

Senate Council
March 30, 2015

The Senate Council met in regular session at 3 pm on Monday, March 30, 2015 in 103 Main Building. Below is a record of what transpired. All votes were taken via a show of hands unless indicated otherwise.

Senate Council Chair Andrew Hippisley called the Senate Council (SC) meeting to order at 3:03 pm.

1. Proposed New Governing Regulation on Faculty Disciplinary Action - Discussion with President Eli Capilouto

The Chair offered a recap of events leading up to the day's meeting. At the last SC meeting, the SC discussed the final report of the ad hoc Committee on Faculty Disciplinary Action, as well as the three major areas of conflict. After the discussion, the SC charged the Chair with contacting President Eli Capilouto, which the Chair did. During the same conversation, the Chair also shared various representative comments from SC members with the President. The first big issue the Chair shared with the President was the issue of academic freedom. Although the SC agreed that academic freedom does not give faculty the right to do anything they want, there were differences of opinion on how that was worded in the proposed new *Governing Regulation*. The Chair and President agreed that there was a way to bridge that gap.

The second issue the Chair raised with President Capilouto was how to address misconduct by faculty administrators. Through General Counsel Bill Thro, the President had previously expressed concern that the policy might limit the President's ability to administratively remove a dean (or other faculty administrator) in the cases of severe misconduct. The Chair explained that the SC believed faculty administrators who misbehave should have the same rights as faculty who misbehave. Further, the SC believed that the wording of existing regulations would allow the President to remove a faculty administrator from their administrative role for misconduct, while any misconduct behavior that is related to their faculty rights will be addressed under the proposed new *GR*. Using a dean as an example, a dean wears two hats – faculty and administrator. Disciplinary action for misconduct stemming from dean activities would fall under a different regulation than disciplinary action for misconduct stemming from faculty activities. It could be possible that a faculty administrator could face disciplinary action for the same misconduct behavior under both regulations.

The final, third issue was more substantive. The Chair explained it was an issue of appeals, specifically if a faculty member is declared innocent by the faculty hearing panel, would the dean be able to appeal the finding of innocence? SC discussed the issue at length at previous meetings and some saw the symmetry between appealing innocence as well as guilt. Thro's compromise was somewhat well received by the SC, in which there would be a special appeals body comprised of the SC chair, University Appeals Board chair, and the provost. The Chair noted that the appeals process was something that SC had a strong desire to talk about with the President.

President Capilouto thanked SC members for their willingness to carefully consider the issue of a faculty disciplinary policy and said it was an essential process to have at a university. The President noted that the misbehavior required for the disciplinary process to begin was extremely rare, but when such things do occur, it is important to have a better policy than the two somewhat extreme measures allowed under current regulations. The President said that what had been proposed thus far was fair, had

symmetry, and included a range of disciplinary actions to fit various offenses. He commented that he felt good about where the initiative currently stands.

The Chair opened up the floor for questions and discussion. McCormick expressed concern that the possibility of appealing innocence would place a significant burden on a faculty member with regards to their need to retain an attorney if the dean appeals their innocence. The President responded by saying that in his experience, the faculty who required outside legal counsel were those faculty whose misdeeds rose to the level of being read about in the newspaper. He said the majority of situations would involve lesser offenses and that it was fair for both sides to be able to make an appeal.

Mazur also expressed concern about the ability of a dean to appeal a decision – she said it appeared to be double jeopardy if a faculty member can be tried and retried over and over again. Mazur said this appeals process seemed to contradict the President’s language in his original memo to the SC in which he requested a timely process. The President said that the original proposal included a timeline that could go up to a few hundred days; he thought the timeline allotted for appeals would be a reasonable period in which to find a resolution.

Porter opined that a dean would always appeal a finding that contradicted their belief. He asked for an example of any situation in which a dean would not “automatically” appeal. President Capilouto said he preferred not to think about the matter in terms of winners and losers, but from a perspective of respecting a deliberative process and the information that comes with the process. He said that the rationale for a decision will carry weight with reasonable people, although there could be some gray areas. He said that at another institution, he was involved with some scientific misconduct inquiries on technical matters and that it was not easy for every party to have the same perspective. He said that a panel could be split in terms of its recommendations and that could be reasonable grounds to appeal. The President opined that reasonable people will not go against resounding, compelling series of facts that dispute a claim.

Wilson asked about an appeals process and if the President was willing to consider having language that would require justification for an appeal on certain grounds. Wilson acknowledged there could be an evidentiary mistake, a one-in-a-million mistake, which would benefit from an appeals process. The President said he was willing to consider that, but wondered who the appeal would go to. Wilson replied that Thro had written language that would accommodate an appeals process with a separate appeals panel. Grossman opined that the language about justifying an appeal was implicit in the proposed new *GR*. President Capilouto agreed – he said it almost went without saying that the grounds for an appeal would have to accompany any request for an appeal. Christ said it was not clear regarding the grounds on which an appeal could be made – could an appeal be based on new evidence, or evidence wrongly considered, or on a procedural basis, or on any grounds?

Guest Connie Wood, who was a member of the [now dissolved] ad hoc Committee on Faculty Disciplinary Action, said that while she did not intend to speak for the Committee, she could summarize the Committee’s concerns. She said the overall concern was that allowing a dean to appeal would nullify the decision of the hearing panel. Further, the proposed new *GR* does not seem to contain language that would specify whether the appeals panel would have appellate jurisdiction (only able to review past proceedings) or if it would have original jurisdiction (able to deliberate on new evidence). Wood said it would be fairer to only allow appeals if the panel went beyond its discretionary powers or if it completely misinterpreted something. In other words, appellate jurisdiction was more palatable for the Committee. Wood also expressed concern that the language of the proposed *GR* did not provide access

to material presented to the appeal body for the accused faculty member and also did not clearly state if new evidence could be produced at the appeals stage. She noted there is a provision that only allows for a reopening of a case if General Counsel discovers substantial new evidence. President Capilouto said that he would ask Thro to work with SC further on that aspect.

The President commented that when misconduct is not stopped, it makes the entire University look bad. He said he believed everyone wanted a fair process and he did not want discussion to ever devolve into an “us versus them” mentality. He said he would be glad to ask Thro to work further on the language, as there was no intent to trap someone by withholding evidence and then creating a “gotcha” moment later on. He said language could be added to make that clearer.

Mazur expressed concern that an appeals process could almost render the entire process to be advisory in nature, similar to promotion and tenure decisions; faculty bodies make advisory recommendations but those are frequently overturned by the dean. Mazur said that making the language explicit would go a long way towards helping faculty better understand the process.

Bailey said that during his career at UK, he had participated in some committees that were advisory to the dean; faculty on those committees tended to recognize when a dean had already made a decision but was going through the motions of asking for faculty input. Bailey said it was discouraging for faculty members to feel that way and worried about it occurring when a dean appealed the decision of a faculty body. He said the members of the faculty hearing panel will always know that the dean can appeal any finding, no matter what. He said that integrity would be added to the process if there is an explicit rationale required for making an appeal.

Porter said he could agree to allow a dean’s appeal, but that it would need to be based on something specific. He asked if there had been any decision whether appeals would be based on merit or on procedures. The President said that it was his preference that an appeal not be limited to something as simple as a procedure. If a faculty member has extenuating circumstances that they thought were not entirely understood, then that faculty member should have the right to make those points. In response to a follow-up question from Porter, the President clarified that appeals should be able to be made based on both merit and procedure.

Blonder objected to the example of a faculty member appealing a finding of guilt, saying that the SC’s concerns were more about a dean appeal a verdict of innocence. She said that having language that allows a dean to appeal innocence and cause the whole process to start over again would not be perceived as a serious attempt to engage faculty in the process. The President commented that it was unlikely the process would start from scratch, as there would be a body of evidence and information that was gathered which would need to be reviewed.

Grossman commented that it appeared that everyone agreed that an appeals panel would not be adjudicated de novo, but rather that the decision of the panel should be given heavy weight. Wood added that the appeals process should only have appellate jurisdiction and be able to review the process to see if the panel went outside its scope. There is already a mechanism to allow the consideration of new evidence. The President said he understood her concern.

Wilson said that another concern was the preference for clear English as opposed to legal discourse in the document. He said the proposed new *GR* will be easier to explain to faculty if it is worded simply. It would be best to have clearer language and less legal terminology.

Blonder raised the issue of clearer language in the section on standards that govern faculty behavior. Grossman explained that the Chair had asked him to work on that language. As a result, Grossman talked with Thro the previous week and he was amenable to the language that Grossman drafted. The Chair said that he would hand out the amendments soon. Blonder said that she wanted the President's opinion on the language and the President said he would need time to compare both passages, although he said he could not imagine objections to clarity. He said he would like to review the versions to perhaps see other points of view. Mazur spoke in favor of simpler language. President Capilouto asked if she also preferred less wording and Mazur concurred.

Wood said she wanted to bring up another topic, specifically how the proposed new *GR* would work with existing regulations and policies, specifically the things mandated by The Joint Commission, which accredits UK's hospital. She said that the Committee kept adding language to say that a faculty member's clinical activities were covered under a separate policy, while Thro kept taking it out. She said the intent was to be sure that faculty rights, other than clinical responsibilities, were governed by the proposed new *GR*. After a few additional explanatory comments, the President said he would discuss the issue with Thro. President Capilouto commented that in some cases, it would be hard for a clinician to be able to teach if they did not have clinical privileges. He said he would find out exactly what Thro's concerns were.

As comments tapered off, the President said that SC members were welcome to ask him about anything on their minds. Blonder asked about the soon-to-be-vacant position of vice president for institutional diversity. President Capilouto said he planned to spend a lot of time talking with many people, which would help him make a decision. He said he was aware of the rumor that the office of institutional diversity would be dissolved, although he was not sure where that rumor came from and had no plans to do away with the office.

The Chair again thanked the President for attending (echoed by many SC members) and the President departed.

The Chair said that the next steps involved reviewing amendments. He asked Wilson to work on language about dean appeals, Grossman to work on clearer language about academic freedom, and Christ to work on language to unequivocally state that deans should be treated like faculty. McCormick stated that she was confused about the need to amend the Committee's final report because there had been no SC action to direct the amendments. Christ said that the report was accepted, but the SC could make edits and have that as a final version of the proposed new *GR*. The Chair explained that the amendments were highlighted in three different colors – there was an additional area with Christ's color [green] that had no changes, but might need revision if another, corollary section were to be changed.

The Chair said the efficient, but perhaps not sensible thing to do would be to start voting on the amendments immediately. Porter suggested that the SC work its way through the agenda to take care of business for which invited guests attended, after which the SC could again take up the faculty disciplinary action item. There were no objections to Porter's suggestion.

2. Minutes from March 23, 2015 and Announcements

The Chair said that there were a few requested edits to the minutes that he had emailed out previously. There were no further requests for edits. There being **no objection**, the minutes from March 23, 2015 were **approved** as amended by **unanimous consent**.

The Chair had a few announcements.

- The Chair discussed the issue of administrative bloat with President Capilouto at their recent meeting. The Chair related that the President was still working on it.
- During that same meeting, the Chair talked with the President about the questions on the faculty survey of the President's performance for 2014-15, which were identical to the questions for the survey in 2013-14. The President declined to add any questions, as well as declined to edit any questions.
- The Undergraduate Education unit appears to not have been formally documented as an educational unit per UK's *Governing Regulations (GR)*, even though there was a common assumption that the unit is headed by a dean. The Chair suggested that during the retreat, the SC could make a motion to request an amendment to the GRs to formally include Undergraduate Education as an educational unit.
- The new strategic plan will be finalized around June, but the SC retreat might include a discussion on the role of the SC and the University Senate (Senate) in its implementation.

3. Old Business

a. 2014-15 Faculty Evaluation of President Capilouto

Guest Connie Wood, who ran the survey evaluation in 2013-14, said that she had updated the survey merely by updating the year range, to 2014-15. There was brief discussion about the questions and the timeline. Wood noted that the survey would be sent out well before nine-month faculty leave campus. She added that she did not add any demographic questions out of concern that it would severely decrease faculty response rates. She said she was able to break respondents down by college, gender, race, etc. She said she had no way to cross-tab the responses with the demographic details, but she could report on what percentages of each college's faculty responded, of clinical versus non-clinical respondents, etc. Wood said she planned to give faculty three weeks in which to respond and hoped to send the survey out to faculty prior to the end of the week.

Christ **moved** to approve the questions and the methodology and Brown **seconded**. A **vote** was taken and the motion **passed** with none opposed.

4. Committee Reports

a. Senate's Academic Planning and Priorities Committee (SAPPC) - Wally Ferrier, Chair

i. Standardized Meeting Times

Guest Walter Ferrier, chair of the Senate's Academic Planning and Priorities Committee (SAPPC), presented the SAPPC's report on standardized meeting times. Ferrier noted that currently, about 30% of classes are offered at nonstandard times. He added that the final report was endorsed by the SAPPC, but the specific wording that would need to be added to the *Senate Rules (SR)* still needed to be created. He said that after having created the report, the SAPPC agreed with the Registrar's office that the start time for 75-minute blocks on time on Mondays and Wednesdays should be at 3 pm, not the 2 pm time listed in the report.

There was lengthy discussion among SC members – while there were very few objections, there were questions about the issues noted below.

- Implementation.
- Exceptions based on: pedagogical aspects; based on departmental control of the room; based on course type (seminars, laboratory classes, clinical courses, etc.)
- Department-controlled classroom space.
- Effect on four- and five-credit-hour classes.
- Impact on distance learning courses.
- Relevance for evening classes. (Ferrier agreed that the report's intent was that the mandate for standardized meetings patterns would taper off into the evening hours, but that it was not explicitly stated in the report.)
- Determination of a "pecking order" prioritization schedule for courses that may compete for the same classroom space. (Ferrier acknowledged that this aspect was not included in the report.)
- If the SAPPC should have considered (it did not) whether electives or core requirements should have priority scheduling.

The Chair commented that the issue was clearly within the Senate's realm. Any time a student has trouble accessing a needed class, it becomes an educational issue. He said the report could next go to the Senate for a vote, after which the policy would need to be codified in the SR. Ferrier noted that it was very possible that just making faculty aware of the current classroom scheduling inefficiencies would improve the situation. Associate Provost for Undergraduate Education Ben Withers (guest) said that if approved, the change would be a positive one for the University. In response to a comment from Porter, Ferrier said that 33% of course sections were at nonstandard times, which affected approximately half of all students.

Grossman **moved** that the SC accept the report from the SAPPC and ask for a presentation of the same to the Senate, after which the proposal can be sent to an appropriate Senate committee for codification. Christ **seconded**. After additional brief comments, a **vote** was taken and the motion **passed** with none opposed. Grossman asked that the report add information about exempting laboratory courses and Ferrier agreed.

ii. Solicitation of Ideas for New Academic Programs

Ferrier explained that at a previous Senate meeting he had commented about the SAPPC offering a survey for faculty to fill out about perceived holes in UK's degree and program offerings. Ferrier said that after conversation with administrators, it was agreed that sending an email solicitation for input would be more effective than creating a full-blown survey. So, upon receipt of the email from the SAPPC, if a faculty member replies with an idea for a new program, the SAPPC will not develop the program, but will facilitate a matching up of faculty across campus who may individually be interested in the same new type of program. He said that if the email seemed reasonable to SC members, he would like to send it out as soon as possible, commenting that Ms. Brothers had already set up a listerv to facilitate emailing all faculty.

Ferrier said that at his [Ferrier's] request, Director of Institutional Assessment Roger Sugarman, and members of Sugarman's staff, put together a "heat map" that showed academic degree programs that UK has in common with its peers. The primary limitation of the map is that it was created based on exact program names, so there are some mismatches due to very similar degree programs at UK and elsewhere being named differently.

McCormick and Mazur expressed concern about what Ferrier and the SAPPC will do with the information they gather and the purpose. The Chair recalled that the issue went back to the SC's June 2014 retreat in which there was discussion about the Senate constantly being in reactive mode; soliciting ideas was a way of being more proactive. Guest Withers added that connections go across colleges and this type of solicitation of ideas could help match up faculty with similar interests. Ferrier added that the semi-anonymous email replies could give junior faculty some comfort in suggesting ideas. Withers used a possible degree in graphic design as a good example – such a degree should include faculty and course work from the Colleges of Fine Arts and Design, and could also include the Colleges of Arts and Sciences and Engineering. He said that if UK continues to rely on the current methodology for creating new degree programs, UK will miss out on proposing the programs that students really want. While such discussions would not mandate creation of new proposals, it would help facilitate conversations about holes in UK's degree offerings. McCormick asked that Ferrier include wording in the email solicitation that discusses how the suggestions will be used. Mazur agreed, saying Ferrier should elaborate on the motivation for the SAPPC's email solicitation, as well as the anticipated benefits.

Brown opined that the SC did not need to see the revised memo again prior to it being emailed. He **moved** that the SC endorse the email solicitation of new program ideas and McCormick **seconded**. A **vote** was taken and the motion **passed** with none opposed.

5. Late Addition to the Degree List (as per Senate Rules 5.4.1.1.D.1-2)

The Chair said that he had received a petition to add a student (Graduate School, Student CL-67) to the December 2014 degree list and asked Graduate School Assistant Dean Cleo Price to explain his request. Guest Price did so and explained that the root of the problem was the ability in SAP to select a previous year as a graduation date. Although the student correctly requested her application be changed, those responsible for making the change input the wrong year.

Mazur **moved** to add student CL-67 from the Graduate School to the December 2014 degree list, due to an administrative error. Brown **seconded**. A **vote** was taken and the motion **passed** with none opposed.

The Chair said he would not accept any motion to adjourn because the SC had yet to decide on what to do about the amendments proposed by SC members. He suggested the SC could meet during the same time frame on Wednesday, or on Friday, or could take another route. He noted that the SC will have to have something ready for the University Senate to review during its April 13 meeting. There was extensive discussion among SC members regarding next steps. It was ultimately decided that the SC will begin meeting one hour earlier on Monday, April 6 (at 2 pm) to allow for sufficient time to review amendments to the proposed new *GR*. Brown suggested SC members submit amendments well in advance of the meeting. The Chair asked SC members to send in their amendments by Wednesday, to give sufficient time to circulate all amendments.

Given the time, the Chair solicited a **motion** to adjourn, which was made by Mazur and **seconded** by McCormick. A **vote** was taken and the motion **passed** with none opposed. The meeting was adjourned at 5:24 pm.

Respectfully submitted by Andrew Hippisley,
Senate Council Chair

SC members present: Brown, Bailey, Blonder, Christ, Grossman, Hippisley, Mazur, McCormick, Porter, and Wilson.

Invited guests present: Eli Capilouto, Walter Ferrier, Cleo Price, Ben Withers, and Connie Wood.

Prepared by Sheila Brothers on Thursday, April 2, 2015.