. In other words, Prof. Muhly

recommends two policies: one for unacceptable behavior and a another for unfitness.

Prof. Wachtel, speaking for the AAUP, advocated a single policy. If a faculty member's work has not been acceptable, the dean and DEO should be willing and able to shift that individual's duties. However, the point may come when the faculty member refuses to cooperate with, for example, the demand that he or she teach an additional class or undertake more administrative work. Therefore, we need a way to assign nonconsensual duties. To do that, we need to decide how much authority deans and DEOs have. In the view of the AAUP, if we have two policies, as Prof. Muhly suggests, only a dean will have the power to decide which policy—inadequate performance leading to reallocation of duties *or* unfitness leading to termination—to invoke. In the latter instance, the judicial committee only will have only one option—to agree or disagree to terminate. Little incentive remains to seek a remedy to the problems.

Prof. Berman expressed concern that the only alternative to termination would be reallocation of effort, which would probably translate into additional teaching. She would not want to see a poorly performing faculty member given more classes to teach. Prof. Porter pointed to a different problem. When a poorly performing faculty member is given new duties, the rest of the faculty members are forced to take up the slack, jeopardizing their own ability to perform.

Prof. Cox then pointed out that the University conducts far more reviews of performance than most other institutions. Tenured faculty members are scrutinized during post-tenure reviews, PTEAP, and annual salary reviews. Therefore, most problems are handled in the ordinary course of post-tenure reviews. Prof. Hertig observed that one of most significant threats to tenure is an individual who holds tenure but does not accept the responsibilities of tenure. This weighs heavily on colleagues and also taints tenure from the point of view of people outside the University. We can defend tenure if we can honestly say that we are policing our own—faculty seriously reviewing faculty.

Prof. Menninger expressed concern that the document provided no protection against malicious colleagues, who wished to remove a faculty member not for dereliction of duty but for trivial reasons. He worried that such a faculty group might exploit the policy by misrepresenting the case to the dean as non-performance. Prof. Cox asked if the document should include external review as part of the procedure, but added that the committee assumed the good faith and good judgment of deans, the provost, the judicial review committee, the president, and the regents.

Prof. Nixon asked what conditions the new policy addresses that aren't already covered by other policies. Prof. Cox cited, as an example, a person who is not doing research, not showing up to class, and not doing service either because of

neglect or inability to do the job. Prof. Carlson then reminded Senators that we already have an Unfitness Policy in the Operations Manual. The question is whether its definition of unfitness, that is of not meeting the standard of performance for one's faculty position, is sufficient.

Prof. Collins objected to Section 10(1)C2B, which permits termination for disability “of sufficient duration and seriousness that the faculty member can no longer perform the essential functions of the job, even with the provision of reasonable accommodations required by the Americans with Disabilities Act.” He asked the committee and Faculty Council to examine this policy. He also asked that should the committee and Council decide to support the UPOD policy that both groups articulate their reason for doing so to the Senate.

Pres. Colvin encouraged anyone with further suggestions to e-mail Prof. Cox.

V. Adjournment

Pres. Colvin called for a motion to adjourn.

Prof. Nixon moved to adjourn, and Prof. Parkin seconded. All concurred.

The meeting adjourned at 4:45 p.m.

Next meeting: The next meeting of the Faculty Senate will be held on Tuesday, March 6, 2001 at 3:30 p.m. in the Old Capital Senate Chamber.

Respectfully submitted,

Teresa Mangum
Secretary