

**UNIVERSITY OF NOTRE DAME
MEETING OF THE ACADEMIC COUNCIL
OCTOBER 13, 2003**

Members Present: Rev. Edward Malloy, C.S.C., Nathan Hatch, John Affleck-Graves, Carol Ann Mooney, Maura Ryan, Jeffrey Kantor, Rev. Mark Poorman, C.S.C., Eileen Kolman, Joseph Marino, Patricia O'Hara, Mark Roche, Jennifer Younger, John Robinson, Jay Brandenberger, Seth Brown, Nasir Ghiaseddin, Kate Schlosser, Patricia Maurice, Carol Tanner, Thomas Noble, Susan Blum, Neil Delaney, Vittorio Hosle, Joseph Buttigieg, Cindy Bergeman, Olivia Remie Constable, Christian Moevs, Steven Buechler, Hope Hollocher, Panos Antsaklis, Mihir Sen, Thomas Frecka, Teresa Phelps, J. Douglas Archer, Ava Preacher, Kenneth DeBoer, Willa Qian, Nicole Wykoff, Angela Colmenaro

Members Absent: Carolyn Woo, Mitchell Wayne, Meghan McCabe, Tim Dale, Angela Colmenero

Members Excused: Frank Incropera, Michael Lykoudis, Paula Higgins, Carolyn Nordstrom, Robert Bretz, Dino Marcantonio

Observers Present: Mary Hendriksen, Capt. James Shelton, Harold Pace, Kevin Barry

Observers Absent: Dennis Moore, Daniel Saracino

The Rev. Edward Malloy, C.S.C., called the meeting to order at 3:05 p.m. Prof. Hatch offered a prayer.

1. Approval of the minutes for the Academic Council meetings of September 8, 2003, and September 18, 2003: After a change was made to the list of those attending the meeting of September 8, 2003, the minutes of the meetings of September 8, 2003, and September 18, 2003, were approved.

2. Proposal of the Undergraduate Studies Committee on classroom management: At its meeting of April 30, 2002, the Academic Council approved a proposal on course scheduling that would have shifted all Monday/Wednesday

classes—both 50-minute classes and 75-minutes classes—to a Wednesday/Friday schedule, as well as all Friday tutorials to Monday. [See *Notre Dame Report*, vol. 32, no. 5, pp. 153-155, (October 25, 2002).] The purpose of the shift was to distribute courses at the University more evenly over the class week as a means of responding to three perceived problems: inefficient use of classroom resources; scheduling conflicts for students; and the “Friday problem,” wherein only 15% of classes are scheduled on Friday—a situation that, in addition to underutilization of classroom spaces, has implications for alcohol abuse related to long weekends.

Over the summer, strong faculty and student opposition emerged to the Council’s vote. Objectors pointed out various unintended consequences of the change, such as the effect of a shift in Friday tutorials on the Monday schedule, problems with the scheduling of graduate student courses, the effect on travel for athletic teams and the physical education rotations. Thus, at its meeting of November 26, 2002, on the recommendation of the subcommittee on scheduling and classroom management, the Council rescinded its earlier vote. The subcommittee agreed, however, to study the issue of class scheduling again and to return to the Council with a recommendation. [See *Notre Dame Report*, vol. 32, no. 16, pp. 373-74 (April 25, 2003).]

At today’s meeting, Prof. Preacher, chair of the subcommittee on scheduling and classroom management issues, introduced a new proposal on course scheduling. See Attachment A. The statement accompanying the resolution indicates that after reconsidering the issue subcommittee members decided that, while Notre Dame’s classroom resources could certainly be distributed more efficiently, the problem was not so severe at this time as to require a mandated distribution system for course scheduling. Rather, subcommittee members concluded that it would be “more appropriate for departmental chairpersons and faculty to consider the scheduling conflicts that are created for students when courses are scheduled only on a Tuesday/Thursday schedule and adjust the course scheduling accordingly at the departmental level.”

Explaining that the subcommittee decided to reintroduce the two clauses of the original proposal that would establish a monitoring system for classroom management, Prof. Preacher said that the first part of the resolution presented to the Academic Council today calls for formation of a Committee on Classroom Management, composed of representatives of various University offices and colleges. Undergraduate students are represented on the Committee as well. The Committee’s function is to “review course scheduling issues; to help set classroom physical and technical

configuration standards; to consider requests to upgrade a classroom, take a classroom out of service, or otherwise alter the current use of a classroom; and to continue efforts to allocate resources in an efficient and equitable manner.” The second part of the resolution calls for the registrar to compile data each semester indicating “how the university as a whole as well as each college and school has distributed its courses during the class week and over each class day so as to efficiently use the university classroom resources and provide feasible scheduling options for students . . .” The measures are to take effect for the Spring 2004 semester.

Prof. Roche asked Prof. Preacher to clarify whether all portions of the original proposal had been rescinded. He also asked whether the subcommittee had any confidence that departmental chairpersons and faculty would follow through on their charge to consider the effect of course scheduling on students and their ability to create a schedules.

Prof. Preacher replied that while it was Prof. Roche who questioned at the November 2002 meeting whether the monitoring and reporting provisions of the proposal—as well as its substantive provisions—should be rescinded, the Council did, in fact, vote to rescind the entire proposal. As to his second question, Prof. Preacher said that she did have confidence in departments’ willingness to engage in some self monitoring. In fact, she noted, there is evidence that the self-monitoring is already occurring. At least in the College of Arts and Letters, she has seen some shift in course scheduling towards a broader distribution of classes in Monday/Wednesday/ Friday time slots. That shift is directly attributable to the interventions of department chairs.

Prof. Hatch asked Dr. Pace, the University registrar, whether he had any thoughts on the proposal.

Dr. Pace replied that he supported it.

After noting that the proposal presented to the Council has the support of the Executive Committee, Fr. Malloy asked for a vote on the resolution that both establishes a Committee on Classroom Management and calls for the registrar to compile and report data each semester on course scheduling. The resolution was approved unanimously.

3. Changes to Article III of the *Academic Articles* concerning dismissal of a faculty member for cause and providing procedures for the imposition of severe sanctions on a faculty member: Over the past year, a joint committee of the Faculty

Affairs Committee of the Academic Council and the Faculty Senate has worked on redrafting the section of the *Academic Articles* dealing with dismissal of a faculty member for serious cause [*Academic Articles*, Art. III, Sec. 6]. On behalf of the joint committee, Prof. Mooney introduced the proposed amendments (see Attachment B). She explained that in addition to various proposed procedural changes applicable when the Provost initiates charges to *dismiss* a faculty member, the critical new portions of the proposal deal with the imposition of *severe sanctions* on a faculty member. She highlighted other important aspects of the proposal:

(1) It defines the term “severe sanctions” to include suspension, revocation of tenure, reduction in academic rank, and certain reductions in salary.

(2) It provides a faculty member facing dismissal or the imposition of a severe sanction the option of a formal, closed-door hearing. In that hearing, evidence is presented to a three-member hearing committee—all three of whom are elected, tenured members of the Academic Council—elected by the Executive Committee of the Academic Council. The hearing committee determines whether clear and convincing evidence exists for imposing the proposed sanction. If so, the members convey that conclusion in writing to the Provost. If not, they provide a recommendation as to an appropriate sanction, if any. The Provost then makes a determination of the case and informs the accused faculty member and the members of the hearing committee in writing of his decision and the reasons for it.

(3) It provides procedures for appeal to the President if the faculty member is dissatisfied with the final result of the hearing.

Prof. Mooney said that the Faculty Senate passed a version nearly identical to the proposal presented to the Academic Council today. The shaded language in today’s proposal indicates words or phrases added by the Faculty Affairs Committee of the Academic Council, with the consent of the two representatives of the Faculty Senate who were present at the meeting.

Prof. Robinson, a member of the Academic Council and the chair of the Faculty Senate, added that for purposes of this meeting, the shaded provisions should be treated as friendly amendments.

Fr. Malloy asked a question concerning Subsection (c)(5), the confidentiality provision. While saying that he is in favor of its call for the “strictest confidentiality,” he

noted that one of the challenges with any case involving dismissal or the imposition of severe sanctions is the civil litigation that may follow it. Thus, he presumes that the section's confidentiality clause relates only to internal confidentiality. In the event of civil litigation, the responsibility of those involved in any disciplinary matters may be different.

Prof. Mooney responded that the issue of confidentiality was discussed briefly in committee. If a person is subpoenaed to give testimony in court, he or she would be free to do so. A subpoena would trump the confidentiality provisions of Subsection (c)(5).

Prof. Roche said that the same issue came up in discussions with the Faculty Affairs Committee. He pointed out that in the letter the University sends to external evaluators in connection with promotion and tenure review, a similar promise of confidentiality is to be made; however, a simple phrase is added: ". . . except in the unlikely event that litigation requires its disclosure." Prof. Roche said that adding similar language to this clause would indicate to all involved exactly what is at stake.

Prof. Mooney agreed that the phrase he suggests could be added to the last sentence of Subsection (c)(5).

Prof. Robinson said that doing so would make explicit what was implicit before.

Prof. Antsaklis asked if the word "unlikely" is necessary.

Prof. Mooney said that it was not.

Fr. Malloy said that the word "unlikely" would be struck.

Prof. Mooney clarified that the phrase would read: ". . . except in the event that litigation would require disclosure of these matters."

Prof. Noble asked Prof. Mooney to explain the consequences associated with a breach of confidentiality. Could a breach of Subsection(c)(5) itself constitute "serious cause" and so lead to dismissal or the imposition of severe sanctions? He wondered if it would be wise to spell out the consequences of a breach of confidentiality or if it would be preferable to avoid doing so.

Prof. Mooney said that Prof. Noble's question was raised at some point in one of the numerous committee discussions of this proposal. She would be hesitant, however, to classify a breach of confidentiality in any blanket way as "serious cause." The seriousness of a person's breach would depend upon the extent of what was revealed, the reasons for the revelation, and a whole host of contextual issues. Prof. Mooney said that she could envision an instance in which a breach of confidentiality was so serious that it might itself be the cause of sanctions, but she would not be comfortable defining *all* breaches that way.

Prof. Mooney added that she strongly endorses the proposal. Reiterating that it calls for major changes in cases of dismissal and the imposition of severe sanctions, she said that the procedures it sets forth are good both for faculty members who might face serious charges and for the administration. That is particularly true of the measure that provides an opportunity to a faculty member facing sanctions to present his or her case to a hearing committee—which is an option that rests in the hands of the faculty member.

Prof. Frecka asked if the proposal's definition of "serious cause" is clear. He wondered if the definition in the current proposal could still present a bit of a gray area. Would it be a good idea, he asked, to say explicitly that "serious cause may consist of any of the following . . .?"

Fr. Malloy said that Subsection (a) of the proposal does define "serious cause."

Prof. Mooney responded that she understands Prof. Frecka to mean that perhaps "serious cause" may consist of more than what is listed in Subsection (a). She said that adding any other behaviors to the definition would be potentially controversial and could not be considered a simple, friendly amendment.

Prof. Mooney continued that Subsection (a) is intended to provide an exhaustive list. "Serious cause" can be any of the actions named—"academic dishonesty or plagiarism; professional incompetence or continued neglect of academic duties, regulations, or responsibilities; conviction of a felony; serious and deliberate personal or professional misconduct (including sexual harassment), continual serious disregard for the Catholic character of the University, or causing notorious and public scandal." It is *not*, however, other things. She added that in constructing the definition of "serious cause," as well as the section's other provisions, the members of the joint committee looked at policies from a number of other institutions. Their proposal differs from the

provisions of peer institutions in its inclusion of the phrase “disregard for the Catholic character of the University,” but otherwise is similar to procedures used at other institutions.

Prof. Hosle said that he agrees that the definition of “serious cause” must be exhaustive. If a phrase such as “may consist of” is added, it would be similar to having a criminal code that permits prosecution for unspecified crimes.

Fr. Malloy observed that the role of the Faculty Senate in drafting these provisions has been important because it ensures that all points of view and variables have been considered. The accountability structures of every institution are subject to great scrutiny today. The more permeable such procedures can be and the more consistent the University can be in their application, the greater credibility Notre Dame will enjoy.

Fr. Malloy then called for a vote on the proposal of the joint committee of the Faculty Affairs Committee and the Faculty Senate, as amended, to change Article III of the *Academic Articles*. The vote was unanimously in favor of the proposal.

Fr. Malloy said that he approved of the provisions as well and would forward them to the Board of Trustees for final approval.

4. Committee reports

(a) Undergraduate Studies Committee: Prof. Preacher reported that the committee had not met since the September 18 retreat meeting. She explained that she has delayed calling the first meeting because the Executive Committee was deliberating on whether to appoint a committee to handle the subject of publishing Teacher Course Evaluations (TCEs), and this was the item given highest priority by committee members at their initial meeting. In fact, the Executive Committee has decided to appoint a committee to study the issue of TCEs. Prof. Preacher said that the committee will meet in the near future to determine how to proceed with the remainder of its agenda items.

(b) Graduate Studies Committee: Prof. Marino explained that this committee, too, has not yet had a chance to meet.

(c) Faculty Affairs Committee: Prof. Mooney reported for the chair, Prof. Nordstrom. She said that in addition to the proposal just passed dealing with the imposition of severe sanctions on faculty members, there is a companion draft now at the Faculty Senate on grievance procedures for faculty. Like the proposal passed today, that proposal is the product of a joint committee of the Faculty Affairs Committee and the Faculty Senate. After a vote in the Senate, the draft will come before the members of the Faculty Affairs Committee and then, in the not-too-distant future, before the Council as a whole.

Prof. Mooney also reported that at the Council's November meeting, the committee expects to bring forward for a vote a proposal on a salary equity committee. Discussion on a preliminary proposal for such a committee was held at the Academic Council meeting of April 23, 2003. The draft was subsequently revised and is now being circulated among the members of the committee.

In addition, Prof. Mooney reported, the Faculty Affairs Committee is working on four other issues: (1) a subcommittee is refining the language of the Academic Articles concerning elections of faculty committees; (2) members are considering a proposal to change the title of the head of the School of Architecture from "chair" to "dean;" (3) as proposed by Gordon Wishon, the University's chief information officer, members are considering a reconfiguration of the University Committee on Computing; and (4) the committee will have representation on the *ad hoc* committee appointed by the Executive Committee to study the issue of publication of TCEs. With respect to the last issue, Prof. Mooney said, that committee will be looking not only at publishing TCEs, but also at other ways to accomplish some of the transparency the students are seeking.

(d) Committee on Committees: Prof. Robinson reported that the committee has met and is undertaking a study of seven peer institutions. Members hope to learn how other universities shape their committee structures.

Prof. Robinson also reported that committee members have consulted with Prof. Kantor, Vice President of Graduate Studies and Research, because it is the overlap of the Graduate Studies Committee and the Graduate Council that originally sparked the current examination of the Academic Council's committee structure as a whole. Members plan further meetings with Prof. Kantor.

By the end of the calendar year, Prof. Robinson said, members hope to have a

proposal ready for consideration by the full Council. In doing so, they may go beyond the subject of the Council's own committee structure and call the attention of members to certain areas in which the function of the Council in the life of the University could be improved.

Before adjourning the meeting, Fr. Malloy noted that Joan B. Kroc, a generous benefactor of the University, died the previous day. He asked members to keep her in their prayers. In the near future, Fr. Malloy said, the University will honor Mrs. Kroc's memory by some appropriate action.

There being no further business, Fr. Malloy adjourned the meeting at 4:45 p.m.

Respectfully submitted,

Carol Ann Mooney