

Faculty Caucus Meeting
December 9, 2009
(Approved)

Call to Order

Senate Chairperson Dan Holland called the caucus to order immediately following the Senate meeting.

Faculty Caucus Minutes of November 18, 2009 Will Be Approved at the Next Meeting

Distinguished Professor Nominations

Motion: By Senator Stewart, seconded by Senator Borg, to move into Executive Session. The motion was unanimously approved.

The Senate concluded its business in Executive Session and returned to open session.

Report to the Caucus on the DFSC/SFSC/CFSC Training Session (General Counsel, Provost Office, URC Chair)

Dr. Chuck McGuire, Assistant Provost: Thank you for the opportunity to bring this material anywhere. This is incredibly important material that we have developed for the DFSC/SFSCs, but I think that we are going to try to make this available in as many formats and as many venues as possible. I will give a little background and then just skim through the material that we presented on October 29th. This was a program that was requested by a whole series of people at various times, including two Senate Chairs. We decided that this was the year we were going to start it; we hopefully will do this every year from this point forward, but also bring this material to a variety of other groups across campus.

On October 29, we presented the first ASPT review session. We invited all of the members of all DFSCs, SFSCs, CFSCs, all department chairs and directors. In fact, we made it mandatory for department chairs and directors. We had a 112 people signed in for the program. I am convinced that there was more than that in the audience. Just as an aside, I had a conversation with the Director of CTLT, and I will be doing this program, or at least an abbreviated version of this program, for new faculty focused on the faculty side. What you are going to see tonight is focused on the decision maker's side for the CFSC, DFSC, department chairs. We also had five of the six deans that morning as well. The timing was very intentional. It was held on October 29. The reason for that was what we call the DFSC season begins November 1 with the tenure and promotion cases. We got evaluations of the program and they were uniformly positive.

We spent an hour or so on the letter-writing seminar because it is incredibly important that the letters that go out, especially the annual letters, contain certain items, that they are explicit, that they do certain things to make sure that they pave the way both for positive and negative decisions later on. Maybe one of the most important things that we talked about is that it is necessary to read the ASPT book. There is a five-year review of the ASPT, which is ongoing at this time. The University Review Community is reviewing it right now. You will receive it as the Senate toward the end of your term in the spring. Nobody is looking at a major revision at this point, but we have a fairly lengthy list of tweaks.

We talked about other university policies. The definition of the term faculty is very important, which deals with tenure and tenure track faculty, and is on page 1. We referred them to the appendices and to the fact that this book refers to minimum levels of achievement and other levels are designed by departments and colleges. All committees are advisory to the President and this book provides the context for department and

university guidelines.

Critical point number one, one of the major reasons why we did this is confidentiality. In the newer version of this book, confidentiality is emphasized in DFSC/CFSC/SFSC proceedings for all kinds of reasons. For procedural, ethical, legal and leadership reasons. We talked about the committee structure, the DFSC in particular. I am not used to saying DFSC/SFSC, so I will just say DFSC for those purposes. We talked about reporting, etc., the various evaluative activities. This was meant as an introduction for new CFSC/DFSC members so they could see the timetable.

Critical point number two, you may be familiar with the University Review Committee ruling on student evaluations. It is ongoing right now, namely, that the student evaluation form is a part of the process that must be adopted by departments. Therefore, many departments are going back and having to readopt their student evaluation form at this present moment. Most departments did not adopt it by department or they can't prove it. There is a January 1 deadline for that to happen.

CFSC committee structure—some of the issues with that and some of the review processes that go on there. It is important to make the distinction between additional review in the case of tenure and promotion and a true appeal in the case of performance evaluation. Tenure and promotion, both the department and college reviews go forward side by side to the President; whereas, a performance evaluation, the annual evaluation, is a true appeal from the department to the college.

The FRC is the Faculty Review Committee and this is the final appellate review and the things that they do are basically appeals of tenure and promotion. They also consider appeals of tenured faculty members. It never happens, but if it does, this is the body that would do that sort of thing. The University Review Committee is the body that does the ASPT book. They are the guideline writing structure.

We talked about reappointment and tenure issues, particularly non-reappointments, which are not used perhaps as much as they could be or should be in lieu of tenure denials, how that process works and the timelines, and that there is no appeal in the case of non-reappointments. This is often a gentler, kinder way to deal with folks who are not going to make tenure.

Then we talked a lot about the tenure clock, the whole tenure process. Again, some more tenure issues. I will just highlight a couple of them, the first and the last bullet point mostly. The annual letters are absolutely critical and also emphasizing to the members, make no promises. An individual member or an individual chair cannot make a promise to individual faculty going through that tenure process.

Promotion policies—much the same sorts of things. We went through these policies in detail. Again, the department criteria are critical and the time requirements. Then performance evaluation and salary incrementation—we ran through it.

Critical point number three, the annual letters are critical, especially pre-tenure. Those annual pre-tenure evaluations of faculty telling them what they are doing, whether they are doing it well, whether they are not doing well. It is absolutely critical that we have those letters done and done well. They have to be specific; they have to be frank and honest with the faculty members because DFSC members will change and, therefore, you have to create a historical record. Department chairs often change and, therefore, it's absolutely essentially that we have some sort of running record of what the DFSC is saying.

The last bullet point I found kind of interesting. This came out of University Legal Counsel. The boiler plate

language at the bottom of letters is critical, because if you say through the course of a letter, you are doing a bad job in teaching and thank you for all of the great service you have done for the university this year, you have just destroyed legally anything you had for the basis of what you may have to use in any kind of tenure case. We didn't spend a lot of time on the salary incrementation process, but we put it up there at least. You will notice that there are references to the blue book (ASPT book) throughout, mostly because we were not sure what the status was and this would take a long time to work its way through.

Again, reports, these are important. They are often ignored or forgotten. The promotion and tenure process appeals—how that process goes. The DFSC, CFSC then FRC. Those are parallel processes except for the FRC. They are parallel recommendations to the President. The President will receive, in some cases, four recommendations, from the department, from the college, from the FRC, if there has been an appeal, and from the Provost. The President decides based on those. They are four separate recommendations.

Performance evaluations go to the CFSC only. There is no second level of appeal for CFSCs. The CFSC may suspend and forward to the Academic Freedom, Ethics and Grievance Committee if it sees an issue. Post-tenure review appeals, they also go just to the CFSC and nothing beyond that. Recommendations for non-reappointment originate in the department and there is no appeal beyond that. Faculty members may request an AFEGC appeal.

This one is interesting and is causing a series of interesting issues for the URC right now. We think that we have got it handled. Access to personnel documents sounds kind of dry and boring except for the fact that University Legal Counsel has discovered a rather interesting statute that provides that letters of reference for that employee or external peer review documents for academic employees of institutions may not be given to the faculty, even though our rules say that you have an unqualified right. I think that what we are going to be doing, but the URC has not yet voted, is provide a waiver process for the reviewer and permit the reviewer to waive that right. That could present some interesting problems. It's the reviewer's right to waive. I think that we will deal with that this year. I provided some language to the URC last week. The URC is considering it and we will probably have some answers later in the spring.

Post-tenure review—I am a fan of post-tenure review. I think it is important from a developmental standpoint for faculty and there is a lot of bad advice going on out there. I simply want to underline that a post-tenure review shall be conducted. There is a lot of opinion out there that we don't even have a post-tenure review process. That is not true. In fact, every department must have a post-tenure review process as part of the ASPT document. It can occur in a variety of ways, but I think that it is a very beneficial process.

Senator Borg: How is that different from an annual review?

Dr. McGuire: It's lengthier; it's more inclusive. It can be a part of an annual review.

Senator Borg: The first bullet point says that there shall be a post-tenure review. It used to be a three- or five- year kind of thing, but that was taken out of the policy, was it not?

Dr. McGuire: Yes, that was what we had before. Then the third bullet point says that departments can do it, but you have to have a process in place, primarily for the second bullet point. If that ever happens, you have to have a process to do it with. A lot of departments I think have been ignoring that. I believe in it from a positive standpoint. I think that it is a very important part of the developmental process just to sit down every few years and say what's your plan and how can we help you get there. Maybe that's occurring on a more informal basis, but I am not so sure.

Senator Borg: It occurs through the annual process if faculty receive two unsatisfactory ratings. How do we determine unsatisfactory ratings since we gave up the merit, high merit, and the unsatisfactory?

Dr. McGuire: We still have an unsatisfactory. There is satisfactory and unsatisfactory that is supposed to be done on an annual basis. It needs to be a holistic evaluation of the faculty member's entire performance.

Senator Briggs: Are those ratings based on end-of-year evaluations?

Dr. McGuire: Yes, that is the annual evaluation that takes place in January.

Senator Van der Laan: I am one of the few who object to this procedure. It has always struck me as redundant to have a five-year review or a three-year review when we are reviewed every year.

Senator Kalter: Could I have you clarify what you and Paul were exchanging just now? He said that we got rid of the high merit, but we still have an unsatisfactory.

Dr. McGuire: It is required that there be an annual evaluation and that that evaluation decide whether you are satisfactory or unsatisfactory.

Senator Kalter: So that is part of the annual review process, but it also sounded like you were talking about salary incrementation.

Dr. McGuire: It can relate to that; it depends on how the department puts that together.

Senator Kalter: So you are just saying that annually we are judged on satisfactory versus unsatisfactory, but the high merit is insignificant?

Dr. McGuire: We used to have five categories.

Senator Kalter: I missed the year that they were gotten rid of.

Senator Borg: It's been ten years at least.

Senator Briggs: Does the wording satisfactory and unsatisfactory need to be stated in the end of year letter.

Dr. McGuire: In my opinion, yes.

Senator Briggs: But legally, should it be?

Dr. McGuire: I think it should be. I also brought to their attention a number of other related policies that I thought were important for people to consider—the University Code of Ethics, the Faculty Responsibility to Students Policy, the Consensual Relations Policy, the AFEGC Policy and the procedures themselves, which I believe are these that were revised in 06. I made sure that they understood that this was a personnel process and a legal process. If the university is going to get sued, in all likelihood they are going to get sued out of the personnel process. Normally, promotion and tenure, but you never know. I told them it was very important to observe the university, college and department guidelines strictly. If we are going to be reversed by a court, it is probably because we did not follow our own policies. It is very important that we comply with our own

timelines. Timelines are a little tricky. We have got them set up, but if they fall on the weekend, they relate back to the previous work day. If Sunday is November 15, it would relate back to the previous Friday the 13th. The letters were really the basis of the whole process.

Write meaningful and individualized letters. They are absolutely critical. If you are going to write guidelines for your department, for your DFSC, whatever, I think that it is important, if you can, to write those outside the context of individual cases. Do them in a vacuum. If you are doing them in reaction to a specific case, you can get in trouble. Don't make promises—again you can't. Confidentiality is absolutely critical. If there is a question, we can ask the URC for an advisory opinion. It is quite useful to do that.

A tenure denial is an expensive failure on our part. With a tenure denial, in my opinion, we have made at least one of three errors. We made a poor hire. We did not mentor that individual or we did not intervene early and non-reappoint or make a settlement agreement with an individual. That way, they don't have a tenure denial on their record and the department does not have to go through the throes of a tenure denial, which is an awful process. We don't do that as often as we could or should. This is my personal philosophy. If you can, be fair and humane. If you can't be both, be fair first and then be humane. By fair, I mean to everyone involved in the process—to the candidate, to the individual faculty member, to the department as a whole, to the students. That was my basic presentation.

Senator Kalter: I am really happy to hear that you are going to be doing something for new faculty. The DFSC in our department is a small committee comparatively speaking. It is really easy in the first year of something like this for people to feel like the DFSC knows something that we don't, so I was wondering if you would consider adding recently hired people, not just for the first or the third year, but up to just before tenure. I think that would really help to alleviate some of the concerns.

Dr. McGuire: I agree. My conversation with Patrick O'Sullivan yesterday from CTLT—he has lists of all of the new faculty for at least the last three years. I thought that those would be our initial invitees and then we can kind of build this as we go forward. I think the focus of it has to be on the individual faculty member. A lot of this stuff was for the decision makers. I think it's more important to talk about what you do with your career and how do you meet these criteria.

Senator Kalter: The other questions that I had all had to do with the subject of non-reappointment because I think that, as you are saying, it seems like we are moving more towards trying to push those decisions a little bit further down so that they are not happening in the sixth year, but a little bit earlier. That, I think, can create some anxiety on the part of the pre-tenure people. I understand in a lot of ways from a personnel and a legal standpoint why there is no appeals process to a non-reappointment. One person brought up a question to me about why that doesn't go through a CFSC level review or a department vote. I can see that the department vote would be somewhat problematic, but I think that a very small group of people could non-reappoint and, as you say, DFSCs change, that that could be an unwise thing to do, especially if it is done prematurely.

Dr. McGuire: I actually have the same question. Right now, the way it's worded, the letter actually comes from the Provost in consultation with the dean and the chair. So the dean has at least a voice in that. I know of at least one instance where the dean and the Provost have said that process was questionable, so we want to redo. I tend to agree. I think that there needs to be at least a second review somewhere along the line, but that is the way the book is written right now. I am going to make some notes and bring these things to the URC for the five-year review.

Senator Kalter: I was wondering if that was a possibility. The other things that were kind of going around in my department were—this may be in the part you are about to do in Lisa’s segment—but, apparently, you don’t have to have any reason for non-reappointment.

Dr. McGuire: You don’t have to state a reason.

Senator Kalter: I guess words like civility and collegiality started getting talked about and some people said what happens if you are in a situation where the people making the decisions also are being non-collegial or not very civil, how is the person without the power labeled that way. I am wondering if you can speak to that.

Dr. McGuire: Can we hold that question until we get to some collegiality issues, because I kind of did that at the end of things in the course of the letter writing.

Senator Briggs: Why is it that this university, unlike other universities, doesn’t have a formalized three-year pre-tenure review? Did we have it once and it went away?

Senator Borg: It’s never been a part of university policy, but I believe individual units have done it informally.

Dr. McGuire: Right, I am aware of several units that do that. I agree with you. It’s a real help. We don’t have it at the university level. There may be a college or two that that is suggested and I know there are at least a few departments that do it.

I will move on to Lisa’s presentation. She is doing a fantastic job as General Counsel. The first basic rule that is important from the standpoint of our process is that deference is generally given to academic decisions. That is to say the courts generally will say this was an academic decision, an academic personnel decision, done by the university. We are not going to disturb it. They are the experts and we are going to leave it in their ballpark. There are, however, some exceptions to it—discrimination, arbitrary decision making, failure to follow institutional procedures. Examples of deference—she gave a few of them and some language. The last one is probably the best; ‘this is best left to an institution of higher learning’.

The evaluations are critical. They lay the groundwork for tenure review. Bad evaluations sow the seeds for lawsuits. Good evaluations convey institutional expectations. They ought to be candid and give guidance for future efforts and constructive criticism where necessary. Bad evaluations—I like this—‘tenure denials should never be a surprise to a candidate’. They ought to know that this is coming by the prior letters, by their mentoring, but this should not be a surprise. Again, Lisa is talking about the value of non-reappointment prior to tenure review if there are problems. She listed the key discrimination laws. The newest one is the Lily Ledbetter Fair Pay Act of 2009. What you say is important. Stray, off-hand remarks are often cited as a basis for tenure- promotion and denial lawsuits. And this is critical, even if we win the case, it has been expensive; it’s been time consuming; it’s been upsetting; it’s created morale problems. We don’t want to be there if we don’t have to be.

We are to make sure that the individual policies follow within here and retaliation and malice are to be forbidden. We have to apply things consistently. Mishandling a request for an extension of the tenure clock—we have some cases that we know of. We have tried to make sure that there is consistency. Sexual harassment complaints—she spent a fair amount of time on sexual harassment complaints. There is a new case out of Sangamon County in April basically saying that sexual harassment by a supervisor includes

sexual harassment by any supervisor. For example, sexual harassment by the chair of one department of a faculty member in another department would constitute sexual harassment within the context of this, rather than having the specific criteria, even if the original department didn't know about it.

We talked a little about academic freedom. Our academic freedom document is based upon the AAUP's 1940 statement of principles. Legally, academic freedom is kind of in never-never land. Academic freedom is generally found to be a professional right, not a legal right and, therefore, the protections there are iffy at best. That is why it is important that we retain our own policies and our own guidelines with regard to academic freedom and follow them explicitly rather than relying on the law, itself. The Garcetti case basically said that the First Amendment doesn't apply to public employees as they are speaking within the context of their official duties. So the Supreme Court has narrowed that definition a lot.

Some protections against personal liability that we have as individual here—the Illinois State Employees Indemnification Act protects employees acting in their employment capacity. We have insurance. There are commercial insurance policies that provide an extra layer of protection from potential liability. You can also purchase your own.

Collegiality came up as a result of three or four issues. One was, and Lisa's issue, was a North Carolina case. Lack of collegiality was found in the North Carolina case as a legitimate ground on which a professor could be terminated from a tenured position. There was a rule in the college that each faculty member was expected to work in a collegial manner. We don't have that here and it relies on specific UNC language that doesn't exist here. But that shows you deference on the part of the courts and also the direction the courts seem now to be going.

Senator Briggs: Collegiality is written into our SFSC documents.

Dr. McGuire: If you have got it in your college—it's not in the blue book (ASPT book). I think a department can do that and, therefore, this rule might apply.

Senator Briggs: I think it was in the Code of Ethics or something like that.

Dr. McGuire: The Code of Ethics—I don't think it uses the word collegiality—talks about respect and words of that sort.

Senator Van der Laan: I am curious if that word is well-defined at all because it opens the possibility of denunciations, of blacklisting, so to speak.

Dr. McGuire: I think we have got some protections here, which I will get to in a little bit. That was Lisa's presentation.

Senator Briggs: About the writing and the statements when we write our SFSC letters, with the wording sometimes, and we looked at student evaluations, we would pull out good or bad where a student would quote something and we learned that that is not legal to do.

Dr. McGuire: What I told them in the letter writing session is that you pay attention to comments, but don't use individual comments.

Senator Briggs: Individual quotes?

Dr. McGuire: Yes, talk about trends. Talk about larger issues if you see several students complaining about a particular issue. Yes, you can identify the issue, but you shouldn't be identifying a specific...

Senator Briggs: So the word to use would be trend?

Dr. McGuire: Yes, trends and generalizations are the best way to do that. This was Rodger's presentation and I will go through it very quickly because Rodger talked a lot about the policy in back of the issues, URC issues and the like. He was talking largely from his own background here, but also from the URC and some of the things that the URC does. It is an External Committee of the Senate and it will be reporting back to you folks later this year. He talked a little about the special role of the DFSC. These are the people that are elected by each department. It's uncomfortable. It can be emotional and it involves a lot of hard and difficult work. Rodger made a point of this. It is generally not a good idea for the DFSC/SFSC to give p and t advice at that point. If there is a mentorship situation, someone else should be doing that. Someone needs to fill that role. Often, it's the chair on a long-term basis, but it probably needs to be another mentor of some sort as well. Otherwise, you end up with a confidentiality issue and some conflict of interest possibilities and promises that you don't want to make.

He spent a lot of time on this slide. All of these slides are available on the Provost's website. Some issues—follow the policies explicitly. Intent versus loopholes, permission versus forgiveness. The old saying that it is better to ask for forgiveness than permission. Not in this area. It is much better to ask for permission first. Go to the URC and get the correct interpretation. Call me first and I will try to give you the best I can, but don't act and then ask for forgiveness, because you will be asking a judge, not us. A lot of protection of faculty rights issues. That is a part of function of the URC. The form for assessment that we talked about a little earlier. Following process to meet with the DFSC/SFSC concerning annual evaluation. That process has come up a couple of times. Protection for the DFSC, itself. Minority reports cause all kinds of issues for us. Where do they stand in relation to what goes forward from the department to the college? What goes forward from the college to the Provost or to the FRC? Can you appeal from a negative minority report? Well, it goes forward, but there is no process for that right now. We may, but there is no process for it right now. That was Rodger's presentation. It was useful to get the URC overview.

Senator Kalter: Could you talk a little about the difference between confidentiality and secrecy? My understanding is that the DFSC is confidential in somewhat the same way as when we close a session here to talk about a specific personnel issue, but that if it is a very general thing that the DFSC is talking about, there is no problem with a DFSC member saying this is how we do things.

Dr. McGuire: No, if it is a general, overall policy procedural issue, I don't see a problem with that at all. If we are dealing with individual personnel decisions, then I see a serious problem. The problem that we were confronted with is that when you have a DFSC considering a tenure, promotion or even an annual evaluation, and then you hear what is happening in the DFSC out in the hall on that particular case, that's bad. That's very serious. That is, I think, a breach of ethics and I think it needs to be dealt with in that sense. It creates legal issues and it's not fair to the faculty member who is at issue or to anyone else. I think it can poison the water in individual cases. I haven't really thought about it in terms of secrecy. It is secret because when you are dealing with a personnel decision, the public output is that letter and that's it. That's permanent, too.

Senator Kalter: I think when you have a process like that, people go to one extreme, which is the one that you described, which is really horrible when you have people talking out of school, but then they go to the other extreme of nothing that is ever said within our meetings can ever be told to anyone else. That creates a

different kind of a problem within a department where you feel like you have a group of people who is deciding people's future, but you don't know what is going on.

Dr. McGuire: In general, I am a believer that committees ought to keep to themselves until they have a public output that they can present to the department. If you are talking about a change in the guidelines, for example, I would much rather have the DFSC consider that in full and then go to the department with 'this is our position' instead of jockeying and doing the politics in the hall.

Our last session was the ASPT letter writing session. We spent a fair amount of time talking about the nature of the letters themselves, the procedures, what reports had to be done, two sets of procedures for appointments, for allocation of monies. We did a lot of quoting here and it says 'this letter shall provide an assessment of the faculty member's strengths, weaknesses and, when applicable, progress toward achievement of promotion and tenure.'

Senator Borg: Is this the place where you say insufficient progress, because the bullet point in the book right after that puts that in quotation marks and here, it is not there in words? And it does not say you must include something in the letter that says insufficient.

Dr. McGuire: Are you saying that the book does not say that?

Senator Borg: No, it does not. This is what it says. "The letter provides an assessment of the faculty member's strengths and weaknesses, and, when applicable, progress..." The only place I was able to find those statements of insufficiency is in quotation marks in the bullet point after this. I am assuming that because of that, we don't have in the document a requirement to include that statement.

Dr. McGuire: I think it's a matter of interpretation of the two. I think you are right.

Senator Borg: I can imagine a letter being written talking about weaknesses given this statement, but not actually saying insufficient progress and then having the argument down the line 'what is insufficient'.

Dr. McGuire: I think by reading five and six together, you have to use those words.

Senator Borg: Well, I am quite sure that I haven't seen those words and I am wondering if this is something that needs clarification.

Dr. McGuire: I think you are right and this is something that I will bring to the URC for their five-year review.

Senator Borg: I suspect that when this language was concocted, it was to avoid those four or five designations that included the word insufficient merit. They were trying to avoid that, but now I find the situation ambiguous.

Dr. McGuire: I think that's a fair statement. Let me raise the issue with the URC. More policy basics. The annual reviews are supposed to be calendar year. There was a fair amount of discussion of why we do a calendar year as opposed to an academic year for evaluation purposes. It would be a massive shift for us to move to an academic year, but there are some benefits to that because you have got a contiguous hold to evaluate as opposed to a spring, broken by a summer and then a fall. So I don't know whether that will get raised or not, but it is an interesting question. Notice that it gives due attention to long-term contributions.

Again, in the next paragraph, the long-term faculty contributions. More policy basics. Student evaluations—we have to use student reactions to teaching performance, but then in the appendix, it says we must use two or more types of factors to evaluate teaching performance, one of which shall be student reactions. So, when you are getting student evaluations, that's one, but what else do we use to evaluate teaching? The department should be using at least two and I would say lots, quite honestly.

Some basic suggestions about annual performance letters. Tell what the letter contains. Is this annual performance, assessment of progress toward tenure or promotion or both? I think they belong in the same letter, but I think you can go either way. What materials did you rely on? These letters should be long. What materials did you receive? What was relied upon? What were the assignments during the evaluation? One letter or two; your choice. Overall assessment, satisfactory or unsatisfactory. That's our question. I think you need to do that.

Senator Borg: I don't find it in the document.

Dr. McGuire: Yes. And I think you need to advise them of the appeals process or at least where to find it and what happens from there. Letter basics must include a clear statement of the current progress towards tenure and promotion. This is especially true if there are potential problems, but I think it is probably true in every case. How well are they doing? The little sentence at the end, do we think you are making satisfactory progress toward tenure and promotion, doesn't help at all. It's conclusory; it needs to state what you are doing right and what you are doing wrong. Provide the dates of the tenure year and the tenure evaluation year. Do not isolate individual student comments. Generalize, but generalize fairly. Look at trends if they exist, not just one bad year or one bad class and use more than student reactions to judge teaching. This is a holistic kind of view and you need to look at those in a much broader sense. Research and service—not much to say. Make specific reference to the department requirements. Be specific. If numbers are an issue, say so. If quality is an issue, say so. Basically the same thing with regard to service. Make specific reference to the department requirements. Again, be specific.

Collegiality and citizenship. Collegiality is not, nor should it be, a separate category of evaluation. In fact, under this document, it should not be. On page 2 of the document, the faculty evaluation categories talk about three mutually supportive categories...teaching, scholarly and creative productivity, and service. That's it. It does not talk about collegiality. Then it talks a little bit further about what those are. The AAUP's stance on this is similar. Those are the three things we evaluate on, teaching, research and service. However, the AAUP says that collegiality or aspects of collegiality are a part of teaching, research and service. How you relate to others in your department affects how you teach, research and certainly how you do your service. So in that sense, collegiality, or aspects of behavior at least, can be a part of the evaluative scheme, but not as a separate criteria. That is essentially the message we gave and we went a little further with that, 'is the candidate's performance in teaching, research or service affected by his or her lack or presence of collegial behaviors?' That is an issue. You have to be able to consider it in that sense.

There are a couple of provisions in this book which lead one to some collegiality issues. The tenure policies, 9, C3, talk about the candidate's competencies must be in keeping with the long-range goals of the department, school and university. So I think that there are collegiality issues implicit in that at least. Likewise, the candidate must have demonstrated the capability to work responsibly toward the goals of the department, school and university. Again, there are behavioral elements to those criteria.

What may be considered and how to handle it in the letter. Cite the specific behavior and the effect of the behavior on teaching, research, service or the department and university goals. Notice it doesn't say college

goals. It says department goals and university goals, but it doesn't say college goals. Quote the university tenure policies as noted above, if those are the issues that you are doing and be specific. Somebody always asks, 'how do you prove that?' It's not a question of eyeball proof, but it is reliable evidence. This is not a courtroom.

Senator Van der Laan: My concern about this is related to a real situation, not saying that that would happen at our institution, but I think it was at Washington University where they had a department of sociology with a strong Marxist inclination. They abolished the program. They had different criteria that they used. If we have this kind of collegiality clause, it could open up the same possibility of a witch hunt.

Dr. McGuire: I have to agree with you. I think it probably could. I kind of like where we are as a university. It allows us to consider some of the behavioral issues, but within in the context of important stuff like teaching, research and service and some of the department and college goals.

Senator Van der Laan: I am certainly not arguing against collegiality.

Senator Briggs: As we are writing the letters, I am concerned about Article 11, B1. If you have a faculty member that has adequate cause, such as lack of fitness, to continue to perform, or failure to perform, assigned duties or collegiality, is there something somewhere in any document that would define that?

Dr. McGuire: Not that I am aware of at least.

Senator Briggs: It's really vague.

Dr. McGuire: You are talking about the dismissal of tenured faculty?

Senator Briggs: Yes, and some of that can roll into collegiality. Some of that can do other things. Are there any cases?

Dr. McGuire: I am only aware of the North Carolina case. In the context of dismissal in a public institution, you do deal with due process issues. So you do have to have fairly significant procedural safeguards under those circumstances. There is such a thing as substantive due process, which deals with the fairness of the law or the guideline itself and I wonder about our dismissal policy in that sense. I think that this might be an appropriate thing to do what I said before. We deal with it in a vacuum before we have a real case before us to talk about that dismissal policy. The dismissal policy—everybody doesn't want to talk about it because it is real embarrassing and real emotional, but by the same token, someday something is going to come down the pike that we are going to have to deal with and I would like to have both the procedure and the grounds set forth. I think that the dismissal language is straight out of AAUP I think, but I'm not going to guarantee that.

Senator Briggs: But there is nothing on the books of the university?

Dr. McGuire: In my 30 years here, I know of one case and that was pretty egregious and pretty obvious. In fact, most of the time when you get to that stage, you threaten it and the people resign.

Senator Klitzing: When did you do this presentation?

Dr. McGuire: October 29th.

Senator Klitzing: I was in the hallways hearing discussion on collegiality and people were talking about that. Was that coming from this discussion?

Dr. McGuire: It may have, although there have been a number of questions that have been floating up out of departments with regard to collegiality issues for about a year now. I am not sure what the source has been. It has been a fairly common question that I get especially from department chairs—‘can we look at collegiality?’ These are the answers that I’ve been giving. Yes, you can, but in this context. I am not sure where it’s coming from unless there are specific cases of which I am unaware. We were asked to talk about it by at least a couple of department chairs and others that thought that this was an appropriate thing for us to talk about.

Senator Klitzing: I know that you said a couple slides back that that was not a criterion, but from some of the things I was hearing, it almost sounds like people are thinking it should be a criterion.

Dr. McGuire: The classic case is always the person who is a great teacher, fantastic researcher, sits on 47 committees and is the world’s biggest jerk. What do you do with them? That happens.

I provided this language; this is real tentative language and I don’t know if anybody is going to try to use it, but this basically tries to provide that nexus between collegiality and performance. ‘Your behavior is such’, whatever it is, rudeness, lack of civility, uncommunicativeness, whatever, ‘that it has made it substantially more difficult for colleagues to work with you on committees, research projects or faculty development processes’, and, by the way, I would suspect that we need to go further than that in this letter, ‘and impedes the department, etc.’

Senator Kalter: Reading that, I am not satisfied with that language. I feel like I wanted to reiterate the question about who defines this. Who has the power to define it? Is that really defining it? Is that really specific? I am concerned about this kind of slippery slope that we can get on as a university, both legally and just in terms of our treatment of each other, that uncommunicativeness is in the eye of the beholder. I would be more satisfied if a letter like that was very specific about what that means. Arrogance, of course,...I think that all of us have been accused of being arrogant just on the basis of being college professors, so I am really concerned that there be very strict checks and balances outside of departments that really ask for documentation, specifics, real evidence of something wrong, as opposed to a he said/she said kind of atmosphere. I think it could really descend into that.

Dr. McGuire: I agree with you and my next statement to them was make it as specific as you possibly can with this behavior and talk about the effect of the behavior on the actual performance, the effect of the behavior on the teaching, research, service or whatever it is as specifically as you possibly can.

Senator Fazel: If somebody is doing an excellent job in terms of research, service and teaching, but is a jerk, would that person get tenure or not?

Dr. McGuire: Because I said they were doing an excellent job on teaching, research and service, I think they have to be tenured. The jerkiness obviously didn’t affect their teaching, research or service. That’s the nexus you have got to make.

Senator Briggs: So documentation in terms of email evidence, student reviews, as much paper as you can have?

Dr. McGuire: Yes, again, it doesn't have to be the eyeball proof, but it has to be reliable.

Senator Briggs: Written?

Dr. McGuire: Written is good.

Senator Borg: And yet if you cannot put in quotations from student evaluation, you don't have that evidence.

Dr. McGuire: If you've got the generalizations.

Senator Day: Does the College of Business have collegiality guidelines? This might be a question for Joe Solberg.

Senator Solberg: None that I am aware of.

Senator Day: I was on the FRC when a case came up about the jerk, but there were clearly other issues.

Dr. McGuire: My recommendation to chairs, deans, FSCs and so on is if that's all you got, be really careful about where you are going.

Senator Briggs: Can this be grounds for dismissal if it is severe?

Dr. McGuire: Only under the North Carolina case, which is brand new. That came out in September. That is the first one that I am aware of that that has ever happened. It was a North Carolina case that said that you could dismiss a tenured professor for lack of collegiality if collegiality was established as a criterion by the university.

A few just general watch words that I left them with on this one. Specificity is incredibly important in these letters. The letters that I have seen lately, in my opinion, a lot of them are not done well and it is very important that we be as specific as we possibly can. That is a major reason why we did this. It's also important to be honest and, along the same lines, fair to everybody concerned. That brings up the issue of courage, because the DFSCs are incredibly cowardly when it comes to saying the truth to faculty members who are before them. That is what I am trying to encourage here. Confidentiality helps in that respect. You don't have to stand out there alone and say this person isn't doing their job. You are putting it in a letter and saying it as a group. Again, confidentiality emphasized again and then questions and discussion. That was our program.

Senator Kalter: Earlier, it sounded like you were saying that, in general, non-reappointment, even though there are provisions for it happening in the first or the second year, it would normally happen between the end of the third and the fifth.

Dr. McGuire: Yes, most non-reappointments we see are in about the third year or even later than that. One of the dates here, in my opinion, needs to be changed. In your first year on campus, you have to get a letter of non-reappointment by December 15th. We don't even have anything to work with by December 15th. We don't have student evaluations. They haven't submitted their annual report, nothing. I am not a big fan of that

one at all. I think these are AAUP dates that we simply incorporated into our document. I am asking the URC to consider that date back to at least January 31st or something like that so that we have the materials on which to make some kind of adequate judgment. It is possible, I suppose, that somebody is an abusive instructor. You saw them in the first semester; it's awful and we want to get rid of them. I have only seen one attempt at that, but that date needs to be shifted. I'm sorry; it's March 15th. March 15th is still pretty early. The second year is December 15th and that is the one that causes problems. You are forced out in May, but you have received nothing more after your first evaluation. After that, it's May 15th and you get an additional year from that point forward. That's true every year until you get tenure. So, if you are in your third year and they want to non-reappoint you, that comes by May 15th. Then you are hired for the next year for one full year. That's the process. If we can work with faculty, it can be a much more benign process than some of the tenure denials that I have seen that are just awful. I agree with you that there needs to be a second level review of those processes. We don't have it right now. I think the deans do. We have a good crop of deans to work with on those issues and, largely, they are pretty sensitive to those issues.

Senator Bonnell: I just wanted to thank you for providing that October session and coming to the Faculty Caucus. I learned a lot in October and I learned more today. The thing that strikes me is that every year we are required to go through ethics training and, while that has gotten better over the years, it is still of marginal value. But this is something that is really important and I think something worth hearing on an annual basis. I really appreciate you taking the time to do that.

Dr. McGuire: It's my pleasure. I agree with you wholeheartedly. I am happy to do it before any audience and we will start with some of the new faculty in the spring a couple of times, I think.

Vice President of University Advancement Search – Selection of Four Faculty Nominees

Senator Holland: The Faculty Caucus is charged with providing a slate of four potential candidates for the VP for University Advancement search. We have had seven people self-nominate themselves. You need to select four of them. You have their vitas. We will then forward this to the President, who will select two. These are the last two remaining people to be put on the committee. The committee has been formed and has already begun its work.

The individuals chosen by the Senate were Joe Armstrong, College of Arts and Sciences, G.N. Naidu, College of Business, Klaus Schmidt, College of Applied Science and Technology, and Paul Walker, College of Applied Science and Technology.

Team Excellence Awards Committee

Senator Holland: We have a request from Barb Todd about Senate representation on the Team Excellence Awards Committee. This is a fairly low impact committee. It meets once or twice before Founders Day to select the winners of the Team Excellence Award. There are some neat projects that you get to review. Would anyone care to volunteer?

Senator Holland and Senator Solberg volunteered to serve on the Team Excellence Awards Committee.

Adjournment

Motion: By Senator Hoelscher, seconded by Senator Stewart, to adjourn.

