

Senate Council Meeting
November 27, 2006

The Senate Council met at 3 pm in 103 Main Building on Monday, November 27, 2006. Below is a record of what transpired. Unless noted otherwise, all votes were taken via a show of hands.

The meeting was called to order at 3:05 pm.

The Chair shared that the minutes from the meeting on November 20 would be ready for review before the next meeting. He added that an email announcement regarding the Senate Council (SC) nominations and subsequent election had been sent to senators earlier in the afternoon. The Chair stated that the nomination period would begin at noon on November 28 and end at noon on December 1, 2006. The period for electing those nominated would begin at noon on December 4 and end at noon on Friday, December 8. The Chair explained that starting and ending at noon offered the opportunity to address any difficulties encountered before the start and allowed for a same-day tallying and preparation for the next round.

The Chair said that a reminder for SC officer elections would be sent out on Tuesday. He added that Grabau would need to leave shortly before 4 pm and Yanarella would arrive around 4 pm due to a UCAPP sub-committee meeting.

Those present introduced themselves. Referring to the two guests, the Chair explained that Barbara Jones was UK's General Counsel and Heidi Anderson was the Associate Provost for Faculty Affairs.

2. [Proposed Change to Governing Regulations II \(Board of Trustees Appeal\)](#)

Guest Jones explained that the *Governing Regulations (GR)* involved in the proposed change had been in place for many years and addressed the right of faculty, students and staff to appeal decisions to the Board of Trustees (BoT). Part of the language currently in *GR I* read as follows: "All faculty members and staff employees shall be entitled to appeal any decision affecting terms of their employment by the University through regularly established channels."

If one reviewed the AR, the regularly established channel was described as beginning at the level of the department chair, to the college dean, Provost, President and then to the BoT. There had been several situations in the past three years where faculty members and a student wanted to go to the BoT for an appeal. Jones explained that the issue circled around when and how an appeal would occur. She said that faculty members were most likely to go to the BoT for denial of tenure. After reviewing the *GR*, Jones said she had still been unclear as to how the process worked.

Jones explained that she checked some of UK's benchmarks and combined the language in developing the proposed language. She said that the final decision maker was the President. Jones compared the BoT to the Supreme Court; the BoT had the discretion to hear a case or not. The President must hear the case, but the proposed language was written so the BoT could choose whether or not to hear the case; if the BoT decided to hear a case, it could also then decide to hold a hearing. She said she hoped to present the proposed language at the January BoT meeting, which would offer enough time to present it to the SC and the Senate, in December. Jones added that she would meet with the Staff Senate's Executive Committee on Wednesday and also share information at the full Staff Senate meeting. The proposal had been vetted through the President's executive staff.

Liaison Greissman asked if the proposed new language had been reviewed by the Student Government Association (SGA). Jones replied that she would do that, although scheduling might be a problem with finals. Jones confirmed for Thelin that the Staff Senate would be briefed, also. The Chair invited questions.

In response to Thelin, Jones said that during the past three years, approximately one case per year had been appealed to the BoT. Thelin wondered if that number was a large or small number. Jones said she could not respond to that, but said it seemed to be a trend. Jones said that the one case involving students was not the recent SGA election issue – it involved a referendum passed by the SGA that would have placed the Student Activities Board under the SGA's purview. The President had issued an opinion that the SGA did not have the authority to take such an action; the issue was subsequently sent to the BoT, but there was a lack of clarity regarding how an issue was taken to the BoT. Jones said she looked at other universities to see how they described the process of appealing to the BoT.

In response to Thelin's assertion that if only one case involved a student, then there could not be many involving faculty, Jones replied that even just one was enough to require a description of the process. Thelin wondered why one a year would be considered unwieldy. Jones said that it was not unwieldy, but there was still a need for a clear description of the process. It was necessary to have language regarding how one would appeal to the BoT. Thelin asked why all the cases could not be heard. Jones said that the BoT would not hear all the cases; it would decide a case based on merit. Thelin inquired if the BoT would hear every case under the present arrangement. Jones said that it was not clear; it was obvious that the Executive Committee of the BoT would act as a hearing panel, but there was no language describing if they had to hear every claim.

Waldhart opined that the proposed new language seemed reasonable and that it would be good to have such language in place. Michael suggested including a time frame by which the BoT would respond to an appeal; silence after a period of time could be interpreted as a denial of the claim. Jones agreed to the

suggestion. The Chair opined that the statement, "...Executive Committee shall serve as a hearing panel..." could mean that they had to hear an appeal. Jones said that the language could be confusing. Michael said that he thought that what was not clear was a right to appeal. Jones replied that the right to appeal was clear in the *GR*, but the uncertainty came when trying to discern what the right to appeal actually meant. It was not clear if the BoT was required to have a hearing. Thelin opined that the existing language was clear.

The Chair thought that whether or not the language was clear, it could be made clearer by saying that every person would have a hearing. Jones said she could note that as the input from the SC. Thelin stated that the Supreme Court analogy was mixing metaphors – the BoT was not the Supreme Court. Jones said that the process was similar; both could be considered a court of last resort. Clearly individuals could go beyond UK to the state or federal courts, but the BoT was the last resort at the university level. Duke entered the meeting at this point.

Jones said she thought she and Thelin should agree that they disagree on the meaning and intent of the proposed wording. In response to Thelin, Jones said that the BoT's position was that not every person was entitled to a hearing. Thelin said the wording had sufficed since 1918 to protect the rights of faculty. Jones said that the proposed language would not deny anyone the right to an appeal. Michael said that the BoT needed to decide on the appeal, but did not have to hold a hearing. Jones stated that by not hearing the case, the BoT would effectively uphold the original decision. Thelin stated that it gave an inordinate amount of responsibility to the president. Jones agreed.

Randall suggested the language could be clarified by using text such as, "...decision is within the discretion of the committee...." He said that "sound discretion" was not clear. Thelin thought that "sound" should remain to dictate that a sound decision should be made, as opposed to an arbitrary or capricious decision. Jones said that she would communicate the suggestions to others involved. In response to the Chair, Jones confirmed that she was looking for input, not approval.

Randall asked for clarification – did the BoT want the ability to refuse to hear a case or was Jones inferring or assuming that request? Jones replied that she met with the BoT and discussed the question of how to communicate or appeal to the BoT. She said a procedure needed to be added since the procedure was not clear in the *GR*. Jones said that she advised BoT members that she had searched the language of six to seven benchmarks and the proposed language was consistent with the benchmarks' language. Jones said while everyone had the right to appeal a decision, it was not absolute; the decision on whether or not to hear the case was within the discretion of the BoT. The BoT approved the language created and requested that Jones continue with gathering input.

The Chair stated that a motion was needed to send the proposed language to the Senate for its input. Waldhart **so moved**. Duke **seconded**. The Chair noted that no recommendation would be associated with the motion. A **vote** was taken and the motion to send the proposed change in the *GR* wording (regarding an appeal to the BoT) to the Senate for review and input at the December 11 meeting **passed** unanimously.

Michael asked if Jones could supply a written explanatory statement for use at the Senate and Jones agreed. The Chair asked when the BoT last heard a case. Jones replied that it was about 25 years ago. Dembo arrived at this point. Jones said that there was one denial of tenure case that was 25 years old and still ongoing, regarding the following of tenure review procedures in place years ago.

The Chair thanked Jones for attending and requested the rationale be sent to the Office of the Senate Council to be included in the handout for the December Senate meeting.

2. Changes to Clinical Title Series

The Chair shared that Associate Provost for Faculty Affairs Heidi Anderson was present to provide information about the proposed changes to the clinical title series (CTS). Guest Anderson thanked SC members for having reviewed [the proposed changes](#) in advance. She shared that the [Provost had asked her to follow up](#) on the recommendations made by then-Associate Provost for Academic Affairs Dave Watt and Associate Provost for Programs Richard Greissman. Duke left the meeting at this point.

Anderson said that work on the issues addressed in the proposal began in 2004; the proposed changes had already been vetted through the particular colleges some time ago. Then-Provost Nietzel charged Watt with reviewing the CTS and proposing recommendations stemming from issues raised in the particular colleges. Watt and Greissman sought advice from the faculty of the six health care colleges and the Colleges of Law and Social Work. The chronology offered was based on Anderson's review of records. Anderson said that the recommendations were submitted to then-Provost Smith in November 2005; Provost Smith in turn sent the recommendations to then-SC Chair Yanarella in December 2005.

Anderson shared that upon entering into her position, Provost Subbaswamy requested she review the suggestions. Anderson said she also looked at UK's benchmarks and the University of Minnesota and the University of Texas. Anderson said she added the two university's information to offer a 2006 perspective. Anderson said that she and Provost Subbaswamy met with Chair Tagavi to get direction as to next steps. Five of the eight recommendations needed action only by the Provost; the other three recommendations required input from the University Senate and BoT or, for *Administrative Regulations (AR)* changes, administrative action. Anderson explained that the recommendations

were separated into those recommendations needing and not needing Senate action and/or changes to the administrative regulations. She said she kept the original numbering, though, to avoid confusion. Duke entered the meeting at this point.

The Chair suggested that the recommendations needing Senate approval be reviewed one at a time. Anderson said that recommendation #3 asked that the 25% cap on the number of CTS faculty be removed. The Colleges of Nursing and Medicine had exceeded that percentage for a number of years; when the cap was written into the *AR* in the mid-80s, there was little perspective regarding how the mission of health care would change over the years. The background information also explained that the Senate approved the cap and also suggested possibly revisiting the issue in the future. Anderson suggested that the revisiting was coming 20 years later, in the form of suggesting a removal of the cap. She said that the recommendation would apply to any college utilizing the CTS. The Chair asked Greissman if he had anything to add; Greissman replied that Anderson had explained the situation well.

The Chair asked where the 25% cap was codified. It was not clear if it was in the *AR* or *GR*. Anderson said she had seen the reference in interpretations by colleges. Enacting the recommendation to remove the 25% cap would require BoT approval. Grabau suggested that references to "Faculty Senate" be replaced with "University Senate." He asked for the percentages of CTS faculty in the eight colleges utilizing the CTS. Anderson referred him to page three of the proposal, which listed the College of Medicine (COM) at 56% and the College of Nursing d(CON) at 50%. All other affected colleges have percentages below 25%.

Michael asked about the concern expressed by College of Dentistry faculty about removing the cap. Anderson said she did not know and had been unable to discern what the concerns had been. Dembo said he was not present at the meeting during which the discussion took place and that no one had approached him with a specific concern. Anderson said that she had a meeting scheduled with Watt and said she hoped he could shed some light on any concerns. Michael said that since recommendation #3 was ultimately approved, it might be assumed that the concerns were addressed or outvoted.

Greissman wondered if the concerns expressed were similar to concerns in the Senate about lecturer faculty – if one class of faculty became too large it could undermine the tenure track systems. However, the CTS was so specific and entailed a specialized job of clinicians, which would not impinge on tenurable title series faculty. Greissman added that it was unclear if recommendation #3 spoke to tenure in the CTS or to a situation in which a faculty member would switch from one tenure track to another. Dembo said that while he agreed that there were large differences between lecturer faculty and CTS faculty, CTS faculty were appointed and bound by contractual obligations. He expressed concern that if CTS faculty were given voting rights as they pertained to the granting of tenure,

CTS faculty might feel compelled to vote in such a way as to support the sentiment of the college dean, who was responsible for renewing CTS contracts. Dembo said that he did not want to alienate CTS faculty, who were bona fide members of the university community, but that offering voting rights would set up a paradox. Grabau entered the meeting at this point.

Greissman stated that a precedent existed for granting limited voting privileges, perhaps on common interest issues and not the granting of tenure. Anderson said that in her college, the College of Pharmacy, some faculty were granted voting rights only on certain issues. Other faculty had voting rights on all issues. Replying to questions from Duke and Dembo, Anderson explained that the dean would need to educate faculty situation-by-situation about who was eligible to vote on which issue. Grabau left the meeting at this point.

There was a brief discussion about where the 25% cap figure came from. Lesnaw asked if there was information available regarding ratios or percentages of CTS-similar faculty tracks at benchmarks. Anderson replied that it was difficult to get such information without knowing a contact personally at an institution. She said she would try to get that data. Anderson confirmed for Duke that the COM was currently in violation of the cap. In response to a question from Lesnaw, Duke explained that CTS faculty in basic research did a lot of teaching.

Lesnaw expressed concern that removing the cap could jeopardize UK hiring more research and teaching faculty in the field of medicine who were needed to support UK's expansion. Anderson reminded SC members that CTS faculty were in more than just the COM; large numbers of CTS faculty also resided in the CON.

Anderson said that Pharmacy, for its curriculum, would like to have more than 25% of its faculty be in the CTS. The accrediting bodies' standards of the health colleges required experiential education for students; to get that effectively, the College needed clinically qualified faculty. In a few years, the Pharmacy experiential activities would increase from one year of experience to three-quarters of the curriculum. Anderson said that Pharmacy was forced to put that type of education into the hands of those who were not faculty members.

Greissman said that the language in the draft policy regarding tenuring was ambiguously worded and could permit an interpretation that assumed tenurability in the Clinical Title Series was being proposed. He thought not, but urged the Senate Council to seek clarity on this point. Lesnaw replied that her concern was not competition, per se, but rather that traditional faculty lines would suffer at the expense of CTS. Michael said that there could be a problem with trying to quantitatively measure faculty series' that were utilized differently in different departments/schools. He said the College of Law would like to have a clinical type model that would train students on how to become a practicing lawyer, but said that other law firms in the area would cry foul, should such an office be

created. The caps kept UK from becoming too entrepreneurial. He said that perhaps the cap could change – if the cap was violated, it could merely mean a college needed to focus on traditional faculty and research.

Anderson pointed out that recommendation #3 included language that the Senate “...may request an annual report on these percentages...” – she wondered if that would allay concerns. She said that if the cap was removed, the wording could be changed to mandate a report, not merely allow for one.

Dembo said that he sent to those present a link to a document on Davy Jones’ website that dealt with the history of the university, as well as the CTS. He said that an ad hoc SC committee, chaired by Brad Canon, came up with the 25% cap. Dembo suggested SC members review the text and discuss the issue again at a subsequent meeting. Greissman suggested that individual units could establish their own percentages for caps, instead of trying to make one cap size fit all affected colleges. To clarify for Duke, Michael said that a unit could be defined as a college, but could also refer to departments in a large college, like the College of Arts & Sciences.

Anderson confirmed for Lesnaw that the recommendations had previously been approved by college councils. The Chair commented that he had been present at a recent COM faculty council meeting; those present said that they supported recommendation #3. Anderson said that Pharmacy also supported it.

The Chair synthesized the comments offered; he said that the concerns primarily boiled down to allowing the faculty of a college determine the cap on CTS faculty and also that language in recommendation #3 be changed so that a report must be submitted. No SC members were ready to make a motion to approve recommendation #3.

Dembo **moved** to table the discussion on recommendation #3 until the Senate Council met on December 4. Lesnaw **seconded**. A **vote** was taken and the motion **passed** unanimously. The Chair said that the SC would revisit the issue at the next meeting.

The Chair said that the next item needing review was recommendation #6. Anderson said that the recommendation was pretty straightforward – it would allow faculty in the CTS to be eligible for sabbatical after seven years of continuous, full-time service. Anderson explained that many CTS faculty felt as though they were not a part of the university. She said recommendation #6 would allow a college to opt to allow sabbatical for a CTS faculty member. Approval of the recommendation, however, would require changes to the *GR* and *AR*, along with a change to the *Senate Rules*.

There was extensive discussion on recommendation #6 among the majority of SC members and Anderson regarding what types of financial concerns could be

a part of enacting such a recommendation. Along with the basic concern that recommendation #6 should include language regarding funding, there were more specific concerns raised:

- Who would be responsible for shouldering the burden of salary and benefit funding while a CTS faculty member was on sabbatical?
- Would clinical income received from KMSF's billing apparatus qualify as internal or external? Did it matter if the funding came from an internal or external source?
- What would the effect be on a college, such as Pharmacy, that had CTS faculty but were prohibited from charging patients to create income?
- Could the decision regarding an appropriate funding source be made by each college, individually?
- Would the funds for sabbatical be raised by the individual, or by a college's CTS faculty as a group?
- How would recommendation #6 make allowances for different colleges' standards regarding the responsibility of funding a sabbatical for CTS faculty?
- Does the term "may" in recommendation #6 allow a college to pick and choose which CTS faculty could take a sabbatical, or did it imply that a college as a whole could offer sabbatical to CTS faculty or not offer?
- How do UK's benchmarks with large numbers of CTS faculty (greater than 50% of faculty as a whole) address the issue of funding for sabbatical of CTS faculty?
- Since the current requirements for sabbatical for faculty require the sabbatical be used for advanced training, scholarly activity or continuing education in specialty areas, how would it affect CTS faculty, who may or may not engage in scholarly activity as a part of their employment?
- Does a physician CTS faculty member on sabbatical automatically receive financial support by a hosting institution, or does it vary from situation to situation?
- Did the approval by all deans in the eight colleges (Dentistry, Health Sciences, Medicine, Nursing, Pharmacy, Public Health, Law and Social Work) mean that the deans understood that there were varying sabbatical funding policies in different colleges, or that the deans assumed recommendation #6 was in step with solely each dean's own college?
- Would the funding for CTS faculty sabbaticals jeopardize funding for traditional faculties' sabbaticals?
- Should funding of CTS' sabbatical stand in the way of the principle that sabbaticals serve a valuable purpose?

Yanarella arrived during the discussion. SC members ultimately requested that funding concerns be addressed somehow in recommendation #6, perhaps allowing individual units to make their own decisions about how to fund CTS sabbaticals. The Chair said that no motion was necessary, since Anderson would be returning the following week with a revised recommendation #6.

The next and last item for discussion regarding CTS faculty was recommendation #7, that CTS faculty would be eligible for election to the University Senate. Such a change would require a change to the *Senate Rules* and *AR*, if the Senate approved it. A shorter discussion ensued on recommendation #7. Among SC members concerns were:

- How would the Senate be affected if a CTS faculty on a one-year contract was elected to the standard three-year term of a senator? (Michael stated that the *Senate Rules* provided for the filling of a vacancy, which is what the situation would be if someone's contract was not renewed and s/he ceased to be a UK employee.)
- How appropriate would it be for CTS faculty, many of whom do not have a teaching or academic responsibility, to serve in the body that is the final authority on curricular issues?
- Does teaching a resident at a patient's bedside or at a research bench, but not in a classroom, constitute a scholarly activity?

The Chair stated that if SC members did not have any further questions on recommendation #7, a motion should be made around which further discussion could center.

Lesnaw **moved** that recommendation #7, which suggested that faculty in the clinical title series would be eligible for election to the University Senate, be sent to the Senate with a positive recommendation. Waldhart **seconded**. After a brief discussion and a review of the *Senate Rules*, it was determined that CTS faculty were already factored into apportionment for the elected faculty seats. In response to a statement by Michael, the Chair said that the *Senate Rule* on apportionment reflected language in the *AR* – the Senate did not have such autonomy that it could change the number of elected faculty seats. He added that, like the other recommendations, recommendation #7 was brought to the SC (and, ultimately, the Senate) for input, not approval.

A **vote** was taken on the motion that recommendation #7, which suggested that faculty in the clinical title series would be eligible for election to the University Senate, be sent to the Senate with a positive recommendation. The motion **passed** with seven in favor and one against.

There was general discussion about the three recommendations. Lesnaw was appalled that CTS faculty were counted in the apportionment of Senate seats, but were unable to serve in the Senate. Michael suggested, and other SC members agreed that the three recommendations should go to the Senate together; since there was one more SC meeting before the December Senate meeting, it was likely that could happen in time for the December meeting. Mrs. Brothers offered to send Anderson a copy of the draft meeting minutes.

Noting the time, the Chair expressed a keen desire to discuss the rule waiver request, since it had been postponed from the November 20 SC meeting.

4. Rule Waiver Request - Retroactive Withdrawal Application Past "Two-Year Window"

The Chair reminded SC members that there had been two requests for a waiver of the "two-year window" rule (window rule) during the semester: one for a student that SC members believed should be waived; and one for a student whose then-new dean misunderstood the process and did not submit the necessary paperwork on time. The Chair said that the case before them involved a student who arrived at the advisor's office on the Friday of the last day of the window with a very incomplete retroactive withdrawal application (RWA). In addition, the student had not filled out the additional forms required by the college. The advisor in charge of receiving RWA applications stated that the form was not complete and therefore would not accept the RWA. The student subsequently requested a waiver of the two-year window. The Chair said there was a question as to whether or not the application should have been accepted.

Michael, also chair of the Senate's Rules and Elections Committee (SREC), explained that the SREC had discussed the issue. Michael said that the SREC felt it would have been best for the college to provisionally accept the RWA, but was indeed within its rights not to accept the RWA. He said that regardless of the SREC thoughts on the matter, the SC could still vote to waive the window rule. The Chair said that the SC was being asked to decide if the waiver should be considered. In response to a question by Waldhart, the Chair said that the SC's actions would not grant the RWA, but would merely allow the Senate's Retroactive Withdrawal Application Committee (SRWAC) to review the RWA.

Lesnaw **moved** that the Senate Council grant the request to waive *Senate Rule 5.1.8.5.A.2* for the student in question and request that the Senate's Rules and Elections Committee review the matter of the RWA forms and deadlines. She said that it would not cost the university any money and that the SC had a moral obligation to let the RWA be reviewed. Michael **seconded**. Michael said that the SREC reviewed the RWA forms during their discussion. SREC members were not overly sympathetic to the student not even being able to list the names of the professors whose classes were involved. Michael said that the part of Lesnaw's motion dealing with the review of the forms and deadline was already underway.

The Chair stated that he had had no problem supporting the rule waiver request from the student who suffered due to an administrator not understanding the procedure; he said he was far less sympathetic towards the previous request for a waiver, although he did not make his opinion known at the time. The Chair wondered why a deadline was even in place, if the SC was going to routinely waive the rule regarding the deadline.

Michael noted that SRWAC Chair McCormick approved of the waiver because of her perceived lack of clarity regarding the requirements for submission. Michael added that he was not sure if the request had merit or not, but thought that

McCormick' willingness to review the RWA should carry some weight in their decision. Waldhart clarified for Duke that the SC was not reviewing the RWA itself, but rather deciding if the window rule should be waived so the SRWAC could review the RWA. Mrs. Brothers added that the SRWAC had not seen the RWA from the student in question – if an RWA was past the window, the Office of the Senate Council sent a letter saying that it would not be reviewed due to being past the window.

Michael stated that a deadline should be considered a deadline, although the form was perhaps somewhat unclear. Thelin stated that differences from one college to another (in regard to additional forms being required) were not a hardship on the student; colleges had different grading systems and different calendars, too. He did not find McCormick's memo compelling enough to think that the student had been treated unfairly.

A **vote** was taken on the motion that the Senate Council grant the request to waive *Senate Rule 5.1.8.5.A.2* for the student in question and request that the Senate's Rules and Elections Committee review the matter of deadlines. The motion **failed** with four in favor and four against. The Chair did not vote on the motion to break the tie. In response to Lesnaw, Michael explained that Robert's Rules of Order dictated that a motion that did not pass should be considered as having failed.

The meeting was adjourned at 5:02.

Respectfully submitted by Kaveh Tagavi,
Senate Council Chair

Senate Council members present: Baxter, Duke, Grabau, Harley, Lesnaw, Michael, Randall, Waldhart, Tagavi and Yanarella.

Provost's Liaison present: Greissman.

Non-SC members present: Heidi Anderson and Barbara Jones.

Prepared by Sheila Brothers on November 29, 2006.