

FACULTY SENATE EXECUTIVE COMMITTEE

Minutes of October 28, 1998 (approved)

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The Faculty Senate Executive Committee met at 2:00 PM on October 28, 1998 in Capen 567 to consider the following agenda:

1. Report of the Chair

2. Report of the President/Provost

3. Code of Academic Ethics - Relations with Students

4. Report of the President

5. Old/new business

Item 1: Report of the Chair

The Chair, much improved but not totally recovered from his laryngitis, thanked Professors Welch and Kramer for helping with the meeting of October 21. He then reported that:

- he attended the Provost and Deans first meeting of this academic year and learned:
 - the Chair's proposal, Faculty Fellows in Administration, which called for members of the faculty to be assigned to a senior administrator and given a project related to the administrator's area of expertise and needs is in the implementation stage. The Provost has asked the Deans for project proposals
 - a new formula for calculating space inventory to determine the indirect cost recovery rate is being established; the new approach asks for the identification of the actual space being used by employees working on a sponsored project and includes audit provisions

- Dean Mitchell described a conference on urban girls that will occur April 14-16, 2000. The conference is being co-sponsored by the Institute on Women and Gender and by the Graduate School of Education
- SMART-NY is an initiative between SUNY and Cornell to obtain additional state money for research; UB needs to add projects to the initiative
- He received the charge for the Task Force on Racial Minorities at UB in draft form, which he will forward to the Affirmative Action Committee.
- Vice Provost Goodman was present to talk about the implementation of mid-semester progress reports. Vice Provost Goodman first noted that the *Reporter* had written an excellent article on mid-semester progress reports last week. He then described some operational details. Ross Winston of CIT created the web page that allowed faculty to post progress reports on line. Security was provided by the campus system which verifies the identity of the user of the web site by UNIX account name and password. Instructors who lacked a UNIX account and password, e.g. adjuncts, courses listed as taught by Staff, courses listing the wrong instructor were problems, but all in all the process went reasonably well. Responses were received from roughly half of the courses targeted. Of 9,904 reports, 1,836 were rated unsatisfactory. Students were informed by letter of their rating and encouraged when the report was unsatisfactory to talk with the instructor. Advisors will also aggressively follow-up with these students. Since this system of on line reporting worked well and seemed popular, UB will try to institute an optional version for reporting regular grades. The Vice Provost invited comments from the floor:
 - received requests for reports both for the main section of a course and also for its recitation sections but responded only for the main course; if other faculty did the same, the response rate was much higher than half; suggest making it possible to get class lists off the web rather than relying on outdated paper distributions (Professor Baumer)
 - also received requests from EOP and Athletics for mid-semester progress reports; it would be helpful to consolidate the requests; was unable to upload data in a reasonable time using a modem and phone line (Professor Schack)
 - not a problem for people on campus connected through the Ethernet (Vice Provost Goodman)
 - easy access to student records may be prohibited by law or regulation (Professor Harwitz)
 - congratulate Vice Provost Goodman on the rapid and successful implementation of a Faculty Senate initiative (Professor Welch)

- will an attempt be made to get fuller faculty compliance with the reporting requirement; will there be an effort to work with students who are not progressing satisfactorily on general study and academic skills? (Professor Tamburlin)
- if we could solve the problem of getting faculty to do something they don't want to do, this wouldn't be a university; the various offices involved in student advisement will try to contact the most at risk students (Vice Provost Goodman)
- students frequently complain that they don't receive any indication that they aren't performing satisfactorily (i.e., no tests) before drop and add; was there any evidence that faculty had no basis on which to judge satisfactory progress? (Dr. Coles)
- perhaps some of the non-responding faculty were in this category (Vice Provost Goodman)
- responding to a resolution from the Faculty Senate Affirmative Action Committee relating to salary inequities, Professor Hamlen, Chair of the Budget Priorities Committee, will prepare an interim report on the data from the first discretionary increase for the Affirmative Action Committee; the Committee is also examining a proposal for Uniform Administration of endowment funds and discussing the draft of a document, *Revenue Generating Policies and Guidelines Committee Recommendations for Income Fund Reimbursable (IFR) Buy-out*.
- Professor Welch reported that the Academic Planning Committee met with the Chair of the Department of Social and Preventative Medicine, Professor Albini and Professor Bryden Grant to discuss the Department of Statistics merger. The Committee should be ready to report to the FSEC in the next several weeks
- Educational Policies and Procedures Committee will meet on October 29

Item 2: Report of the Provost

Provost Headrick attended a meeting of the academic officers of SUNY last week. Systems Administration is in the process of reorganizing. There are more vacant than filled positions in the Provost Salins' office, but he is recruiting, and Provost Headrick is impressed with the talent of the new staff. Provost Salins has had a lot of negative feed on Achievement Testing; he seems committed to having an exam but he is more open to discussing what kind of exam it should be and how it should be used. Provost Salins spoke of using the exam as a diagnostic tool rather than as a way to measure SUNY schools against each other, and he seems to recognize the difficulties of testing on knowledge

as opposed to skills testing. Provost Salins also agreed publicly with the need for additional support for research and for differentiating the missions of the various SUNY schools. Provost Headrick has been pleased with Provost Salins' growth in the position of SUNY Provost.

Item 3: *Code of Academic Ethics - Relations with Students*

The Chair invited Professor Boot, Chair of the Academic Freedom and Responsibility Committee to speak on the Committee's proposed policy on consensual relations between faculty and students. Professor Swartz immediately raised a point of order. He questioned whether there had been adequate notice to permit this to be an agenda action item. The only new Committee document available to FSEC that was sufficient to warrant further FSEC discussion on an issue already before Faculty Senate was the handout distributed at this meeting.

The Chair responded that he intended only a discussion prior to scheduling a second reading of the proposal at Faculty Senate on November 10. Professor Boot added that the Academic Freedom and Responsibility Committee had prepared two proposals that had been completely shot down. The Committee, therefore, wanted to hear the opinions of FSEC to get their "marching orders" before they tried to revise the proposal again.

Professor Malone asked whether, if a revised proposal were put before the Faculty Senate, the reading would be considered a second reading? The Chair answered that it would depend on what the revision looked like. Professor Boot stated that he would fully expect it to be considered a first reading, so there could be adequate discussion of the revised proposal. Professor Schack suggested that FSEC vote on whether it would be a first or second reading. The Chair agreed to a vote, but at the next meeting of FSEC when the agenda for the November 10 Faculty Senate was offered for approval.

The Chair ruled that the discussion would proceed. He asked Loyce Stewart, Associate Director of Equal Opportunity/Affirmative Action to join the discussion and acknowledged the presence as invited guests of Professors Arcara, Duchan, Meyerowitz and Noble. The Chair gave a brief summary of negative comments from the Minutes of the Faculty Senate meeting at which the proposal on

consensual relations had been discussed: no need for the policy; situation has changed since the 1960s and 1970s; language of the policy too vague.

Professor Boot noted that opinions on this issue ranged the spectrum from no need for any policy to the need for an elaborate policy that also spells out disciplinary procedure. Professor Boot believes it would be prudent to have a clear statement that it is unwise for faculty to associate with students in their class or students that they supervise in any other than a teaching or mentoring capacity since other relationships create asymmetries as to the other students in a class, and may be perceived by the involved student as an exercise of power rather than a friendly relationship. The lack of a statement may leave the University legally vulnerable in the face of legal action. Based on an informal survey of his female students Professor Boot believes that this is not a widespread problem, but that it does exist. He directed FSEC's attention to a handout compiled by the Committee which contained several alternate versions of a policy. The old policy (number 5) reads: "A faculty member should not have an amorous or sexual relation, consensual or otherwise, with a student who is enrolled in his/her course, or whose performance is supervised or evaluated by that faculty member." The one he is most comfortable with (number 6) reads: "Any relation other than a teaching or mentoring relation with a student in one's class or under one's supervision is unprofessional conduct. Such conduct may, if the situation warrants, lead to disciplinary action." He then deferred to Loyce Stewart.

Ms. Stewart affirmed that consensual relations are a problem at UB, and indeed at all universities, but for reasons of confidentiality declined to describe specific instances.

She stated, however, that typically a situation involves a male faculty member and a female student; the faculty member may be the aggressor, but sometimes is the target; relationships seldom stay discrete; and complaints may be third party sexual harassment claims. A policy would be a "loss prevention measure" that could give guidance to a faculty member in doubt as to the propriety of a relationship.

Professor Adams-Volpe then made a statement. She pointed out that many of our peer and aspirational peer institutions have adopted policies banning consensual relations between faculty and students. She also warned that courts have, in the absence of an institutional policy, found liability against the institution in cases of sexual harassment. Furthermore faculty should be aware that courts

increasingly do not accept mutual consent as a defense against a sexual harassment charge. Third party exclusion complaints may also be brought. UB needs a policy in place to protect itself.

Professor Arcara disputed Professor Boot's conclusion that the problem is not widespread based on an informal survey of his female students. Students could find Professor Boot intimidating and that would influence how they answered. Professor Arcara has also asked students whether the problem exists and they unanimously said it did.

Professor Duchan added that a faculty/student relationship can make more than a class dysfunctional. An entire department can be affected negatively. It can undermine the community perception of the department or of the University. She is also concerned about parental reaction to such a relationship. A policy would be helpful in educating faculty on the systems effect of their actions.

Professor Noble noted that the work of the Task Force on Women revealed that most students were personally aware of problems of consensual relations, but, in the absence of a policy regulating such relations, felt very vulnerable to retaliation and were unwilling to talk openly. Even female full professors proved unwilling to speak openly of their own experiences and knowledge of problems, also feeling vulnerable.

The Chair, stating that the Committee needed advice to help them in preparing a resolution to be presented to FSEC next week, invited comments from the floor:

- federal regulations are aimed only at sexual harassment, but a soured consensual relationship can be found to constitute sexual harassment (Ms. Stewart)
- if UB were found in non-compliance with federal sexual harassment provisions, would the University's ability to receive federal grants be at risk? (Professor Baumer)
- the first instance of a finding of non-compliance would probably result in a substantial fine, while a continuation of non-compliance could lead to a disbarment from future federal grants; the presence of a university policy on consensual relations would be some protection against a federal finding of sexual harassment (Ms. Stewart)
- a policy alone would not be a complete defense; there would need to be efforts to make faculty aware of the policy; furthermore the law on sexual harassment is already clear and could be the basis of training faculty, whereas an unclear policy could create additional problems(Provost Headrick)

- we are only discussing a statement to be added to the *Code of Academic Ethics*; there is a nearly completed a policy on sexual harassment which contains "all the pieces" necessary to protect the University (Ms. Stewart)
- the University Equal Opportunity/Affirmative Action Committee has been working for over a year on a policy on sexual harassment and is ready to present it; consensual relations and sexual harassment are separate issues and overlap only in the area of third party complaints (Professor Arcara)
- discussion in Faculty Senate did not say there was no problem with consensual relations, only that we lacked evidence of the problem, but Ms. Stewart has supplied that evidence; the policy that the Committee presented to Faculty Senate is a badly written policy; it will have unintended consequences, for example, barring the teaching of one's ex-spouse, that may lead to administrative abuse if used broadly; prefer a statement saying that if any faculty or staff member engages in social relations with a student over whom the faculty or staff member has authority, either currently or in the near future, then the faculty or staff member must report it to a supervisor so they may make arrangements as necessary to transfer the authority to someone else; such a statement is both less intrusive and broader than the proposed policy and would cover, for example, the very real problems of teaching one's own or friends' children and consensual relations between faculty and department chairs, etc. (Professor Schack)
- a faculty member can not control who takes a class, so it is capricious to label the faculty member unethical if someone with whom the faculty member has had a past relationship chooses to take the class (Professor Wooldridge)
- the Committee understands that the policy presented earlier to Faculty Senate is dead; the Committee has compiled alternate versions and is looking for FSEC advice on which of these is most acceptable (Professor Boot)
- support version number 5 which limits only amorous or sexual relations; number 6 is too broad in that it would seem to limit social relationships which may facilitate teaching and mentoring relationships. (Professor Welch)
- international students to be successful may need nurturing relationships with faculty which number 6 would forbid; adopt a policy because it is morally correct, not because it will protect the University from law suits; share the reluctance to discuss private experiences with one's colleagues (Professor Malave)
- in drafting policy one really needs to have a sense of how it will be applied; a policy without a supporting process for enforcement is empty and ineffective (Professor Smith)
- based on a recommendation of the Task Force on Women at UB, the Provost's Office formed a committee which is working toward a carefully thought out procedure to our policy on sexual harassment; lacking a policy on

consensual relations, the committee has not drafted procedure to deal with it, but could do so if such a policy were adopted (Professor Noble)

- need expert legal opinions on the several legal issues that have been raised by various speakers; if we are not prepared to enforce zero tolerance of a policy, questions of selective enforcement arise; for example, number 6 could be triggered if a student is a member of the same church or social action organization as the professor; even number 5 could be too broad if we want to exempt serious relationships from its reach, and the seriousness of a relationship is irrelevant to a third party complaint (Professor Swartz)
- agree with the need for procedure, but the policy should come first; prefer number 5 as being more specific (Professor Adams-Volpe)
- legal issues are important only to persuade those who believe there is no problem since this is clearly an ethical issue and should be primarily so approached; social relationships support the teaching function and build the kind of student/faculty climate that we want to foster; past relationships can be just as disruptive as current relationships; sexual harassment and consensual relations are so closely connected that the two issues ought to be presented and discussed together in Faculty Senate (Professor Baumer)
- did not propose banning social relationships, but only reporting them to one's supervisor so that if a problem arises responsibility can be transferred; have known of a class situation in which some members of the class felt aggrieved because of the faculty member's social relationship with other students (Professor Schack)
- the intent of a short statement is very different than that of an all inclusive document which covers all cases; the short statement will more likely be read and understood (Professor Boot)

Professor Baumer then moved (seconded) that the policies on sexual harassment and consensual relations be combined for further Faculty Senate discussion. Professor Harwitz objected because the motion pre-empted comments from those members of the FSEC who had not already spoken. Professor Baumer agreed to defer discussion on his motion until all members had had opportunity to speak to the original question.

- the procedures on sexual harassment are ready to be presented to the administration; don't delay their implementation, but combine the two issues later (Professor Arcara)
- students romanticize faculty, so suggest that number 5 be broadened to include a ban on consensual relations with all students, not just those in one's class (Professor Coles)

- number 6 is problematic in that informal relations with students could be misconstrued and also because it does not strongly enough discourage inappropriate relations, saying only that inappropriate conduct "may ...lead to disciplinary action"; however it enumerates the kind of behavior that is appropriate, viz., teaching and mentoring; number 5 on the other hand bans only specific kinds of current or contemporaneous relationships; use number 5 and add to it the provisions of number 6 on teaching and mentoring (Professor Harwitz)
- number 6 speaks of unprofessional conduct;, since the University already has provisions for dealing with unprofessional conduct, the last sentence of number 6 is unnecessary; number 6 is limited to relations with students but needs to cover situations in which a non-student is under the authority of a faculty member; are there any sanctions which would apply to an aggressor student? (Professor Malone)
- believe we need a whole package that deals with sexual harassment and consensual relations and which established procedure (Provost Headrick)

The Chair indicated that Professor Baumer's motion was now being considered and invited comments:

- oppose the motion because in spite of our discussion the issues are not clearly defined; for example the motion speaks of combining the policy on consensual relations with that on sexual harassment, but we haven't yet settled on a policy on consensual relations; do not delay the sexual harassment policy by linking it with consensual relations; join them later (Professor Welch)
- oppose the motion because consensual relations is a separate matter from sexual harassment and there is value in having an accessible and distinct statement on which we can reach consensus; combine the two later (Professor Adams-Volpe)
- disentangle the Faculty Senate from sexual harassment which should be handled by institutional policy which will require negotiations with the unions and with SUNY; focus on relations between faculty and students which is the core of the University (President Greiner)
- consensual relations need to be broadened to include other disruptive relationships (Professor Schack)
- a simple statement without procedures will not have a beneficial effect; need a well thought out, carefully crafted policy which we do not yet have (Professor Swartz)
- does the motion require that the University have well developed procedures on sexual harassment so that we know how to combine the two procedures? (Professor Malone)

- motion was based on the assumption that the work of the two committees could usefully be combined
(Professor Baumer)
- seconded the motion believing the two policies could be joined at some future time, but not requiring that they be immediately joined (Professor)
- motion as stated requires immediate jointure and would mean that the matter will not come to the Faculty Senate in November and perhaps not this year (Professor Nickerson)

The motion failed to pass. Professor Baumer then moved that number 5 be put before the Senate in November. Professor Boot objected saying that his Committee should have the chance to grapple with which version to recommend. Professor Boot also said that he has a clear message that FSEC prefers number 5. The Chair added that Professor Boot will come to FSEC next week with a proposal.

Item 4: Report of the President

The President had no report but invited questions from the floor:

- Provost Salins letter to the SUNY campuses asking for a mission review document encouraged wide consultation with various campus constituencies, including faculty; unaware of any wide consultation with faculty here at UB (Professor Boot)
- have been engaged in this process for three years with the mission statement, stating our plans, stating our projections and stating our goals, and in this process have consulted widely; will share the review document with the Academic Planning Committee as soon as there is a draft version and have already talked with FSEC about the general direction of the document (Provost Headrick)
- have there been consultations with other SUNY institutions since this is an attempt to coordinate the campuses (Professor Boot)
- SUNY's letter asking for the mission review document was sent in April and set a deadline of September 30; do not consider that a serious request; not give campuses sufficient notice to allow meaningful participation; had we followed that timetable we would have been criticized for acting while faculty were away for the summer;

Provost Headrick has consulted widely and to hold to the contrary is simply being misinformed (President Greiner)

Item 5: Old/new business

Professor Schack requested that the Chair provide a comprehensive list of all the Faculty Senate committees with Chairs and members provided. The Chair should indicate which committees need new members and how many, and should ask for nominations outside the regular business of FSEC. The Chair promised to provide a comprehensive list, but he will continue to circulate nomination sheets during regular business with discussion scheduled for executive session.

The meeting adjourned at 4:20 PM.

Respectfully submitted, Marilyn M. Kramer
Secretary of the Faculty Senate

Present: Chair: Peter Nickerson
Secretary: Marilyn Kramer
Engineering & Applied Sciences: Ramalingam Sridhar
Graduate School of Education: Lilliam Malave
Health Related Professions: Judith Tamburlin
Information and Library Studies: George D'Elia
Law: Louis Swartz
Management: John Boot
Medicine & Biomedical Sciences: Boris Albini, Cedric Smith
Natural Sciences & Mathematics: Melvyn Churchill, Samuel Schack
Nursing: Powhatan Wooldridge
Pharmacy: Nathan
Social Sciences: William Baumer, Mitchell Harwitz
SUNY Senators: Judith Adams-Volpe, John Fisher, Dennis Malone, Claude Welch
University Officers: William Greiner, *President* Thomas Headrick, *Provost*
Guests : Eran Kobakov, Undergraduate Student Association
William Coles, Chair, Professional Staff Senate
Sue Wuetcher, *Reporter* John Celock, *The Spectrum*
Nicolas Goodman, Vice Provost
Loyce Stewart, Associate Director, EO/AA
Professor Bernice Noble
Professor Margaret Arcara
Professor Judy Duchan
Professor Ruth Meyerowitz
Excused: **Dental Medicine:** Robert Baier
University Libraries: Dorothy

Woodson **Absent:** **Architecture & Planning:** Shahin Vassigh **Arts & Letters:** Martha Hyde **Medicine**
& Biomedical Sciences: Herbert Schuel **Ex-Officio:** Robert Hoeing