

**THE UNIVERSITY OF NOTRE DAME
ACADEMIC COUNCIL
MEETING OF MARCH 29, 2006**

Members Present: Rev. John I. Jenkins, C.S.C., Thomas G. Burish, John Affleck-Graves, Jean Ann Linney, Christine Maziar, Dennis Jacobs, Jeffrey Kantor, Rev. Mark Poorman, C.S.C., Panos Antsaklis, Seth Brown, Steven Buechler, John Cavadini, Rev. Austin Collins, C.S.C., Tom Cosimano, Katie Crossin, Mary Rose D'Angelo, Kenneth DeBoer, Nasir Ghiaseddin, James Grace, Hope Hollocher, Frank Incropera, Jennifer Keegan, Manish Kelkar, Michael Lykoudis, Collin Meissner, McRae Miller, Christian Moevs, Joseph Marino, Robert Nelson, Carolyn Nordstrom, Patricia O'Hara, Hugh Page, Ava Preacher, John Robinson, Mark Roche, Richard Taylor, Scott Van Jacob, Jennifer Warlick, Bill Westfall, Carolyn Woo, Jennifer Younger.

Members Absent: Philippe Collon

Members Excused: Gilberto Cardenas, Olivia Remie Constable, Neil Delaney, Stephen Fredman, James McAdams, Teresa Phelps, Ram Ramanan, Vijay Ramanan, Valerie Sayers

Observers Present: Kevin Barry, Dennis Brown, Mary Hendriksen, LTC Kelly Jordan, Harold Pace, Joy Vann-Hamilton

Observers Absent:

Observers Excused: Daniel Saracino

The Reverend John Jenkins, C.S.C., opened the meeting at 3:05 p.m. Fr. Austin Collins, C.S.C., offered a prayer.

1. Minutes of the meeting of February 21, 2006: The minutes of the meeting of February 21, 2006, were approved without change.

2. Changes to the *Academic Articles* related to Title IX compliance and to the composition of committees for deans' searches or reviews:

(a) Title IX compliance: Appendix A of the *Academic Articles* specifies appeal procedures for contract renewal, promotion, or tenure decisions that are allegedly the product of sex discrimination.

Subsection (a) provides that if, after consultation with the department chair, dean, and provost, a faculty member believes that an adverse decision was the result of sex discrimination, he or she may submit a petition to the provost requesting review of the case.

Subsection (e) provides: “If the reviewer finds evidence of discrimination on the basis of sex of such a magnitude that it may have affected the disposition of the case, the reviewer shall remand the case for reconsideration, beginning with the Provost’s Advisory Committee and proceeding forward through normal procedures. . .”

Subsection (f) provides: “The reviewer in all cases will report his or her decision to remand or not to remand to the petitioner and will provide a detailed written report of his or her findings to the provost.”

Prof. Linney said that after an audit, the Office of Civil Rights (OCR) required the University to clarify the chain of events in subsection (e) of the appendix and to include specific time frames in subsection (f).

She explained that as to the first change, the Executive Committee endorsed the proposal to replace the current phrase with “proceeding forward through review by the provost and the president.” Standard procedure in tenure and promotion cases is review by the Provost’s Advisory Committee, then the Provost, and then the President. The suggested change simply articulates this.

Prof. Linney further explained that the second change merely establishes a timeline. The OCR was concerned that under the current procedure, a reviewer could conceivably take years to submit a report to the provost. Thus, the Executive Committee discussed specific timetables—either 90 days or 120 days following the initiation of the procedure—but determined that a specific date would ensure that reconsideration of the case, if necessary, could be accomplished in a timely manner. April 1 was chosen because it is consistent with the standard time frame for the provost’s and president’s review of tenure and promotion decisions.

Prof. Roche asked whether the current language in subsection (e) specifying procedures for remanding a case (beginning with the Provost’s Advisory Committee) is stipulated by a court settlement or is the University’s own choice. If the latter, the contrast between procedures in cases alleging sex discrimination and those alleging personal bias strikes him as odd. When a faculty member alleges personal bias, a new Committee on Appointments and Promotions (CAP) is convened, or an outside observer, or “monitor,” is appointed to be present at CAP meetings when the group reconvenes to decide the case again. [See Article III(f)] In other words, what was colored by bias is stricken. Is it possible for the same procedure to be followed when sex discrimination is alleged?

Prof. Linney replied that as indicated by the note at the end of Appendix A, the current language is derived from a court decision. Now, the Office of Civil Rights is asking the University to clarify two aspects of the court-mandated procedures.

But, Prof. Roche asked, is the University permitted to change language in the appendix in any substantive way?

Prof. Linney said she would need to check with General Counsel on that point. Prof. Roche is correct that when personal bias is alleged, the case returns to the CAP and is begun anew; but, for cases involving allegations of sex discrimination, the procedure has been different.

Prof. Roche said his point is that the procedures specified in cases alleging personal bias appear to him to be better. He thinks it odd to have exactly the same file come to the Provost's Advisory Committee without the case having been prepared anew without the taint of discrimination.

Prof. Linney responded that it is her experience that cases alleging sex discrimination differ a bit from those alleging personal bias. In sex discrimination cases, the discrimination may have taken the form of differential course assignments or differential allocation of space, resources, etc. Remanding a case to the CAP will not necessarily remedy those problems.

A member said she believes General Counsel has indicated that it is not possible to make a substantive change to Appendix A without going back to court, which they deem not advisable. The two modifications before the Council today are not substantive changes; rather, they are a clarification of existing procedures.

Prof. Cosimano said he has a concern about the date chosen—April 1—for Subsection (f). Such a late date may be problematic if the faculty member is on the job market for the fall.

Prof. Linney said that, frequently, she must deal with questions from faculty members who have difficulties with similar issues of timing. The problem is that the appeals are not normally filed until October, and there is then time necessary for the process to play out. There is usually every effort made to complete the review as quickly as possible. The April 1 date is intended to be an outside limit.

Prof. Cosimano asked why the appeals are not usually filed until October.

Prof. Linney read from Subsection (b) of the Appendix: “. . . the petitioner may, no later than 60 days (excluding June, July and August) after notification of the original adverse decision...submit a petition to the provost requesting review. . .” Typically, the tenure and promotion decisions are communicated to the candidates around the first of May. With the summer months excluded—because faculty members are not frequently available to conduct a review—any appeals would normally be filed in September or October.

Fr. Jenkins then called for a vote on the proposed changes to subsections (e) and (f) of Appendix A. They passed unanimously.

(b) Deans' search and review committees: Fr. Jenkins next turned to the second group of changes—those dealing with the composition of deans' search and review committees in sections 3 through 6 of Article II of the *Academic Articles*.

Prof. Burish explained that the current *Articles* specify that when a dean is to be appointed or reviewed, five faculty members are elected by the college to serve on the nomination or review committee. (In the schools of architecture and law, all regular faculty members may serve as the committee.) He has recommended amendments, which the Executive Committee has endorsed, to add a few sentences to the relevant *Academic Articles* provisions.

The first proposed addition is: “The provost may appoint up to two additional members from among the regular faculty to the committee in order to ensure that a broad range of views and perspectives is represented on the committee.” While the language of the second amendment differs a bit in the sections dealing with the University’s various colleges, the point is the same in all cases: for the provost to have the ability to appoint an associate provost to serve as a nonvoting member of either a search or review committee, and, for a review committee, for the provost to appoint the chair.

Prof. Burish explained the rationale of the first proposed amendment is to allow the provost to make a search or review committee more representative when the normal election process does not result in balanced representation. He said that a good example of its desirability is provided by the search now underway for a new dean of engineering. There are five departments in engineering. Each department elected one person to the committee—as it turned out, all white males. Prof. Burish said that all members of the search committee are excellent people—and their qualifications are not at issue. Still, he would have liked to have had a woman or person of color on the committee; yet, the *Articles* do not allow him to appoint additional members. With the proposed amendment, he would have an opportunity to appoint additional members to make search and review committees more representative.

Prof. Burish continued that the proposed change would also provide him with an option to appoint someone from outside the college—for example, a faculty member who interacts with the college by way of interdisciplinary programs—to search or review committees. In addition, from time to time, it would be helpful to have another dean on a committee. It has been his experience that during a dean search, candidates frequently have many questions about the nature of the position—for example, how budgets are structured, how faculty is hired, etc.—that are best addressed by a current dean. The *Articles* simply do not allow a dean to serve in the search committee, and it is very unlikely that a college’s faculty would elect someone from outside their number to be one of five search or review committee members.

Finally, Prof. Burish explained, the proposed amendments give the provost the authority to appoint a chair of deans’ review committees. The current *Articles* are silent on this point. The proposal also codifies current University practice in that an associate provost is often asked to staff committees as a non-voting member. Prof. Linney, for example, is doing just that for the engineering search. This procedure gives the committee important organizational help. The provost’s office has secretarial support to schedule meetings and to generally keep the search or review process on track.

Prof. Brown asked for the rationale in having the provost appoint the chair, rather than having members of the committee elect a chair themselves.

Prof. Burish said that while either method is possible, the advantage of the provost appointing the chair is that, at times, certain individuals might be excellent committee members but, for various reasons that the faculty may not know of, he or she might not be the best person to serve as chair.

Prof. D'Angelo said that while she finds the idea of appointing someone to increase diversity by gender or ethnicity—or to provide an interdisciplinary perspective—to be a positive move, she would like to see that intention embodied in the document.

Prof. Burish agreed that he could do so, and some discussion ensued about the correct way to accomplish that.

Prof. O'Hara stated that she liked the language “broad range of views and perspectives.” The examples Prof. Burish cited are good ones, she said, but she can imagine considerations of balance that might not be tied to gender or ethnicity. For instance, perhaps the provost would like to see a junior member on a search or review committee or to include faculty members with a variety of perspectives on a certain issue. The phrase “broad range of views and perspectives” allows the provost flexibility to cover a variety of situations when the goal is to achieve an appropriate cross-section on the committee.

Prof. Burish said he agreed. For example, in the current dean of engineering search, if all the committee members had been elected from the same department, he may have wanted to appoint members to the committee to represent other departments as well. The language he is attempting to construct could include a phrase such as “for example” or “reasons might include.” The language should not be restrictive; rather, it should be suggestive of possible rationales.

Prof. Roche said that he supports the idea of flexible or open-ended language for the provision. He can imagine scenarios other than those in which gender or ethnicity is at issue. For example, in Arts and Letters, the college council conducts the election for search or review committees. It would be entirely possible not only to have, as occurred in engineering, no women on the committee, but for there not to be a representative from one of the college's three major divisions—arts, humanities, or social sciences.

Prof. Roche also said that when he appoints the members of committees in Arts and Letters seeking a departmental chairperson from outside the University, routinely, he does something analogous to what Prof. Burish has suggested with deans. Because they offer such a unique and valuable perspective, in every case, he has either a sitting chairperson or a former chairperson from another department serve on the committee. And, he could imagine that in the search for a dean as well, while there might be good representation of gender, ethnicity, and disciplines on a committee, it might be advantageous to appoint a departmental chairperson to

serve as well. The chairpersons work very closely with the deans and have a good perspective on what a college requires.

Prof. Roche concluded by saying that his point is that any effort to construct language to be inclusive of the variety of situations in which broad representation would be favorable is likely to result in a very long list. If there is a concern that appointment along these lines might be arbitrary or that the possible reasons for the appointment power might be lost over time, then examples should be included in the *Articles*. If those concerns are not present, he would prefer to leave the language as is.

Prof. D'Angelo said her concern is limiting the reasons for which appointed members are added to elected committees. There have been many moves at the University towards more appointments and less faculty governance.

Prof. Burish asked if Prof. D'Angelo would propose language for a Council vote.

Prof. D'Angelo offered that another way the provost's concern could be addressed is in the instructions to faculty when search or review committees are elected—for example, in the college council. As to the current proposal, she thinks the appointment power should be exercised in unusual cases, such as the diversity example with which Prof. Burish began the discussion.

Prof. Burish said he feared that enumerating examples of diversity would make the list too lengthy.

After more discussion of correct parliamentary procedure, Prof. Moevs said that he believes that a “for example” clause, with even a few situations given, would guarantee that the spirit of the rule would be understood in the future.

Prof. Burish said he would take Prof. Moevs' suggestion as a friendly amendment. That language is not restrictive in any way.

Profs. Roche and DeBoer then constructed a phrase to add to the proposed language: “This might include balancing the committee by gender or discipline or adding administrative experience to the committee.”

Prof. Robinson said that he would suggest to Prof. Burish that he “be unfriendly” to the proposed friendly amendment. He fears that the *Academic Articles* could be becoming more and more “a cookbook.” He advocates proceeding with the level of generality that was captured quite appropriately in the initial language.

Prof. Moevs said he understood Prof. Robinson's point and would withdraw his friendly amendment.

Prof. Preacher noted that there is beginning to be much piecemeal rewriting of the *Academic Articles* and the *Academic Code*. She would like to reiterate her plea of last year for the provost to convene an *ad hoc* committee to review both the *Articles* and the *Code*. She works with both on a daily basis and finds that current practice and language are frequently at odds.

Prof. Burish then said that because both architecture and law are unique in that the entire faculty can serve as the committee or, as has occurred in the past, the faculty can vote to convene a smaller committee, he wants to make sure that it is understood that the appointment powers extended to the provost in the proposed amendments apply in either situation—whether an entire faculty committee or a smaller subset.

Profs. Lykoudis and O’Hara said they believed that was clear in the language Prof. Burish proposed originally.

Fr. Jenkins then called for a vote on the amendments as originally presented:

“The provost may appoint up to two additional members from among the regular faculty to the committee in order to ensure that a broad range of views and perspectives is represented on the committee.” And [this example given from Section 5.1, Architecture]: “The provost may assign a Vice President and Associate Provost to assist the committee as a non-voting member.”

With two opposed and one abstention, the amendments passed.

Prof. Roche then stated that he, too, advocates formation of an *ad hoc* committee to review the *Academic Articles* and the *Academic Code*. The *Articles* have not been reviewed in at least ten years. A committee was working on the task under former vice president and associate provost Carol Ann Mooney, but with last year being a year of transition in the provost’s office, the effort did not advance. For the Mooney committee, though, his office put together about two or three pages of contradictions and inconsistencies in the *Articles*, and that document could be passed on to a new committee.

Prof. Roche added that some universities have a standing “rules committee” in their Faculty Senate or equivalent of the Academic Council. Given that there are more Academic Council members than committee slots, he recommends that next year, along with the three standard committees, the Council establish a rules committee. Its members would collect inconsistencies in the *Articles*, as well as passages that are difficult to interpret and decipher, and then propose language that is simpler and more consistent. That would be a very useful and necessary service for the University community.

3. Registrar request regarding the Academic Calendar: Harold Pace, University Registrar, provided background on an academic calendar proposal: The Academic Council passed the Perpetual Academic Calendar in February 1993. The perpetual calendar rules state

that the first class day for the fall semester is the fourth Tuesday in August, which can fall from August 22 through August 28. A discussion occurred at the time the calendar was in development about the years in which August 28 was the first class day. Given class days, reading days, and time for grading exams, grades would be due those years on December 24—one day before Christmas. It was agreed that in those years (2001, 2007, 2012, and 2018), the end of the semester would be adjusted by reducing the number of reading days from four to three.

In April 1998, as the first application of the adjustment approached, the Office of the Registrar asked the Academic Council to consider a solution for the 2001 Fall calendar that would have the first class day occur on the *third* Tuesday of the month (August 21) rather than the fourth (August 28). Students advanced the proposal because late exams required many of them to fly home during peak holiday travel time, when tickets are most expensive. Yet, the 1998 Academic Council rejected the proposal primarily because of faculty concerns with conflicts with academic conferences that occur in mid-August and because it shortened the summer research period to thirteen weeks. As a compromise, for Fall 2001, the Academic Council maintained the late start date but:

- reduced the number of class days from 70 to 69;
- reduced the reading period from four to three days; and
- scheduled final exams on Friday, Saturday, Monday, Tuesday, and Wednesday rather than the normal Monday through Friday schedule.

Grades were then due on Saturday, December 22.

Dr. Pace said that with 2007 presenting the same difficulties as 2001, once again, the Office of the Registrar is proposing that when, by rule, the first class day would occur on August 28, the semester begin instead on the third Tuesday in August—August 21. He said that there are several advantages to the proposal:

- final exams would end on December 14 rather than December 19;
- students would retain four reading days;
- faculty would retain 70 class days rather than 69;
- final exams would remain on the traditional Monday-Friday schedule; and
- faculty final grade submission deadline would be Monday, December 17, rather than Saturday, December 22.

Prof. DeBoer offered his support to the proposal. He pointed out that first-year students will take their first set of university exams in the Fall 2007 semester. This proposal neatens the division between reading days and a full week of exams, and provides an earlier exit from campus. While upper-class students may have their own perspectives on the proposal, it is to the benefit of first-year students.

Prof. Maziar said that one of the concerns about this year's calendar she heard in the provost's office—from both faculty members and parents—was the long break between the fall and spring semesters. She asked how the proposal would impact the length of the semester break.

Dr. Pace said that it would be the same as this year: four weeks. He added that there is always debate about breaks between terms and in the summer. When spring commencement falls on May 21 and the fall semester begins on August 22, there is the shortest possible summer break of 13 weeks.

Prof. O'Hara asked how many years in the calendar would result in a short summer break.

Dr. Pace said the calendar would be so affected in 2007, 2012, 2018, and 2029.

Prof. O'Hara said her concern is that except for leap years, the existing seven-year calendar distributes a number of pluses and minuses to faculty and students—depending on which stakeholder one is considering. One ramification of the change Dr. Pace is proposing relates to the shorter summer—13 weeks rather than the normal 14-week schedule. A short summer break can impact students' summer earning ability. While, Prof. O'Hara said, there is a little messiness to the current calendar, one advantage is the way it distributes the trade-offs among seven years. There are a few four-week Christmas breaks and a few 13-week summers in any seven-year cycle. She wonders, though, if the current proposal redistributes those trade-offs all in one direction. She recalls having this discussion when the proposal was presented in 1998. While the proposal definitely has simplicity, there are other ramifications to consider.

Dr. Pace responded that there are difficulties in years other than those in which the start of the semester occurs on August 28. An August 27 start date results in grades due on December 23—also difficult administratively because faculty and deans must be present until just before Christmas. Yet, it is the students who are the main concern when the calendar is considered.

Prof. O'Hara asked Dr. Pace to clarify how frequently a start date of August 28th occurs in any calendar cycle.

Dr. Pace responded that this situation would occur only four times in the next 25 years: 2007, 2012, 2018, and 2029.

Prof. Roche said that the proposal advanced today was rejected in 2001 primarily due to stated conflicts with academic conferences occurring in August. He remembers the meeting in which the proposal was discussed as very long. Did Dr. Pace look at the minutes from the April 1998 meeting to see what arguments were presented at that time and whether there were any the Council has not considered today? Prof. Roche said that in particular, he

remembers that Prof. Kolman, then the dean of the first year of studies, had very strong opinions on the matter.

Dr. Pace said that he and others in the registrar's office did review those minutes. In addition to Prof. Kolman's views and the concern about academic conferences overseas in mid-August, Student Affairs expressed concern with an earlier start to the fall semester requiring resident advisors to return very early in August—perhaps as early as August 17.

Prof. Woo noted that masters' programs in the Mendoza College of Business have a two-week orientation. If the proposal passes, she must make sure that accommodations will be available for those students quite early in August.

Dr. Pace noted that just because we are discussing increments of only one day, from one academic year to another, other years also have an early start date. This coming fall semester, for example, begins on August. 22.

Prof. Preacher pointed out that another concern with late grade submission is the extreme difficulty it creates for students who may not end the semester cleanly. Frequently, deans' offices must chase down many faculty members who do not submit their grades on time or whose grades do not come through properly. Finding faculty on December 24 is nearly impossible. Then, if grades are not recorded properly, problems surface at the beginning of the spring semester, when students are beginning to send their transcripts out to professional and graduate schools. Moreover, when the semester ends late in December, problems are created for students in academic trouble. Deans' offices cannot make decisions on dismissal without accurate grades. Thus, unfortunately, students can return to campus without knowing that they will be dismissed that term. Her point is that pushing the end of the term so close to Christmas has real disadvantages for students.

Fr. Poorman noted that in terms of assembling the hall staffs, an early start to the semester is less of an issue with resident advisors or rectors than with assistant rectors, who are generally law students. He asked if there is any standard internship length for summer law students.

Prof. O'Hara said that while there is no standard length, her point is that losing even a week of employment in the summer can have a substantial impact on law students, whose summer earnings help with rising tuition. As she noted earlier, in any seven-year cycle, there is an even distribution of some 13-week summers and some 14-week summers. This proposal removes four 14-week summers out of the coming 20-year cycle. And, in some years, assistant rectors would have only a 12-week summer.

Prof. Roche said that he has just had a chance to review very quickly the minutes of the April 1998 Academic Council meeting when the proposal was raised for the first time. It was the dean of the College of Science, Prof. Castellino, who raised the concern about mid-August

academic conferences and faculty attending them missing the start of the semester. He is not sure if that concern exists today. If not, he is very much in favor of the proposal.

Prof. Brown asked Dr. Pace if he sought a permanent or an *ad hoc* solution.

Dr. Pace replied that the point was to have a permanent solution to years in which the calendar would dictate an August 28 start date.

Prof. Brown clarified: Effectively, the proposal would change the language from the fourth Tuesday in August, August 22 through August 28, to whatever Tuesday falls in the range of August 21 through August 27.

Dr. Pace answered that he was correct.

Fr. Jenkins then called for a vote on the proposal to amend the academic calendar in years in which the fourth Tuesday falls on August 28.

The proposal passed, with one “no” vote and one abstention.

4. Committee reports:

(a) Faculty Affairs: Prof. Robinson, chair, reported that the committee met to consider amending Article III, Section 2 of the *Academic Articles*, which relates to academic freedom and associated responsibilities. Members deliberated two separate questions: (1) Should there be an explicit reference to artistic expression in the *Articles*? and (2) Should there be a specific reference to student expression in the *Articles*?

On both counts, he said, members decided in the negative. The consensus was that the current language of the *Articles* is sufficient to cover faculty members’ freedom of expression. As for students’ right to expression, *du Lac* contains extensive language on this point, and members did not feel competent, he said, to suggest how the *Academic Articles* might cover the same ground.

Prof. Robinson added that the committee met as well to consider a proposal related to TCEs and the evaluation of teaching by the Advisory Committee to the Provost on the Evaluation of Teaching (ACPET). He will send a summary of that meeting to Vice President and Associate Provost Dennis Jacobs.

(b) Undergraduate affairs: Prof. Preacher, chair, reported that the committee will have several agenda items at the next meeting for consideration by the Council. The items concern a proposal to better inform students about courses at the time of course selection, Advanced Placement credit, and changes in course numbering rubrics.

(c) Graduate Students: Prof. Kantor reported that at the last meeting of the Graduate Council, members forwarded a proposal for a new interdisciplinary program, a Ph.D. in bio-

engineering, to the Executive Committee. It will come to the Council for its consideration as well. Members also forwarded a resolution on maintaining the confidentiality of the written portion of TCE's in small graduate classes.

There being no further business, Fr. Jenkins adjourned the meeting at 4:30 pm.

Respectfully submitted,