

The University of Iowa
FACULTY SENATE
 Tuesday, April 24, 2001
 3:30 p.m.
 Old Capital, Senate Chamber

Members Present: K. Abdel-Malek, S. Aquilino, S. Armstrong, Z. Ballas, J. Berg, C. Berman, A. Bhattacharjee, D. Bills, J. Carlson, R. Cohen, S. Collins, C. Colvin, J. Cowdery, J. Cox, K. Ephgrave, B. Fallon, V. Grassian, A. Gratama, R. Hohl, R. Hurtig, J. Jew, B. Levy, D. Liddell, J.P. Long (Emeritus Council), C. Lynch, D. Manderscheid, T. Mangum, K. Marra, A.M. McCarthy, J. Menninger, G. Milavetz, S.A. Moorhead, J. Moyers, P. Muhly, B. Muller, W. Nixon, G. Parkin, M. Pincus, J. Polumbaum, M. Raymond, C. Ringen, J. Ringen, P. Rubenstein, H. Seaba, C. Sponsler, C. Stanford, B. Thompson, L. Troyer, R. Zbiek

Members Absent: E. Anderson, N. Bauman, J. Bertolatus, F. Boos, M. Browning, B. Doebbeling, G. El-Khoury, L. Geist, L. Hunsicker, T. Judge, M. Klepser, P. Kutzko, R. Miller, A. Morris, I. Nygaard, T. O'Dorisio, P. Pomrehn, C. Porter, R. Slayton, A. Steinberg, J. Soloski, J. Tomkovicz, R. Valentine, S. Vincent, E. Wasserman

Members Excused: R. Bork, D. Brown, D. DeJong, S. Larsen, W. Stanford

Guests: J. Aikin, Jim Andrews (AAUP), T. Boles, P. Chang, Lee Anna Clark (Office of the Provost), H. Cowen, K. Diffley, Charles Drum (University Relations), C. Dungy, L. Dusdieker, Julie Englander (WSUI), Mike McWilliams (*Daily Iowan*), G. Hamot, R. Hegeman, P. Heidger, E. Irish, S. Kurtz, R. LeBlond, Alan Nagel (Cinema and Comparative Literature), T. Schmidt, L. Snetselaar, K. Tachau, Julie Thatcher (Faculty Senate and Office of the Provost), J. Westefeld, Jon Whitmore (Provost), Heather Woodward (*Press Citizen*)

I. Call to Order

President Colvin called the meeting to order at 3:45 p.m.

II. Approval of Agenda and Minutes

A. Senate Minutes, March 6, 2001

Prof. Aquilino moved and Prof. Lynch seconded the following:

MOTION 1: That the Senate minutes for March 6, 2001 be approved. *The motion carried.*

B. Council Minutes for February 27, 2001 and March 6, 2001

The Council minutes for February 27 and March 6 were approved by consensus.

C. Agenda, April 24, 2001

The Agenda was approved by consensus.

III. Old Business

A. Unacceptable Performance of Duty Warranting Termination

The Cox Committee presented Draft #8 of the "Unfitness Policy," now renamed the "Unacceptable Performance of Duty Warranting Termination" policy. The Faculty Council forwarded the policy to the Senate in the form of a motion for approval.

MOTION 2: The Faculty Council moves that the Senate adopt the "Unacceptable Performance of Duty Warranting Termination" policy.

Prof. Cox presented the latest revision of the policy with a quick review of its history. In the fall of 1999, Central Administration asked the Senate to appoint a committee to review the unfitness section of the *Operations Manual* because the policy was unclear. The appointed committee, chaired by Prof. Cox, agreed that the policy could be improved. That committee and a second committee, appointed in the fall of 2000, has made several basic changes. The revised policy would clarify lines of accountability by stating who is responsible for bringing charges of unfitness (the appropriate dean). It would create conditions under which a dean must operate. The dean would be required to keep a record of attempts at remediation and to specify a method of consultation with peers and DEOs. The dean would defer to judgments of departments and DEOs unless the dean believes these judgments to be clearly erroneous. In that case the dean may turn to the provost to protest the department's decision. This version also creates a new level of review of the dean's report and the action of the dean by the provost. In addition, the provost would be asked to state reasons for agreeing or disagreeing with the dean. Moreover, the new policy introduces an obligation on the part of the administration to show that the accused faculty member's academic freedom was not violated. Finally, the new policy allows the accused faculty member to appeal to the Board of Regents.

Prof. Cox then addressed concerns expressed about this policy. He noted that some faculty members thought the review of the policy was mandated by the administration. To the contrary, he said, although the administration initially suggested that the existing Unfitness Policy would benefit from a review by a Senate committee, the committee members themselves decided to undertake rewriting the policy. In other words, the decision to move from a cursory review to a substantial revision was the decision of the Senate committee, not the

administration. Other faculty members feared that improving the policy might make it too easy to deploy, even in cases of weak performance versus unfitness. Acknowledging the reasonableness of this concern, Prof. Cox said that the committee decided it would be better to have a policy with clear safeguards built into it than to trust to the ineffectuality of a bad policy. Still other faculty members were concerned that by using the phrase "unit standards" as the baseline against which to judge unfitness, the policy might encourage administrators to begin imposing standards upon units. The committee members are confident that units would not accept imposed norms even if they were presented.

President Colvin then presented the revised Unacceptable Performance of Duty Warranting Termination Policy to the Senate, asking whether Senators were ready for a motion to accept the changes proposed by on the Unfitness Committee.

Prof. Collins responded by offering a suggestion for revising the language in paragraphs III.29.8 A.1., X (New).1., B.2.a., and C.1. The italicized words would be omitted and the words in bold face would be inserted.

III. 29.8.A.1 Scope. This section establishes procedures to be followed by the University in initiating and conducting proceedings against a faculty member whose performance of duty is alleged to fall *substantially below standards for acceptable faculty performance have been*, for a significant period of time, **below the standard of performance required of an individual in the position occupied by the faculty member** to such an extent that the person is unfit to serve on the faculty.

III.29.8.X.1 (New section that would follow III.29.8.A.5.) When a faculty member's performance **of duty** is judged to have been *substantially below the relevant unit's or units' standards and criteria for acceptable faculty performance*, for a significant period of time, **below the standard of performance required of an individual in the position occupied by the faculty member** to such an extent that the person is unfit to serve on the faculty, for reasons that may include but are not limited to substantial and manifest neglect of faculty duties or inability to perform those duties.

III.29.8.B.2.a. The evaluation shall consider whether or not the faculty member's performance **of duty** has been *substantially below the relevant unit's standards and criteria for acceptable faculty performance*, for a significant period of time, **below the standard of performance required of an individual in the position occupied by the faculty member** to such an extent that the person is unfit to serve on the faculty.

III.29.8.C.1 Determine whether there is a reasonable basis for the complaint that the faculty member's performance **of duty** has been *substantially below the relevant unit's or units' standards and criteria for acceptable faculty*

~~performance~~, for a significant period of time, **below the standard of performance required of an individual in the position occupied by the faculty member** to such an extent that the person is unfit to serve on the faculty.

Prof. Nixon asked who would make the determination to charge an individual with unfitness. The departmental group, answered Prof. Collins. He added that the discussion would focus on the individual case rather than upon the construction of norms. Prof. Lynch asked whether the word “substantial” should be retained since that word was supposed to send notice that a person’s work had to be well below standard? Prof. Collins replied that he preferred to drop "substantial" in order to shift the focus from general standards and instead to insist that the standard had to be defined for each individual.

Prof. Cox noted that the committee had wrestled throughout the process with the word "unfit" itself, but decided it usefully distinguished between *poor* and *absolutely unacceptable* behavior. In fact, "unfit" should never be applied to a person who stood at the bottom of a group being evaluated but still meeting obligations. In other words, *unfit* and *worst* are not synonymous. Therefore, Prof. Cox would support Prof. Collins' amendment as a reminder that individual cases are at issue, not departmental comparisons.

Prof. Collins moved and Prof. Berman seconded the following:

MOTION 3: Section III.29.8.A.1, X.1, B.2.a, and C.1 of the Unacceptable Performance of Duty Warranting Termination Policy will be amended as recommended in the text box above. *The motion carried.*

Prof. Collins then proposed an additional amendment. He noted that many faculty members have expressed concern about the motives for the policy change and the possibility that the improved policy will be used with greater frequency. Prof. Collins also expressed his own concern that so much attention to the policy will be interpreted by members of the public outside the university as a sign of our inability to "keep house." To address both of these concerns, he believes we should insert the phrase "warranting termination" throughout the document following the phrase "unacceptable performance of duty." In other words, the defining phrase would consistently read: "unacceptable performance of duty warranting termination."

Therefore, Prof. Collins moved and Prof. Aquilino seconded the following:

MOTION 4: The phrase "warranting termination" will be inserted throughout the Unacceptable Performance of Duty Warranting Termination Policy after every use of the phrase "unacceptable performance of duty." (This phrase occurs in A.4., A.5., B.2.d., B.3., C., C.4.b., and J.) *The motion carried.*

Prof. Chowdery asked whether this change was really necessary given that the whole point of the document is to provide faculty members with the opportunity for due process. In response to Prof. Collins' observation that the two phrases already are used in conjunction in at least six places in the document, Prof. Marra asked that the document be worded consistently throughout one way or the other. Prof. C. Ringen asked Prof. Collins why he wanted to add the phrase. He fears discussions will begin with the question "what is acceptable?" These discussions should begin with the question "is this faculty member unfit and should he or she be terminated?" Prof. Chowdery observed that inserting the phrase seems somewhat pejorative because it presumes a weaker position for the faculty member being charged. In fact, the burden of proof is upon the review process outlined in this document. Prof. Menninger responded that the point here is to make filing a complaint so onerous that any dean would think hard before doing so. Prof. Moyer advocated the change, emphasizing the policy should be used only in extreme cases.

Prof. Chowdery recommended changing the formatting of section III.29.8.C.2, paragraphs 1 and paragraph 3.

Prof. Collins then noted several technical problems. First, he argued, paragraph 29.8.A.2 is in direct violation with the *Operations Manual*, which disallows forced transfers. Second, another paragraph makes clear that some of the items listed in paragraph A.2 are sanctions. He suggests striking the words "appointment to another principal unit." Prof. Cox agreed with this interpretation, noting these options are later listed specifically as sanctions. Here, the transfer could actually be a consensual shift in duty. Prof. Jew said it was her understanding that a person's appointment *can* be transferred to another department, for example, if that transfer were the recommendation of a grievance panel. Prof. Collins insisted that the *Operations Manual* is quite clear that involuntary transfers *cannot* be made.

Prof. Carlson moved and Prof. Lynch seconded the following:

MOTION 5: The phrase "appointment to another principal unit" will be removed. *The motion carried.*

Prof. Collins then said that paragraph III.29.8.2.e should be revised to clarify that deans must honor findings of the DEO and departmental consulting group when deans evaluate a faculty member for unfitness. (The DEO and DCG draw a conclusion and put it in writing, then pass their findings to the Dean.) The current wording, however, allows a dean to deviate from the departmental judgment.

Prof. Collins also noted ambiguity in III.29.8.B.1.a, which calls for the participation of the "entire DCG." The problem, he said, is that the way the

membership of any given DCG is defined changes, depending on the faculty member under review and the purpose of a review. Prof. Cox had suggested the DCG should be composed of peers (which would be unlike the tenure and promotion DCG). Prof. Collins' asked that the word "entire" be deleted from the description of the DCG. Then a phrase could be added: "consisting of all faculty with primary appointments in the faculty member's group of equal or higher rank." Prof. Cox feared that in small departments this change might immobilize the policy. Prof. Moyers suggested that the executive of a college would choose four people to serve as the DCG, and Prof. Cox agreed that this was the committee's intention.

How about adding a phrase "or an ad hoc committee elected?" asked Prof. Lynch. Prof. Hurtig said if the goal is to protect faculty members, then the whole department or the group that usually evaluates a faculty member at this level would be best. Should assistant professors vote on accused senior faculty members, several senators inquired? If there were a large academic unit, asked Prof. Moyers, would the whole group or a sub-committee participate? University policy would suggest the whole group should vote, though a sub-committee might do most of the labor, answered Prof. Collins. Prof. Marra worried that if a junior person supported an unfitness charge against a senior faculty member and then the senior faculty member won an appeal, this could create serious problems. Prof. Hurtig suggested only those of higher rank should vote, as with promotions, but Associate Provost Clark pointed out that in some departments this stipulation would mean only two or three people could make final decisions. That is the reason, she added, to use the language "tenure and promotion" and to follow that example, since the tenure and promotion policy requires a minimum of four faculty members on any acting tenure and promotion committee. Senators then debated whether these four faculty members would be chosen by the dean. Prof. Cox proposed that the document be revised to read "after the departmental consulting group with no fewer than four members and consisting of all faculty with primary appointments in the faculty member's unit of equal and higher rank and in no case fewer than four." Prof. Liddell asked whether the committee was concerned about confidentiality, in cases where the DCG consisted of all members of a department? Prof. Collins then suggested that the DCG include faculty members of equal or greater rank with a primary appointment in the accused person's department.

Prof. Collins moved and Prof. Muhly seconded this revision:

MOTION 6: In paragraph III.29.8.B.1.a. and B.2.e. the language will be revised, first, to clarify how the Departmental Consulting Group will be selected and, second, to stipulate that deans must honor findings of the DEO and departmental consulting group. In B.1.a, in the phrase "entire DCG," the word "entire" will be deleted. The phrase "after the departmental consulting group with no fewer than four members and consisting of all

faculty with primary appointments in the faculty member's unit of equal and higher rank and in no case fewer than four" will be inserted. The Unfitness Committee will revise B.2.e at their discretion.

Prof. Raymond further suggested, as a friendly amendment, inserting the phrase "**consisting where possible of all. . .**" after "**departmental consulting group.**" *The motion carried.*

President Colvin then asked Senators to return to the main motion before the group--whether to accept the revised policy? She recognized Prof. Kurtz. He objected to one phrase in 10.2, expressing concern that the reference to post-tenure allocation of effort was inconsistent with PTEAP itself as a policy. He recommended striking the entire section III.29.8.X.2 (the new section following 29.8.A.5) in which the policy is mentioned.

Prof. Carlson moved and Prof. Bills seconded the following:

MOTION 7: The words "post-tenure effort allocation" will be replaced with "reallocation of effort" in section III.29.8.X.2 (the new section following 29.8.A.5). *The motion failed.*

Prof. Cox explained that the committee did not want to use a reference to reallocation of effort because no procedures exist for nonconsensual reallocation of effort. Also, he noted that administrators seem to understand PTEAP in different and inconsistent ways.

Prof. Muhly moved and Prof. Jew seconded the following:

MOTION 8: The phrase "post tenure allocation of effort" will be stricken from section III.29.8.X.2 (the new section following 29.8.A.5). *The motion carried.*

President Colvin then offered, as a motion on behalf of the Unfitness Committee, the following:

MOTION 9: The Faculty Senate approves the amended draft number 8 of the Unacceptable Performance of Duty Warranting Termination Policy. The approved policy will be forwarded to the Provost. *The motion carried.*

On behalf of the Unfitness Committee, Prof. Cox will incorporate the agreed upon revisions and send the revised policy to the Provost's Office.

IV. New Business

A. Review and Promotion Procedures

On behalf of the Faculty Council, President Colvin presented the following motion:

MOTION 10: The Faculty Council moves that the Senate adopt the revised "Review and Promotion Procedures," Section 10.5 of the *Operations Manual*.

Prof. Collins proposed an amendment to bring the timing for tenure and promotion described in paragraph 3 in line with paragraph 1, seconded by Prof. Ringen, as follows:

MOTION 11: The wording shall be revised in paragraph 3 to read: "Appointments at the rank of assistant professor shall ordinarily not exceed a total of seven years of service and thus shall be reviewed for tenure no later than during the sixth year of service." *The motion carried.*

Prof. Carlson then called for a vote on the main motion, Motion 10.

MOTION 10: (see above) *The motion carried.*

B. Report of the Interdisciplinary Committee on Faculty Issues

President Colvin next presented a motion from the Faculty Council, following the Council's discussion of a report from the Interdisciplinary Committee on Faculty Issues, chaired by Prof. Nagel.

MOTION 12: The Faculty Council moves that the Senate endorse Appendix A and B and forward to the Provost the Committee Report from the Interdisciplinary Committee on Faculty Issues. (No vote was taken.)

This Interdisciplinary Committee, chaired by Prof. Nagel, was created by the Provost. The committee chair requested that the Council indicate endorsement or unwillingness to endorse the report. The Committee did not ask the Senate to take any specific action on the report. The Council now requests the same of the Senate.

Pointing to Appendix A, which deals with appointments, Prof. Jew expressed concern with point 3. It states that a unit can make non-tenure track appointments. Does this open the door for a non-tenure track program, she queried? President Colvin asked Prof. Nagel and Associate Provost Clark for clarification. Clark said that a unit must have an executive body of tenure-track or tenured faculty to approve appointments. Therefore, a unit would have control over this decision. Prof. Collins then questioned whether this policy would allow faculty members of a research center to appoint a person in a research track

position, which could allow appointments of non-tenure track faculty and/or unspecified kinds of faculty members?

Noting that the motion asks the Senate to endorse the report and forward Appendixes A and B, Prof. Muhly asked whether we could vote separately on each issue?

Prof. Muhly therefore moved and Prof. Manderscheid seconded the following:

MOTION 13: The two recommendations of the Faculty Council regarding the report of the Interdisciplinary Committee on Faculty Issues, first that we approve Appendixes A and B of the report and then that the Senate endorse the report, will be split into two proposals and voted upon separately. (No vote was taken.)

Prof. Lynch returned to Prof. Jew's question. Would the executive committees of units be able to hire non-tenure track faculty members? Prof. Collins pointed to paragraph 3 of Appendix A. The wording permits a unit that has an executive committee to make appointments of non-tenure track faculty members, and those appointments are renewable and budgeted.

At this point, Prof. Chowderly asked for a count to determine whether a quorum was present for a vote. The count revealed inadequate numbers and the discussion was tabled until next fall.

C. Committee Selection and Approval

President Colvin noted that she had also intended to ask the Senate to vote on a motion approving Committee appointments for next year, as recommended by the Committee on Committees. This motion was also tabled.

V. Reports and Announcements

A. Legislative News

President Colvin stated that the Work-Study bill was on the Iowa State Senate floor for discussion today. There is no indication that any amendment is being made to add money to replace the funds that have been cut. No final agreement has been made regarding salary funds. The proposal to build a new art building is still a part of the infrastructure bill, but that bill has not yet been discussed. At the earliest, the budget will be voted on May 2.

B. Membership of the 2001-2002 Faculty Senate and Faculty Council

Along with a sheet listing the names of Senators whose term is at an end this year with grateful thanks, President Colvin also distributed a list of the names of newly elected Senators for 2001-2002. Elections for the Faculty Council have also concluded, President Colvin noted, and the new members have been elected to the Council: Lisa Troyer and Kim Marra, from the College of Liberal Arts and Sciences, Joyce Berg (College of Business), Richard LeBlond and Rebecca Hegeman (College of Medicine), John Westefeld (College of Education), and Hazel Seaba (College of Pharmacy).

C. Motion Summary 1999-2000 Senate Session--presented by Vice President Bhattacharjee

Vice President Bhattacharjee distributed a list of motions passed in the past Senate session.

D. Brody and Regents Award Winners--presented by President Colvin

President Colvin announced the winners of the Regents Awards for Faculty Excellence. She joined her fellow Senators in congratulating Kay Gfeller, Robert Wallis, Gary Hunneyhake, Jean Love, and Jeffrey Pessian.

President Colvin then announced the winners of the Brody Award for outstanding faculty service to the University. The Senators heartily applauded Sheldon Kurtz, Jean Jew, and Robert Yager.

President Colvin concluded by thanking outgoing Senators for their many contributions.

VI. Adjournment

The final meeting of 2000-2001 adjourned at 4:45 p.m.

Respectfully submitted,
Teresa Mangum,
Secretary