

Minutes*

**Senate Consultative Committee
Thursday, February 13, 2002
12:00 – 2:00
Room 238A Morrill Hall**

- Present: Dan Feeney (chair), Judy Berning, Susan Brorson, Nick Cecconi, Tom Clayton, Arthur Erdman, Yev Garif, Marti Hope Gonzales, Mary Jo Kane, Kari Lindeman, Judith Martin, Ryan Osero, Jeff Ratliff-Crain, Martin Sampson, Charles Speaks, Teresa Wallace
- Absent: John Amble, Muriel Bebeau, Gary Davis, Kelsi Holland, Candace Kruttschnitt, Marvin Marshak, Nathan Saete, Eric Steinhoff, Thomas Walsh
- Guests: John S. Anderson (Student Behavior Committee), Betty Hackett (Student Academic Integrity Office), Meredith McGrath; Eugene Borgida (Advisory Committee on Athletics), Laura Coffin Koch (Faculty Academic Oversight Committee for Intercollegiate Athletics)
- Others: Rebecca Hippert (University Senate)

[In these minutes: (1) revisions to the Student Conduct Code; (2) the meaning of "abstain"; (3) athletics issues]

1. Revisions to the Student Conduct Code

Professor Feeney convened the meeting at 12:05 and welcomed Betty Hackett and Professor John Anderson to discuss revisions to the Student Conduct Code.

Ms. Hackett reported that the Code was last reviewed during 1991-92 and in the normal rotation of policy review came up again this year. A task force was appointed to review the Code, chaired by Professor Anderson, and it decided to recommend a separate provision covering classroom misconduct; some of the wording in the Code was also archaic. The issue of on-campus versus off-campus behavior (and what the Code would cover) dominated the discussion, she reported, and this is an issue that has arisen on many campuses: What role does the institution take in students' lives?

There are 16 items in the Code, Professor Anderson reported. The revisions for the most part put similar items together, condensed in some places, updated the language, and clarified the titles. There was a lot of discussion about jurisdiction. Section I identifies the interest of the University in having a code; many students use distance education and are not on campus; there was need to clarify the University's role vis-à-vis those students.

The biggest student concern is the gray areas in jurisdiction, Ms. Berning reported; the students agree with all of the other revisions. If they could ask questions that did not have an answer, how could

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the average student understand what the Code covered? Their concern is that the University could use the Code in ways that it should not.

Ms. Hackett said that her office receives call about hypothetical situations all the time and does not have the answers. Historically, the Code came to be as a result of student protests in the 1970s; the University adopted a humane, liberal approach to students with high regard for them as adults. There have been difficult times and challenges to the Code (such as proposals for the adoption of speech codes, which the University declined to enact). The task force concluded it wished to continue to treat students as adults with a private life, but if a student takes the University off-campus and there is some nexus between behavior and the University, then the University will become involved. (For example, athletes' off-campus behavior or the behavior of student organizations will elicit University involvement.) Ms. Hackett said her office will only become involved in off-campus behavior if it must. But there are classrooms all over the globe and the limits on where her office will become involved are not defined by the mark on a street. The University will continue to assemble all the facts about an event, analyze them, and then decide if it should be involved, if there is a University interest. This is not just a "trust Betty Hackett" approach, she assured the Committee; there are procedures that balance the interests involved.

Ms. Berning asked about the hypothetical case of a University student who is in Montana who murders someone, and the case is covered in the media. There is not clear-cut University involvement but it would not be a good image for the University to have the student on campus. What about a study group off campus that becomes unruly; does that take the University's interest off campus? Ms. Hackett said she would not shoot from the hip; she would want to know why the student was in Montana, whether he or she was representing the University, who paid for the trip, what tie connects the student to the University, and so on. If there is no other connection except that the person happens to be a student at the University, then the University would have no jurisdiction. If, however, the student had abused a child and was enrolled in the Social Work program, then the University might have an interest. If there is no other connection than that someone is a student, the University would not become involved. It would also probably provide assistance to the student (who is presumably innocent until proven guilty).

Years ago, Ms. Hackett related, the question was whether the University was harmed or offended by what happened. Now, more commonly it is students who offend or harm one another and the University is expected to intervene. Campuses are much safer than the rest of society but they do nonetheless reflect society; all want it to be a joyous and celebratory place but it must deal with those who threaten it.

Professor Sampson inquired about one section: I(2): "The University has a fundamental concern with conduct that breaches the peace, causes disorder, and substantially interferes with the rights of others." That ONLY applies to students, Ms. Hackett noted. And that is the language of most concern to students, Ms. Berning said; it is so vague and left up to interpretation by the University. Just because the University has not used it does not mean it will not do so in the future.

Ms. Hackett also noted two other provisions, dealing with "threatening, harassing, or assaultive conduct on campus" and "disorderly conduct on campus." How does one know it is in the best interests of students for the University to pursue these incidents, Ms. Berning asked? Would demonstrating in Washington, D.C., against a war in Iraq, and being arrested and convicted of something, jeopardize one's student status, Professor Sampson asked? Both Ms. Hackett and Professor Anderson said it would not because the student would not be officially representing the University. What about a hockey fan who

gets in trouble at a game in Wisconsin? Professor Martin thought not. What if University fans tear down a goalpost at an away game; is the University responsible, Professor Ratliff-Crain asked? Ms. Hackett said the event would need investigation; if Mortarboard were there, there could be a problem. Students in that case could be subject to civil or criminal penalties. Others could see the University as easier to sue, Professor Ratliff-Crain pointed out. That is why the Code goes out of its way to define the University's interests, Ms. Hackett said, but it cannot contemplate all possible events. The goal is to stay out of the parts of students' lives that do not represent their relationship to the University. With respect to the examples, the University has not viewed students as instruments; they are students, and will be treated as such even though it may not make out-of-town people or the University's neighbors happy because it will not treat them in ways the University deems inappropriate.

Professor Sampson asked about another provision dealing with disruptive behavior ("participating in a campus demonstration that disrupts the normal operations of the University and infringes on the rights of other individuals"): what about a big group on the Mall that (perhaps inadvertently) ignores the partitions on the Mall and blocks sidewalks? Are students who participate at risk? The Code language is sensible and necessary but could be used as a hook to get people who are not trying to be disruptive. A fence might be kicked down, a destruction of University property that is inconsequential to the University, or a group might block a sidewalk and impede pedestrian traffic; in both cases, there would be a hook to get students. One is concerned about the way the Code could be used. If there is a big crowd, presumably the University police would be present and would keep order, Professor Martin said.

Ms. Hackett said she would need a lot more facts. If the actions were not willful, and students were swept away in a crowd, she said she did not know why the University would want to take action under the Code. In the case of the incidents following the national championship hockey game last year, the University did not enforce the Code off campus but did do so on campus and evaluated each event (was it an accident or was there affirmative intent?). With events on campus, the University can work cooperatively with known police officers and can rely on their response; the University does not have the same quality assurance about police departments all around the metropolitan area.

Professor Erdman noted that he will be taking students to Switzerland; what will their status under the Code be? Many programs have students participate in such events, Ms. Hackett said; in most, part of the application from the student includes a clause that the Code governs their behavior.

The University seems to be trying to distinguish between students who are and who are not representing the University in an official capacity and are or are not on campus. If the student is off-campus and not officially representing the University, the University will generally not get involved? That is correct, Ms. Hackett affirmed. What about a student on break who the University discovers is a serial rapist? That is not the University's issue, Professor Martin said; it will be in the hands of the local jurisdiction. If the University knew the student had been charged, would it allow him to return in good standing to his dorm and not warn anyone, Professor Kane asked? She said could not imagine the University would do that. Professor Anderson said that the language "The University has a fundamental concern with behavior that threatens or actions that imperil the physical and mental health and safety of members of the University community" would apply in that kind of case. But that does not box in the University, Professor Kane commented. "Never say never," Ms. Hackett responded. So as a general rule there are categories, but then there are instances when they may not hold, Professor Kane concluded.

Sometimes it may not take a disruptive act away from campus, Ms. Hackett said; that does not mean the University might not have a thoughtful way to respond. Off-campus events come to the attention of the University by various means; she would need to know a lot of facts before deciding what the University should do. That is why this is so difficult. In the case of the 1992 task force, that included many students, they divided down the middle: One-half wanted anything not in a classroom taken out of the Code while the other half wanted the Code to apply to students on a spring break. The University must do a critical analysis to determine if the incident has crossed the threshold for University involvement, Ms. Hackett said; it needs to be careful because the University is also a place where students begin to experiment with their freedom.

Professor Speaks observed that there is often a standard paragraph in ethics codes, individual certification, and accreditation of academic programs that findings of any judicial or regulatory body may trigger University action on one's student status. It is "may" because the University could decide a student who commits a felony in another state will cause no harm here and set aside the finding for University purposes. Or the University could accept the findings and act according. What about an arsonist, Professor Kane asked? Attending the University is a privilege, not a right. The University will not always wait on action by the courts, Ms. Hackett said. "Never say never," she repeated, and said she understood that it is frustrating not to be able to give an answer about what it is that protects the entire community.

Ms. Berning said that language such as "The University has a fundamental concern with conduct that breaches the peace, causes disorder, and substantially interferes with the rights of others" could be used to harm students. Ms. Wallace responded that one must also put oneself in the position of the victim, in the case of the sex offender in the dorm, for example: the events happened off-campus but the University would have a role to play.

Ms. Hackett said that the task force had talked with a number of people and had looked at codes at 36 other institutions and could develop no language that satisfied the concerns that have been expressed.

Professor Feeney said the Committee had three options: not deal with the Code today, take action on behalf of the Senate to approve it (so it could be brought to the Regents in March), or defer action so the Senate itself could act on the Code. Ms. Berning asked that the Committee not take action today and that it wait until the Student Senate and the Student Senate Consultative Committee have had a chance to weigh in on it. Professor Feeney agreed to table the matter until the students request that it be taken up. He thanked Ms. Hackett and Professor Anderson for joining the meeting and agreed with Professor Sampson that the Committee expressed its appreciation for how well student conduct issues are handled on the campus.

2. The Meaning of "Abstain"

In response to a question raised at an earlier meeting of the Committee, it was reported that unless there are explicit organizational rules to the contrary, the default rule (from ROBERT'S) is that when a body takes a vote on a motion, 5 in favor, 2 opposed, and 4 abstentions means the motion passed 5-2. The 4 abstentions are not counted at all (except toward a quorum for the meeting).

3. Athletics Issues

Professor Feeney turned now to Professors Borgida and Koch, chair of the two athletic committees on the Twin Cities campus, and noted that the Committee needs to recommend one of two bylaw provisions governing how policies in athletics will be approved: either all policies can be brought to the Twin Cities Campus Assembly or they can be approved by the Assembly Steering Committee and reported to the Campus Assembly for information (and with the understanding that the Assembly may reverse a decision of the Steering Committee). The latter process is the one that was in place up until the bylaws were revised two years ago.

The Committee voted unanimously to approve a bylaw change requiring this Committee to approve policy changes and report them for information to the Campus Assembly.

Professor Borgida then provided a brief update on the policies that will be coming from the Advisory Committee on Athletics:

-- the anti-discrimination policy that includes provisos dealing with offensive mascots has gone through the two committees, the President has approved it with minor changes, and then it needs to be brought to the Social Concerns Committee and the Native American Advisory Board

-- the policy on adding and deleting sports was activated last year when there was a move to eliminate three sports; it has been discussed by the committees and the decision was to incorporate the essence of it in the charge to the Advisory Committee on Athletics: If the administration and intercollegiate athletics want to add or delete a sport, they have to consult with the committee

-- the policy dealing with contact between faculty/instructors and coaches is close to being done. Professor Koch reported that the problem is that the intent of the policy was that coaches not contact instructors about the academic progress of a student but some coaches believe they cannot talk to faculty or instructors for any reason. They will clarify that coaches are not to contact instructors about a student, but the major issue for them is obtaining the academic information they need. The policy will provide a way for them to do so. In general, however, the University wants to integrate coaches into academic life.

Professor Koch reported that the Faculty Academic Oversight Committee for Intercollegiate Athletics has tweaked a number of other policies and most are ready. Should they go to the Assembly Committee on Educational Policy before coming to this Committee, it was asked? Professor Koch reported that she had taken them to ACEP once for a quick overview and is going back for review; she said she wants comment to be sure they are workable and make sense. Professor Martin noted that there are four SCEP chairs at this meeting (three past and the current chair); she opined that they would say the policies should go through SCEP. The Committee concurred.

Both Professors Borgida and Koch reminded the Committee that when issues of athletics come up at other meetings, it would be helpful if the athletic committees are informed. He noted that recent minutes of the Committee on Finance and Planning contained reference to the financial subsidy to athletics and that some of the comments contravene what the athletic committees and the University are trying to do in terms of integration of athletics into the academic community. Professor Koch agreed. The Committee had an extended discussion about what was discussed at recent meetings and what should appear in minutes.

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Professor Feeney adjourned the meeting at 1:40.

-- Gary Engstrand

University of Minnesota