

The University of Tennessee Faculty Senate
MINUTES
March 23, 2009

Absent: Lt. Col. Michael Angle, Janice Appier, David Atkins, Lora Beebe, Roberto Benson, Bill Blass, Thomas Boehm, Bill Bradshaw, Cathy Cochran*, Jim Conant, Daniela Corbetta, Steven Dandaneau, Jim Drake, Michael Essington, Lee Han, Robert Heller, Russel Hirst, Roxanne Hovland, Yuri Kamychkov, Jeff Kovac, Ramon Leon, Bruce MacLennan*, Norman Magden, Murray Marks, Susan Martin, Mike McKinney, John McRae, Lynne Parker, Natalia Pervukhin, W. Tim Rogers, Rupy Sawhney, Neal Shover, Montgomery Smith, Edgar Stach, Marlys Staudt, Patricia Tithof, Gary Ubben, Michelle Violanti, Peiling Wang, Pia Wood, Tim Young, Yang Zhong

*Alternate Senators: Carol Collins for Cathy Cochran, Michael Thomason for Bruce MacLennan

J. Nolt called the meeting to order at 3:34 p.m.

ANNOUNCEMENTS

Establishment of a Quorum (S. Kurth)

S. Kurth reported a quorum was present.

Senate President's Report (J. Nolt)

J. Nolt announced that he would not be presenting a report because of the long meeting agenda. He noted that his update on the budget situation appeared in the recently distributed March Faculty Senate Newsletter.

President's Report (J. Simek)

J. Simek referred to the recent events that had led to his sabbatical being abruptly ended and his appointment as President for two years. He addressed pivotal issues confronting the University of Tennessee.

Budget. Governor Bredesen was scheduled to give his budget address that evening addressing the impact of the federal stimulus package. A system-wide committee was in place to work to direct funds to the various campuses' faculties to make proposals to agencies. The current suspicion was that the stimulus money for education would for the most part be handled through the Tennessee Higher Education Commission (THEC). The money would probably be equal to what the University's budget had been reduced in recent times, so the money would only provide a two-year reprieve. He anticipated that the state might require implementation of the planned budget cuts, given the impact of recurring costs. In that case the stimulus money would be used to backfill. Simek said he would work to make certain that the University would be in the best possible position in two years, noting that ideally the economy would recover by that time. He expressed the hope that the Governor had developed some way to use the stimulus money to reduce base budget cuts. Simek announced that he would engage in a web cast the next afternoon.

Higher Education Reorganization. The possible reorganization of higher education had been brought up in Nashville in part because of fortuitous timing: the top positions in both systems of higher education would be open. Simek said he thought it never hurt to have a reasonable rational discussion of change. He noted the University of Tennessee had done well over the last decade—better than it had before—and that the campuses were stronger together. He raised the question of how the UT system would fit in a reorganized system of higher education.

Comments/Questions. D. Birdwell commented that it was better to have a two-year planning horizon than a three-month one. He noted that agencies, such as NIH, had already begun spending stimulus money by going deeper into their highly rated proposals. D. Patterson queried whether it was a propitious time to look at the campus/system organization. Simek agreed, noting that the Vice President structure was being reviewed. He said it was complicated, but there was interest in reducing the number of Vice Presidents, not simply the number of people holding the title but rather the number of people. J. Malia commented that the faculty was looking forward to working positively with the system for the next couple of years.

Chancellor's Report (J. Cheek)

J. Cheek expressed appreciation for the President's update on the budget. He said the campus had prepared a list of possible actions in anticipation of any opportunities that might arise. For example, there was a list of buildings to be built and renovated, as well as joint projects. And, there was a list focused on developing academic programs. He pointed out that for whatever bridge money there was there were budget cuts and increased costs for various items (e.g., utilities, graduate student insurance, faculty promotions) to address. As a consequence, a 9 % tuition increase was proposed. Of that increase, the majority (7%) would address increased costs. The remaining 2% would be used to accomplish anything additional.

Comments/Questions. Cheek was asked whether anything in the stimulus package addressed tuition. Cheek said the only thing would be the restoration of the budget to 2006-2007, but he did not know about tuition. Simek said some language addressed it. He said the campus probably would not get as large an increase as proposed, so that pressure probably needed to be maintained.

Vice Chancellor for Development and Alumni Affairs Report (L. Davidson)

L. Davidson reported the good news that 3.05 million of the 4 million dollar fund raising goal had been attained. In other words with 60% of the campaign completed, 70% of the money had been raised. She noted that proposals had been made that would allow achievement of the goal. She said one question was how to raise money during difficult times. She had looked at giving during previous difficult times and learned that there was under a 4% decline in giving. People who are philanthropic (and are employed) typically continue to give. Some people are relatively insulated from economic downturns. And, the last charitable contributions that people tend to cut are to their churches and alma maters. The strategy development officers were employing was to stick with those who had previously donated. She noted the importance of accommodating people seeking to adjust their pledges. She then posed the question of what the campaign donations meant for the campus. She said 30% of the donations would be deferred. And, 99% of the gifts would be restricted, noting that significant money had been designated for professorships and chairs. Davidson said the faculty played an important role in creating a future generation of grateful graduates, in addition to its other contributions.

Comments/Questions. J. Shefner said H. Dye and others have said that legislators have a basic lack of understanding of what the faculty does. He asked whether there was some way to use alumni to get across the political message of supporting the University. Davidson said that Dye worked with a group divided by districts on legislative lobbying. Simek noted that there was alumni support. He noted that caution should be exercised, so that legislators were not overwhelmed. He went on to say that the problem with the legislature is that they have so many issues to address singly or in combination. The question is how to get them behind higher education.

MINUTES

Faculty Senate Meeting

The minutes of the February 25, 2009, Faculty Senate meeting were moved and seconded. Minutes approved.

Faculty Senate Executive Committee Meeting

The minutes of the March 9, 2009, meeting of the Executive Committee were available as an information item.

MINUTES POSTED ELECTRONICALLY

Graduate Council Minutes (V. Anfara)

V. Anfara highlighted the minutes of the February 26, 2009, meeting of the /Graduate Council. He began by expressing appreciation for the actions of the Graduate School. He pointed out that the meeting addressed revisions of the Bylaws for various Council committees, approvals for dissertation directions, and election of a Vice Chair/Chair-elect. Minutes approved.

Statements of Presidential Candidates (B. Lyons)

The agenda order was modified to allow both candidates to make presentations. B. Lyons, Nominating Committee Chair, said it was traditional for oral statements to be made by the candidates, in addition to the written ones. He anticipated that ballots would be distributed later in the week and the election results would be announced at the April meeting of the Faculty Senate. G. Gruber spoke first. He noted that the Senate had had extraordinary leadership in recent years. And, he expressed the belief that the proposed Senate Bylaws changes would make the Senate more nimble. J. Heminway said she and Gruber supported similar views as evidenced by their written statements. She noted that she focused on trust and communication. She said a time of change provides opportunities.

PREVIOUS BUSINESS

Task Force on Faculty Senate Effectiveness: Proposed Bylaws Changes (T. Boulet)

Committee Chair C. White was out of the country, so T. Boulet as President-elect handled the proposed Bylaws changes. The Executive Committee had reviewed and approved them. Some changes introduced at the last meeting would be voted on, while others were being introduced and would be subject to a vote at the next meeting.

Boulet said one action at the March Executive Committee meeting was removal of the proposed elimination of the Athletics Committee. C. Pierce made a correction. The Executive Committee referred the section of the Bylaws referring to the Athletics Committee to that Committee for review. Birdwell asked about the issue of Appeals Committee members' terms. Boulet said the Executive Committee agreed to a different term structure for members of that Committee. The phrase "except as noted below" would be inserted and the existing language on staggered three-year terms would not be stricken. The motion to approve the proposed amendments to the proposed changes was approved. The motion to approve the proposed changes as amended passed.

The new proposals approved by the Executive Committee included clarifying the Bylaws language (e.g., by referring to campuses in a new Section 3 of Article I) and establishing that once a quorum is obtained "it cannot be lost before the meeting is adjourned" (new Section 4, Article II). M. Holland asked about the intent behind the quorum proposal, as she understood the goal was for meetings to end at 5 p.m. She specifically asked whether a motion to adjourn could still be used to terminate a meeting. She was informed that it could.

REPORTS OF STANDING COMMITTEES

Research Council (J. Hall)

J. Hall reviewed the policy documents approved by the Research Council.

Research Data Policy. The goal of the document was to meet federal obligations for ownership of research data. It would not override other policies governing intellectual property. There was no discussion.

Tangible Research Property Policy. The policy addressed issues of definition, control, and commercialization.

Nolt pointed out that the policies had been approved by the Executive Committee and posted on the web. Motion to approve the policies passed.

Resolution on Response to the American Recovery and Reinvestment Act. The resolution constituted an affirmation of the desirability of responding to the new opportunities for funding. The Executive Committee added to the statement "collaboration of Office of Research." The Executive Committee had approved the resolution. Motion approved.

Faculty Affairs Committee (J. Heminway)

J. Heminway presented an overhaul of the annual review and retention policies. One goal of the changes was coordination of the reviews for those on tenure track. The three-year review time frame would provide fairer evaluation with long-term projects. She pointed out the new form for reporting on external activities. For faculty members in good standing the annual evaluation process would be somewhat truncated as regards the nature of the Department Head's narrative and the materials a faculty member would need to submit. Approval of a new evaluation scheme with five categories was being sought. Tentative approval of the scheme had been received to submit it to the Board of Trustees, if the Senate approved it.

Birdwell had distributed proposed changes (these are included as Appendix A below). Amendments to Exhibit F were moved and seconded. A change in terminology, namely, replacing "employment" with "engagement" was proposed. Amendment 2 proposed another change in wording on p. 24, as the "no expense" wording was at variance with current policy stating "without significant direct expense." Amendment 3 was complex. It addressed federal contracts, specifically OMB Circular No. A21 that does not mention "100% effort." Amendment 4 addressed the confidentiality issue—what *additional information* would be provided. Amendment 5 proposed substituting "or" for "and." Amendment 6 addressed redundancy in two sentences, namely "total consulting time."

J. Malia asked Heminway's view of the proposed changes. Heminway said she did not object to them, although some were more important than others. S. Gardial said she did not see any big problem for the Office of Research. G. Reed said he did not see any problem with what Birdwell proposed. Lyons said whether the form was changed or a wording change was required on compensated outside activity. Wang raised a question about Amendment 5. She asked why limit compensation to enhancement of "professional status." With reference to compensated outside activity could it be modified to "may"? Lyons pointed out that the intention behind Chapter 7 was to have outside activities discussed during the annual review. He noted the goal was to prevent things like running a karate studio. Lyons indicated he supported the changes proposed by Birdwell, but he did not want to introduce other activities, noting that the issue was recurring, not non-recurring activities. Heminway said the goal was to not have people engage in significant outside activities that detracted from their performance. The six proposed amendments were approved.

Discussion of Wang's point about page 24 Exhibit F was resumed. The question was why did it only state "federal." Did it mean that filing was not required for other agencies? Heminway replied that if other agencies were involved that one sentence would not apply, but faculty would still have to file. The question of what constituted "significant outside activity" was raised, particularly if a faculty member has received positive evaluations.

A resolution by G. Pulsinelli to amend proposed paragraph A.5 of Part II of the *Manual for Faculty Evaluation* (page 9 of the Faculty Affairs packet distributed prior to the meeting) was distributed at the meeting. The resolution was moved and seconded. The goal of the proposed stipulations about communication during the Annual Review Process was to clarify channels of communication. Heminway said there was concern about department heads talking to deans ahead of time or a faculty member immediately going to the Dean after meeting with the Head. Birdwell expressed concern about the last line that mentioned the ombudsperson but not the Appeals Committee. Heminway said meeting with the ombudsperson would constitute a consultation rather than an appeal. Birdwell pointed out that an early meeting with the Appeals Committee Chair would be a consultation also. Heminway responded that nothing could be appealed until the Chief Academic Officer ruled. Birdwell said communication usually began earlier than that. Boulet pointed out that a faculty member usually learns how to file an appeal through conversations. Heminway said the issue was one of process versus substance. T. Wang asked when the annual review process would be complete. Heminway said while there was still not a calendar for next year, she anticipated it would be late in the fall semester. Vice Provost S. Gardial offered that it likely would be early December. Wang said she thought the right to consult was important. Birdwell proposed an amendment to the Pulsinelli amendment: insert at the end of the last sentence of the proposed text of the Pulsinelli amendment: "pursuing possible rights of appeal available under Chapter 5 of the *Faculty Handbook*." N. Mertz seconded. Heminway said the proposed amendment would require a small change to separate that last part of the last sentence into two labeled clauses, (a) and (b), with (a) including the mentor exception and (b) including the Birdwell amendment. G. Pulsenilli was asked for his view (as a current member of the Appeals Committee) on the timing issue, that is, whether consultations with the Appeals Committee or its Chair should start taking place before the annual review process is completed. Boulet said faculty members should be able to enter into confidential conversations with the Appeals Committee Chair at any time. G. Fox said she was concerned about clause (a). Heminway said the mentoring process is also supposed to be confidential.

Motion to move the question was made and seconded. The Birdwell amendment to the Pulsinelli amendment was approved. A motion to postpone action on the overall Pulsinelli amendment, as amended by the Birdwell amendment, was made, seconded, and approved.

N. Mertz moved to adjourn. Motion died for lack of a second.

NEW BUSINESS

Faculty Senate Elections (T. Boulet)

Boulet announced that that evening faculty members would receive an email with a link allowing them to vote for the candidates for Senate from their unit. The voting would close on Saturday at 5 p.m.

ADJOURNMENT

Motion to adjourn made, seconded and approved. Meeting adjourned at 5:12 p.m.

Respectfully submitted,
Suzanne Kurth, Secretary

APPENDIX A

Doug Birdwell's proposed Amendments to "RESOLUTION FROM THE FACULTY AFFAIRS COMMITTEE OF THE FACULTY SENATE PROPOSED FOR ADOPTION AT A MEETING OF THE FACULTY SENATE TO BE HELD ON March 23, 2009"

I plan to move that the following amendments to Exhibit F of the above resolution be adopted at today's meeting of the Faculty Senate.

--Doug Birdwell / EECS / College of Engineering / March 23, 2009

Amendment 1: In exhibit F, change "employment" to "engagement" as follows:

on p. 24:

(a) Change:

"The proposed employment will not interfere with my assigned duties. In such outside employment, I will act as an individual and not as a representative of The University of Tennessee."

to

"The proposed engagement will not interfere with my assigned duties. In such outside engagement, I will act as an individual and not as a representative of The University of Tennessee."

(b) Change:

"I understand that consulting/outside employment may not be undertaken on that portion of time covered by federal grants or contracts. I further understand that this request applies only to that portion of my time for which I am employed by The University of Tennessee. I agree to furnish reports and additional details of employment as reasonably required (taking into account, for example, professional or contractual obligations of confidentiality) and to update this form when appropriate during the academic year."

to

"I understand that consulting/outside engagement may not be undertaken on that portion of time covered by federal grants or contracts. I further understand that this request applies only to that portion of my time for which I am employed by The University of Tennessee. I agree to furnish reports and additional details of engagement as reasonably required (taking into account, for example, professional or contractual obligations of confidentiality) and to update this form when appropriate during the academic year."

(c) Change:

"I certify that there will be no conflict of interest between this outside employment and my responsibilities as an employee of The University of Tennessee. I also certify that this employment/consulting work will be conducted at no expense to The University of Tennessee."

to

"I certify that there will be no conflict of interest between this outside engagement and my responsibilities as an employee of The University of Tennessee. I also certify that this engagement/consulting work will be conducted at no expense to The University of Tennessee."

(d) Change:

"I have read Chapter 7 of the Faculty Handbook (Compensated Outside Services) and agree to conduct my outside employment/consulting in accordance with the applicable provisions of this Chapter"

to

"I have read Chapter 7 of the Faculty Handbook (Compensated Outside Services) and agree to conduct my outside engagement/consulting in accordance with the applicable provisions of this Chapter"

on p. 25:

(a) Change "Names and addresses of employing firms, agencies or individuals" to "Names and addresses of firms, agencies or individuals" (deleting the word employing).

Rationale: Consulting is often performed by a faculty member as an independent contractor, and not as an employee. The IRS treats these situations differently, and a publicly available form signed by the faculty member referring to the relationship as "employment" could create problems.

Amendment 2: In Exhibit F, change the wording on p. 24 from:

"I also certify that this employment/consulting work will be conducted at no expense to The University of Tennessee."

to

"I also certify that this engagement/consulting work will be conducted without significant direct expense to UT or significant use of university facilities, equipment, or services unless procedures and fee schedules have been established and approved as specified in the Faculty Handbook."

Rationale: The historical standard has been one of "no significant impact", not "no expense" to UT. See section 7.3, item #6 of the *Faculty Handbook*. This issue also came up a number of years ago with regard to the use of UT IT resources such as the network and email -- and the Research Council (including Bill Blass and myself, among others) affirmed its position in these discussions (with OIT) that an expectation of "no expense" was unreasonable and could open a faculty member to criticism for activities such as use of a UT email account to communicate with a client. This position is reflected in the current wording in the *Faculty Handbook*, which is extracted to form the proposed change.

Amendment 3: On p. 24, change:

"if I receive compensation from federal grants and contracts, the additional commitment reported with this form cannot result in more than 100% effort as detailed in OMB Regulation A21"

to

"if I receive compensation from federal grants and contracts, I understand that this compensation must be in compliance with OMB Circular No. A21".

Rationale: OMB Circular No. A21 (its official name) does not mention "100% effort", and it does not restrict total effort to 100%. The current wording is not consistent with either historical UT practice and policies or the requirements of OMB Circular No. A21. The relevant portion of A21 is reprinted at the end of this document for your review. For the full text, see <http://www.whitehouse.gov/omb/circulars/a021/a021.html>.

Amendment 4: On p. 24, change:

"I agree to furnish reports and additional details of employment as reasonably required (taking into account, for example, professional or contractual obligations of confidentiality) and to update this form when appropriate during the academic year."

to

"I agree to furnish additional information as reasonably required, so long as this is consistent with, for example, my professional or contractual obligations of confidentiality, and to update this form when appropriate during the academic year."

Rationale: The issues of confidentiality can not be overstated. "Reports" – which could be interpreted as being written – are a particularly severe problem.

Amendment 5: On p. 24, change:

"my value as a faculty member and my own professional status will be enhanced and improved by the proposed outside professional activity"

to

"my value as a faculty member or my own professional status will be enhanced and improved by the proposed outside professional activity"

Rationale: It would be difficult to firmly establish that one's value as a faculty member is enhanced and improved by a single activity. This standard is also unfair to faculty members who agreed to employment at UT with the understanding and expectation that they were free to consult for external organizations up to one day a week without any restrictions.

Amendment 6: On p. 25, delete the lines that begin:

"Total consulting time requested for period"

and

"Total consulting time requested (including previous approvals)"

Rationale: Many consulting projects are open-ended and may continue for an extended period of time. I believe the rest of the form adequately captures the need for reporting and oversight without attempting to account for every hour or day of labor in advance.