Guests: Carol Nicolls, Doug Wadden, William Dow, Paul Jenny, Jed Bradley, Patrick Riley
Absent: Balick, Kochis, Fridley, Reyneveld, Lidstrom

1. Call to Order and Approval of Agenda.

The meeting was called to order at 2:33 by Senate Chair Harrington, and there were no changes made to the agenda.

2. Report of the Senate Chair – James “JW” Harrington. {Exhibit A}

In response to his written report, Harrington was asked about possible changes to the retirement contributions paid for by the state. Harrington said that as he understands it, the retirement is part of an employment contract, and can’t be changed. If the Governor’s proposal is approved, the University would have to make up what the state would no longer pay as part of the retirement contribution.

In further remarks, Harrington mentioned areas of activity within the University about which he wished to provide some context and discuss official faculty representation.

State relations and Budget
The Legislature has approved a 2011 supplemental budget, but still will have to cut more. Rumors regarding the 2011-13 biennial budget will be swirling until the March 2011 revenue forecast comes out. Harrington also reminded the SEC that ideas for addressing budget shortfalls are much more useful than pleas to retain current funding. He also reiterated that the State need grant is crucial for maintaining access. Faculty Legislative Representative Jim Fridley will monitor and report on the processes and discussion related to State budget activity.

University Budget
The University budgets annually, while the state budgets on a biennial basis. The Legislature is not scheduled to end until late April, while June is when Regents approve the University budget. The Senate Committee on Planning and Budgeting is actively involved in these discussions with the Provost, especially as related to the core education portion of the budget.

University General Structural Changes
Harrington said that as the state budget situation is changing and more than half of University support is from tuition, changes in the University’s structure are being considered. To what end do we make changes is the “2d” (two decade) part of the 2y2d initiative. Harrington explained that there have been a series of focus groups to discuss planning for the future with faculty involved. He also said that there are several parts of the “2y” (two year) planning effort that are currently occurring: 1) Program Evaluation, 2) Organization Effectiveness, 3) Strategic Academic Business Plan, 4) Activity Based Budgeting (ABB), and 5) UW Technology. Each academic and administrative have been asked to develop plans to deal with 10% cuts; if those plans result in program changes, RCEP may be involved. Each unit is being asked to consider how to become more effective; Bruce Balick is on the group examining Organizational Effectiveness. ABB is being used in allocating tuition within the university this year, but is not fully implemented. There is an oversight committee examining UW Technology changes; Harrington has replaced David Lovell representing the faculty on this group, and other faculty are involved in various IT committees.

Interim President Wise began by saying the Governor presented her budget before the holidays, and explained that there is a discrepancy in how the Governor, newspapers, and UW Planning & Budgeting people interpret the cuts to the UW. There is an effort among the presidents of all six four-year institutions to collaborate on delivering the same message to the legislature about the impact of cuts to higher education. The Community Colleges have successfully stayed on one message. President Wise complimented Vice Provost for Planning and Budgeting Paul Jenny and Director of State Relations Margaret Shepherd for their efforts in helping all the universities to have a coordinated message.

Paul Jenny spoke to several budget issues. Jenny explained that there will not be firm budget information until the March revenue forecast for the state, which is predicted to look worse than in December. The state may cap the contribution to retirement benefits made by the University, but The University currently believes that they are legally bound to existing contribution levels for current employees, and feel that maintaining this level is important for recruitment. Also, the governor’s proposed salary cut of 3% for all state employees was not included in Governor’s communication about cuts to the University, but it is a cut UW would need to address. The UW wants the flexibility to take cuts in ways they choose. The Governor’s budget proposed an increase in the State Need Grant, but it doesn’t cover all eligible students.

President Wise continued her report and said that she had spent time with fellow university presidents as well as legislators. She feels that the presidents are on the same page right now favoring tuition flexibility as opposed to tuition setting authority. President Wise has guarded optimism that the universities can come together and represent the higher education sector as a whole.

President Wise said that she is working on how to message impact of budget cuts. The University has tried very hard minimize the negative impact of past budget cuts. To continue to say that would be untruthful. President Wise explained that the University can’t take those kinds of cuts without a significant impact. One impact being examined is access to the University and how the University will need to consider admitting more out-of-state students. Excellence is another possible impact. President Wise explained that she is not willing to have the University lose its reputation for excellence under her watch, and emphasized that decisions about future program cuts will be based on factors including quality, affordability, and essential contributions to the future. President Wise then went on to discuss alternative funding models. While donors are generous, they give very specifically. Public University donors are not used to giving support for regular on-going activities. At private Universities, they may be used to such a model, but at public universities there is an expectation for the state to fund on-going activities.

President Wise was asked about how peers are responding to budget cuts. President Wise said they have responded by controlling access, enrolling more out-of-state students, and eliminating programs.

   a. Report of the Secretary of the Faculty. {Exhibit B}
   b. Report of the Chair of the Senate Committee on Planning and Budgeting. {Exhibit C}
   c. Report of the Faculty Legislative Representative. {Exhibit D}
      Distributed separately before meeting.

There were no questions.
5. Invited Guests.

There were no invited guests.

6. Consent Agenda.
   a. Approve the November 15, 2010 Senate Executive Committee minutes.
   b. Approve the December 2, 2010 Faculty Senate minutes.
   c. Approve the Nominees for Faculty Councils and Committees.  {Exhibit E}
   d. Approve the 2011-2012 Vice Chair Nominations for Faculty Senate vote.
   Jim Gregory, Professor, History; Vandra Huber, Professor, Business Administration
   e. Approve the January 27, 2011, Faculty Senate agenda.  {Exhibit F}

The Consent agenda was approved without objection.

7. Announcements.

There were no announcements.

8. Unfinished Business.  {Exhibit G}

Findings of the Official Request for Code Interpretation of the mutually referential language in the Handbook Volume Four, Part 9, Ch. 1, Sec. 5.B.1. and the Faculty Code Ch. 28-32 and 28-35.

**Action:** Approve the interpretation of the Advisory Committee on Faculty Code and Regulations as specified in Exhibit G.

**Action:** Approve the recommendation of the Advisory Committee on Faculty Code and Regulation as specified in Exhibit G.

Harrington introduced the subject and gave background information on the matter and thanked Vaughan, chair of the Advisory Committee on Faculty Code and Regulations for the detailed report.

Vaughan explained that he was not presenting an interpretation, but advice and background.

The SEC discussed the report. It was brought up that some procedures are set forth in the Faculty Code, while others are in Executive Orders. Vaughan explained that they are complementary as parts of the University Handbook. The Faculty Code is the purview of the faculty, while Executive Orders are issued by the President. Vaughan said the he found it striking that two important bodies (the Office of Scholarly Integrity and UCIRO) that can have significant impact on faculty are never mentioned in the Faculty Code, but are in Executive Orders. This could be one reason why there have been tensions and confusion about procedures, leaving room for interpretive conflict. Recent cases highlighted these issues. We now may need to go back and resolve those issues.

Faculty Council on Research Chair Ron Stenkamp asked how Federal Regulations get folded into the University Handbook. Vaughan explained that was done through Executive Orders. Faculty Council on Faculty Affairs Chair Rich Christie explained the Faculty Code is more general and that Executive Orders can be updated to keep up with Federal changes while changes to the Faculty Code can take up to a year.

Vaughan then went to discuss answers to the four questions submitted by the Faculty Senate Chair and the Secretary of the Faculty. The four answers were:

1) There is no contradiction between the Handbook section on Scientific Misconduct and the Faculty Code.
2) Deans do not have the authority to make the final decision of the University about academic misconduct.
3) A decision by the President to overturn a decision of an adjudication panel must include specific reasons that can stand up to external review.
4) An adjudication hearing must be held for any disciplinary or punitive actions that exceeds specified limits or if the faculty member files an adjudication because they object to the action.

It was pointed out that a great deal depends on whether or not a faculty member knows their rights. The SEC discussed the challenges of informing faculty and what could be done to better inform faculty. The SEC also discussed the idea of “Miranda-type” rights for faculty members that would explain the Faculty Code and a faculty members rights.

Faculty Council on Academic Standards Chair John Schaufelberger suggested that the SEC could accept the report and then ask FCFA to address the recommendations. Christie shared that he had very strong feelings that no interpretation should be made by the SEC, and the FCFA is very good at addressing directions from Senate leadership.

Schaufelberger then made a motion to accept the Response of the Advisory Committee on Faculty Code and Regulations to the Senate Executive Committee’s questions. It was approved with all in favor and one abstention.

Senator Nolan made a motion for the SEC to ask FCFA, based on the Advisory Committee on Faculty Code and Regulations’ report of January 10, 2011, to conduct a review of the Faculty Code and propose revisions based on the review. After a second and discussion, the motion passed.

Schaufelberger then moved that the Faculty Senate Chair invite the President of the University (through her representatives) to participate in the review and realign the Executive Orders as appropriate. After a second and discussion, the motion was approved.


Vaughan inquired about faculty oversight for global education. The Faculty Council on Teaching and Learning or the Faculty Council on Faculty Affairs were suggested for this role. Stenkamp said he saw potential overlap with the role of the Faculty Council on Research. Vaughan pointed out that it goes back to the fact that faculty oversight has not kept up with changes made to the administration. The SEC may invite Vice Provost for Global Affairs Steve Hanson to a future meeting to address these issues.

10. Adjournment.

The meeting was adjourned at 4:52 PM.

Prepared by: Marcia Killien, Secretary of the Faculty
Approved by: JW Harrington, Chair of the Faculty Senate
Report of the Faculty Senate Chair
JW Harrington, Professor, Geography

What a November!
We knew about the Veterans Day holiday, and about the Thursday football game, and about Thanksgiving – but who knew that we’d miss two and a half more days to snow and ice?

November 18th Regents meeting
During a joint session of the Regents’ Academic & Student Affairs Committee and Finance, Audit, and Finance Committee at the November meeting of the Regents, the Athletic Director, director of development for Intercollegiate Athletics (ICA), and key people from the Capital Projects office and the Treasury Office were questioned about the proposal for reconstruction of Husky Stadium. The detail presented to the Regents is available online.1 Among the questions asked:

- How sure are we that the proposed use of the University’s Internal Lending Program (ILP) can be paid back?
- What are the plans for fund raising, ticket prices, box rentals, and naming of facilities?
- If the results of the financing plan are as successful as forecast, will ICA pay the University back early?
- Will the ICA be able to return funds to support the rest of the University?
- What do the students and the Faculty Senate think of the proposal?

In response to the last question, I asked to come to the table. (The ex officio members of the Regents – the Faculty Senate chair, ASUW president, GPSS president, and Alumni Association president – generally sit at the table and offer comments only at the formal Regents meeting.) I reported that Scott Woodward had presented pans and answered a series of questions at the November meeting of the Senate Executive Committee. I noted that the Senate Committee on Planning and Budgeting focuses on the academic side of the University, and has not formally taken up the Stadium proposal. I suggested that the major concern of the faculty is the opportunity cost of using up to $250M from the ILP. Are there other construction projects waiting for internal financing?

I didn’t receive a direct answer, but detail about the current uses and plans for the ILP2 had been presented earlier in the day.

With a reminder that the Regents must approve the annual budget for ICA and that they could insist on payback to the University, the Regents approved the proposal as outlined.

My brief formal remarks to the Regents3 focused on the steps that faculty are taking to advise deans, chancellors, and provost on budget cutting; the impacts of cuts on our work; and the importance of developing trust as we engage in all this cutting.

Adjudication processes
As I write this, the Advisory Committee on Faculty Code and Regulations is finalizing its report to the SEC, to be enclosed in this agenda packet. This will be a major topic of our meeting.

Presidential search
The Advisory Search Committee is making great progress, and working together very well. We are definitely in a quiet phase, because of the positions of the people with whom we are interacting. I am very heartened, but the proof will be in what we are able to present to the Regents sometime this quarter, and what the Regents are able to do with that input. Note that three Regents are on the committee, so they will be able to present the Committee’s thinking very directly.

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Leadership from our students
I learned a lot from the discussions and presentations at the annual **ASUW Legislative Dinner** and the 4th annual **GPSS Higher Education Summit**. Each featured state and national legislative and policy folks. State Senator Scott White made waves at the ASUW event when, as keynote speaker, he noted how much he appreciated the students’ enthusiasm and noted that it’s unrealistic to expect that higher education budgets and tuition would be unaffected as the state cuts out funding for all manner of programs.

Public Ceremonies Committee
The University’s Public Ceremonies Committee met in November, providing some input to the Office of Ceremonies’ planning for a **2011 Commencement Speaker** and the **Autumn 2011 Freshman Convocation**. The Office develops a list of potential speakers, which gets added to or modified from year to year – feel free to make suggestions via me or directly to Norm Arkans.

Sesquicentennial Working Group
Next academic year is the sesquicentenary of the University’s founding. Folks from UW Marketing will organize or coordinate activities – because of the budget, these activities will primarily be things that we’d be doing anyway, such as Freshman Convocation, Commencement, and celebrations by the College of Arts & Sciences (which also turns 150), the Libraries, and the Information School (which turns 100). I’ve served on the working group for the past year, and will serve for the next year, as our work turns from idea-generation to information dissemination.

Retirement
Retirement is getting a lot of attention these days.

- The Fund Review Committee is considering some changes in the **structure of the UW Retirement Plan** (regarding fund offerings and advising); Katie Dwyer (Executive Director for Benefits) has met with the Faculty Council on Benefits and Retirement, and has assured me that this matter will not go to the Regents until FCBR has digested and commented on any proposal.
- The Governor’s proposed budget for the 2011-13 biennium calls for a 6% cap on **state contributions to employee retirement accounts**. If this were to be adopted by the Legislature, it would represent a further cut to the University’s budget, as the University makes good on its commitment of a higher contribution.
- State Representative Reuven Carlyle and others have “dropped” a bill that would limit the **re-hiring of state retirees** – it’s not yet clear at all how this might affect university faculty.

Other conversations of note
- I’ve met with Stephanie Rempe, Senior Associate Athletic Director, about lessons learned from the November 18th football game; we’ll continue that discussion as she compiles a report of the effects and their mitigation.
- I’ve met with Gary Ikeda, the new chief of the UW Division of the state Attorney General, to learn more about the functioning of that office and its relationship to the AG, the Regents, the President, and the faculty.
Report of the Secretary of the Faculty
Marcia Killien, Professor, Family and Child Nursing

1. Fourteen nominations for the position of Vice Chair of the Faculty Senate for 2011-12 were received; of these nominees, four agreed to be interviewed by the Nominating Committee. The Nominating Committee recommends two candidates for the ballot: Jim Gregory, History and Vandra Huber, Business. The SEC will vote on January 10, 2011, to determine whether to send these candidates to the Faculty Senate for election.

Thank you to the members of the nominating committee for their service in this important process. Members of the Nominating Committee were:

- Marcia Killien, Committee Chair and Secretary of the Faculty
- Susan Astley, Epidemiology, Faculty Senate Vice Chair
- Bill Erdly, UW Bothell, Chair, Faculty Council on Tri Campus Policy
- Gerry Philipsen, Communication, Past Faculty Senate Chair
- John Schaufelberger, Construction Management, Chair, Faculty Council on Academic Standards

2. The Secretary of the Faculty is in the process of contacting each chair of the Elected Faculty Councils of Schools, Colleges, and Campuses to offer assistance for the upcoming election of Senators for terms beginning in Fall 2011, and to inquire about the status of Bylaw changes or updates.

Submitted: 01/05/11
Report of the Chair of the Senate Committee on Planning and Budgeting
Bruce Balick, Professor, Astronomy

The SCPB report includes a copy of the SCPB’s letter to the provost on December 15, 2010, with attached principles and recommendations for crafting UW’s 2011-13 biennial budget. The set of principles is quite general; however, the recommendations are specific to the budget being prepared for the 2011-13 biennium.

I will not be able to attend the January 10 SEC meeting. However, any questions about the content or history of the report can be directed to JW Harrington or other SCPB members.

You can follow the past and future SCPB agendas at any time at www.washington.edu/faculty/facsen/issues.html

December 15, 2010

Mary Lidstrom, Interim Provost and Executive Vice President
Office of the Provost
UW Mailbox: 351237

Subject: Principles and recommendations for crafting UW’s 2011-13 Biennial Budget

Dear Provost Lidstrom:

Interim President Wise succinctly summarized the core of the University of Washington’s mission: “the focus of our community remains . . . on our students at all stages of their learning.” However, a very difficult budget biennium lies ahead for the University. Total support for our “Core Educational Budget” — the part of the budget that lies at the heart of our mission of instruction, learning, research, scholarship, and community service — may well decline for the fourth year in a row as our state appropriation drops faster than tuition revenues increase. These cuts may very well force programmatic changes and curtailments that, in turn, raise profound questions about our priorities. All resulting changes — especially those that threaten our academic quality, access, affordability, and scholarship — are of direct concern to each of the members of the Senate Committee on Planning and Budgeting (SCPB) and the entire academic community.

We concur with and support the words of Interim President Wise. To those ends, and as one of the Provost’s main advisory bodies, the SCPB has developed the attached list of budget design principles and recommendations for your consideration as you make difficult decisions about allocations to academic and administrative units in the 2011-2013 biennial budget. Although our principles are enduring, our recommendations (shown in italics) apply specifically to the state-and tuition-supported elements of the University’s Core Educational Budget that will be crafted during the Spring of 2011. The principles are listed in approximate priority order; however, the recommendations are grouped by subject, not necessarily by priority.

We are happy to continue to discuss these and other budget-related issues with you as our revenue picture comes into better focus.

Sincerely,

Bruce Balick, Chair
Senate Committee on Planning and Budgeting
Professor of Astronomy
Principles and Recommendations for Crafting UW’s 2011-13 Biennial Budget

**Principle 1: Respond to budget changes strategically.** Our students are among the state’s most important resource. Our faculty provide the means for our students to succeed in their education and for the state to prosper. However, continued budget cuts are taking an accumulating toll. Repeated across-the-board budget cuts are not a suitable strategy for long-term success, excellence, and prosperity. Alternate strategies include:

a. encourage academic units to decrease the cost of our primary services (principally instruction) and their delivery as long as doing so maintains the overall excellence of our academic program,

b. reduce the level of administration and infrastructure service whose impact lies furthest from the classroom, possibly through simplifications and consolidations, and

c. balance student needs, the scope of our programs, and our overall instructional quality through the reprioritization of our strategic goals and the evaluation of the effectiveness of our program expenditures.

**Recommendations**

1. Aggressively continue the work of the goal-setting, strategic-planning and program-evaluation initiatives in progress (i.e., 2y2d, Organizational Effectiveness, and the Program Evaluation initiatives).

2. Require that the deans engage with their elected Faculty Councils to develop strategic priorities for their academic units. This will be a necessity in the event that units must cope with painful internal decisions about reducing or eliminating programs.

3. Consider consolidations and reorganizations of units that result in significant reprogrammable funds.

4. Prioritize and possibly reduce the levels of service provided by non-academic units. The infrastructure that most directly supports teaching and learning quality, excellent scholarship (e.g., libraries), and essential student services (e.g., advising) should be protected first.

5. Preserve access to UW for lowest-income students.

6. Create a pool of central bridge funds that allow disruptive changes in academic programs and student support to be managed thoughtfully.

7. As a short-term measure allow vacant state-funded faculty positions to remain open to meet the most urgent needs except where the integrity of programs that meet key strategic needs would be compromised. (See also Principle 3.)

**Principle 2: Value the faculty.** Faculty drive the University’s mission of instruction, research, and community service. Their confidence in high-level appreciation of and fair and competitive compensation for their work is essential if UW is to proceed to function collaboratively through the coming period of budgetary unpredictability and retain its devoted faculty.

8. We must strive to fairly reward meritorious performance and to remain competitive among our peers.

9. Promotion and tenure policies, including promotion raises, must be sustained at all faculty levels.

10. The Provost should reaffirm our commitment to established principles of promotion and compensation.

11. Faculty numbers may not keep pace with undergraduate enrollment, so student-faculty ratios and teaching loads are likely to increase. Encourage the use of TAs where they add instructional value and control the negative impacts of rising faculty teaching loads. It is important that we not lose TA positions in programs where these TA’s provide a key part of the education services.

**Principle 3: Maintain faculty demographic balance.** The long-term health of academic programs requires a good demographic mix of faculty. An imbalance arises when opportunities for junior level faculty positions are not sustained.

12. Propose effective ways to entice earlier faculty retirements for faculty review.
Principle 4: The actual per-student cost of delivering of instruction differ widely across programs. In addition, instructor training, course web-page preparation, and new low-cost instruction delivery methods (e.g., on-line learning exercises and exams) can be time-consuming investments that are critical for reducing long-term costs. These efforts need to be recognized and compensated in unit funding allocations.

13. Consider differential per-student instructional costs across the units as the new budget is crafted.
14. Be aware of the accumulating impacts and the responses of diligent units to previous budget cuts.
   We urge that best practices of successful programs to cut the costs of instruction be posted.

Principle 5: Curtail (but continue) strategic investments. To remain a world-class institution of higher education it is vital that we continue to invest in the most urgent facets of our mission with vision and purpose at a rate consonant with financial reality.

15. Centrally funded strategic investments must continue. Nonetheless defer all but the most vital investments at least until the University’s revenues stabilize.
Today is Day 1 of Washington State’s 2011-12 two year legislative session. This year’s regular session is the “long one” and will last for 105 consecutive days. During those 105 days the legislature will need to pass two operating budgets, a supplemental budget for the current fiscal year and a biennial budget for the 2011-13 biennium. While there is no shortage of people who seem to think the 105 day session will prove too short and a special session is inevitable it is also well understand that it will be in everybody’s best interest for the legislature to get their work done and adjourn before Easter Sunday (Day 105 of the session).

The supplemental budget is needed because the state revenue through June 30 is expected to be insufficient in comparison to the current budget (as modified during the December 2010 Special Session). The higher education budget is believed by many to be most likely left unchanged from the existing operating budget. There is considerable sense of urgency to pass the supplemental budget quickly (within the next couple of weeks perhaps) due to the fact that June 30 is rapidly approaching and agencies will need time to change their operations in reaction to a new budget. Therefore we should know soon what, if any, immediate budgetary accommodations must be made at the University of Washington.

The severity of the budget problems facing the state for the coming 2011-2013 biennium have been well covered in the local news media and, barring miraculous changes to our state’s economy, the implications of any budget that can be passed and signed into law are almost unimaginable. Despite this the legislature and the Governor will eventually pass a budget. Education, including higher education, will be much discussed but so too will be things like health care for children and people who cannot work. Over the past few months a governor appointed task force higher education funding and accountability completed its work and provided a report to the governor and the legislature. The recommendations of the task force have been amply covered in the local news media. One interesting commentary is the one provided by Brad Smith (he chaired the task force) in a blog entry that you can find at: http://blogs.technet.com/b/microsoft_on_the_issues/archive/2011/01/03/higher-education-task-force-presents-funding-strategy-to-gov-gregoire.aspx The Governor’s office will provide one or more bills to implement the recommendations of the task force.

The Governor made news last week with a proposal to consolidate the oversight of education “K through Ph.D.” under a new cabinet level Secretary of Education. This is described at http://www.governor.wa.gov/priorities/budget/p20_system.pdf. The Governor’s office will no doubt be providing bills to implement this proposal.

We will learn more in the coming weeks but remember that while opinions about how to do it are widely varied, the members of the legislature are all here because they want very much to do what is best for our state. Fortunately most see higher education and the University of Washington as being extremely important to that end.
2010-2013 Faculty Member Appointments to University and Senate Committees

Faculty Council on Benefits and Retirement
- Arthur Nowell, Oceanography, as a member for a term effective immediately and ending September 15, 2013.

2010-2011 Representative (Ex-officio) Faculty Council and Committee Nominations

Faculty Council on Multicultural Affairs
- Eligio Martinez, Graduate and Professional Student Senate, as an ex-officio member without vote for a term effective immediately and ending September 15, 2011.

Faculty Council on Student Affairs
- Mallory Martin, Graduate and Professional Student Senate, as an ex-officio member with vote for a term effective immediately and ending September 15, 2011.

Faculty Council on Teaching and Learning
- Jed Bradley, Associated Students of the University of Washington, as an ex-officio member with vote for a term effective immediately and ending September 15, 2011.

Faculty Council on University Facilities and Services
- Daniel Coslett, Graduate and Professional Student Senate, as an ex-officio member with vote for a term effective immediately and ending September 15, 2011.
Agenda
Faculty Senate Meeting
Thursday, January 27, 2011, 2:30 p.m.
Savery Hall, Room 260

1. Call to Order and Approval of Agenda.


4. Opportunities for Questions and Requests for Information.
      I. Approval of November 15, 2010, Senate Executive Committee Minutes.
      II. Approval of December 2, 2010, Faculty Senate Minutes.
   b. Report of the Secretary of the Faculty.
   c. Report of the Chair of the Senate Committee on Planning and Budgeting.
   d. Report of the Faculty Legislative Representative.

5. Invited Guests.  None scheduled.

6. Consent Agenda.
   Approve Nominees for Faculty Councils and Committees.

7. Memorial Resolution.

8. Announcements.


    a. Announcement of Candidates for 2011-12 Faculty Senate Vice Chair.
       Jim Gregory, Professor, History; Vandra Huber, Professor, Business Administration.
    b. 2011-12 Faculty Senate Vice Chair Candidates’ Presentations.

       The vice chair election will occur electronically within a week and will proceed unless there is an objection on the floor. Results will be announced via E-mail following the election certification.

    c. Discussion: Report of the Advisory Committee on Faculty Code and Regulations to the Senate Executive Committee.

       Motions involving Class C actions should be available in written form by incorporation in the agenda or distribution at the meeting. It is preferable that any resolution be submitted to the Senate Chair and Secretary of the Faculty no later than the Monday preceding a Senate meeting.

11. Good of the Order.


Prepared by: Marcia Killien, Secretary of the Faculty
Approved by: James “JW” Harrington, Chair of the Faculty Senate

NOTE: If a continuation meeting is necessary to conduct unfinished or special business, it will be held on Thursday, February 3 at 2:30 p.m. in Savery 260.
January 10, 2011, SEC Minutes 14

6 January 2011

Professor J.W. Harrington
Chair, Faculty Senate
36 Gerberding Hall
Box 351271

Dear J.W.,

At its 15 November meeting, the Senate Executive Committee requested that the Advisory Committee on Faculty Code and Regulations provide its advice regarding “whether there is a conflict between these two sections of the handbook:

1. The University Handbook Volume 4, Part 9, Chapter 1, Policy for Addressing Allegations of Scientific and Scholarly Misconduct, Section 5.B.1, Investigation; and
2. The Faculty Code Chapter 28, Adjudicative Proceedings for the Resolution of Differences, Sections 28-32, Cases Subject To Adjudications and 28-35, Time Limitations on Initiating Adjudications.”

In subsequent communications with you and the Secretary of the Faculty, this general request was focused in four specific questions:

1. Are there any procedural conflicts among the Handbook section on Scientific Misconduct (specifically, Vol. 4, Part IX, Ch.1, Sec. 5.B), the Faculty Code Section 25-71.D.2, and Faculty Code Chapter 28)?

2. According to the Handbook and Code, can deans make findings of academic misconduct that are ‘the final decision of the University’ and not subject to review by the faculty through the Adjudication Procedure?

3. Under the Code (Chapter 28), the President has the right to overturn the decision of an adjudication panel only with a clear justification specifically by declaring the Panel 1) ‘arbitrary and capricious,’ 2) ‘materially and prejudicially unfair,’ or 3) ‘not in accordance with the law or University rules or regulations’ (28-61.D). How specific must the justification be? Is there any provision or requirement for further review of that decision and justification? Would such a review by the Faculty Senate or other body (e.g. Board of Regents) be against the Code?

4. Must an adjudication hearing (or any other faculty review hearing) be held before a dean or Provost can impose any disciplinary or punitive actions against a faculty member? Or is this required just in cases that meet the standards appearing in 25-71.D.?

The Advisory Committee, after deliberating on these questions, submits to you the attached draft of our responses. We are marking these as draft for purposes of distribution to the SEC in advance of Monday’s meeting. If we have any substantive changes or additions, we will present them at the meeting.

Collegially yours,

Mičeál F. Vaughan
Chair, Advisory Committee on
Faculty Code and Regulations
Summary

While there are some potential inconsistencies in a few overlapping details of the procedures articulated in Faculty Code Section 25-71 (Standard of Conduct) and Executive Order #61 (currently published in the University Handbook, Volume Four, Part IX, Chapter 1), there are no overt conflicts in the language of the two. Similarly, there are no overt conflicts between the Executive Order and Chapter 28, though in certain particular details the relations between various procedures could be made much more clear.

The inconsistencies do, nevertheless, leave room for contradictory interpretations and it would be prudent to clarify these matters as they are applied in future cases of alleged scientific or scholarly misconduct.

Responses to SEC Questions

The SEC has asked us to consider a number of specific questions regarding the relations between Faculty Code Section 25-71 and Executive Order #61. We shall examine each in turn and provide our responses.

1. Are there any procedural conflicts among the Handbook section on Scientific Misconduct (specifically, Vol. 4, Part IX, Ch.1, Sec. 5.B), the Faculty Code Section 25-71.D.2, and Faculty Code Chapter 28?

E.O. #61 deals exclusively with procedures to be followed when allegations are made of scientific and scholarly misconduct by faculty, staff, or students; insofar as such allegations may involve faculty, this is but one (D.2) of three distinct kinds of allegations of misconduct addressed by Section 25-71. Chapter 28 delineates procedures for adjudication of differences involving faculty. One of those “differences” subject to adjudication is action by the Provost to discipline faculty for misconduct.

Under 25.71, after being informed of an allegation of misconduct, a department chair (or dean in an undepartmentalized school/college) “shall inform … and shall offer” to discuss the allegation with the accuser and accused, in hopes of resolving the matter by “mutual consent of all parties” (25.71.B). Moreover, the chair (or dean) or the faculty member “may initiate conciliatory proceedings” (25.71.C), invoking procedures detailed in Section 27-41.

COMMENT: There is some incompatibility here, in the spirit if not in the letter of the “law.” This should be addressed and, it would appear, the distinction between “informal” oral allegations and “formal” written allegations would need to be clarified (or completely done away with). Does the initiation of an OSI inquiry only occur when a written allegation of misconduct is filed with it? Or is a department chair (or dean) required to report any oral allegations to the OSI immediately, putting them in writing? The latter does not seem to be required, but it may indeed be intended by the “are to be made in writing” at the beginning of the E.O.’s Section 4. Does that mean that nothing is to be done if the allegation is not put in writing? Clarification is obviously needed.

If (under 25-71.B and C) there is no “mutual consent” resolving the matter, and if conciliation is not pursued (or subsequently fails), Section 25-71.D implies that the allegation is now reported to the faculty member’s dean: “if the dean … determines that the alleged violation is of sufficient seriousness to justify consideration of the filing of a formal statement of charges that might lead to dismissal, reduction of salary, or suspension for more than one quarter, he or she shall … proceed as provided in” E.O. #61.

Since the 2003 revision, E.O. #61 now states (Section 4): “Allegations of scientific or scholarly misconduct are to be made in writing and, submitted to the Office of Scholarly Integrity (OSI)”
It appears to be incumbent on the dean to provide a written allegation (if the original complainant has not already done so). The previous wording of this sentence read: “Most frequently, allegations of scientific or scholarly misconduct are reported within a department to a chairperson.” The earlier version of this sentence was, therefore, more directly compatible with Section 25-71.B, where such allegations are expected to begin with “the department chair or the dean of a non-departmentalized school or college.”

Further, while 25-71.D clearly vests the responsibility for the final decision to proceed against a faculty member with the dean of his/her school/college, any previous stages of his/her inquiry and investigation are not spelled out in detail in this Code subsection, which simply begins:

If a mutually agreeable resolution is not achieved under Paragraphs B or C of this section, and if the dean (after consultation in the case of a departmentalized school or college with the department chair and the faculty member) determines that the alleged violation is of sufficient seriousness to justify consideration of the filing of a formal statement of charges.

The means by which the dean arrives at this determination are not articulated, beyond the required “consultation.” E.O. #61 details both an inquiry stage and an investigation, should the inquiry provide grounds for further proceedings. During the inquiry stage, OSI assumes primary responsibility, while keeping the dean informed; during the investigation, on the other hand, the dean appoints an “ad hoc advisory committee of at least three scholars” to conduct the investigation, and this committee is “supported by the OSI.” A written report, detailing the committee’s “findings of fact, a preliminary determination, and any recommendations based on those facts,” is submitted to the dean and copied to the accused faculty member and the OSI.

COMMENT: Any attempt to clarify the initial stages of dealing with oral allegations raised in the previous COMMENT should take care to reconcile the stages of inquiry and investigation articulated in the E.O. with the procedures less clearly detailed in the opening paragraph of Section 25-71.D. It should also make explicit the point at which and manner by which a department chair shall report an unresolved allegation to the dean.

Having been directed to follow the procedures of E.O. #61, if the dean, after conclusion of the investigation, “determines that scientific or scholarly misconduct has occurred” s/he is directed (E.O. #61, Section 5.B.1) back to the procedures articulated in the Faculty Code, being directed to act:

against a faculty member in accordance with the University Handbook (Volume Two, Part II, Chapter 25, Section 25-71.E, and Chapter 28), deliver to the appropriate academic administrator a written report stating that reasonable cause exists to adjudicate charges of wrongdoing brought against the faculty member, with enough of the underlying facts to provide the reasons for this conclusion.

The “appropriate academic administrator” in such a case is the Provost, who is responsible (under Section 28-32.A) for initiating an adjudication “before taking any disciplinary or punitive action against such faculty member…..”

COMMENT: These stages of the proceedings are quite explicit and unambiguous in integrating the two parts of the Handbook: proceedings up to Code Section 25-71.D.2 are preliminary to those in E.O. #61; AND the inquiry and investigation under E.O. #61 are preliminary to those in Code Section 25-71.E.
2. According to the Handbook and Code, can deans make findings of academic misconduct that are “the final decision of the University” and not subject to review by the faculty through the Adjudication Procedure?

A dean, the administrative head of the faculty of a school or college, is in no position to make any determination in the name of the University, unless specifically delegated to do so by the President and Regents.

The Faculty Code is quite explicit in requiring that any disciplinary or punitive action against a faculty member (28-32.A) can only occur as a result of an adjudication initiated by the Provost.

A dean’s “determin[ation] that scientific or scholarly misconduct has occurred” (E.O. #61, Section 5.B) is clearly only a local determination, since it simply initiates further actions: i.e., “deliver[ing] to the appropriate academic administrator [in 25-71.E: the Provost] a written report stating that reasonable cause exists to adjudicate charges of wrongdoing” (E.O. #61, Section 5.B.1 AND Code Section 15-71.E). At that point, should the Provost believe that “such reasonable cause exists, then, before taking any disciplinary or punitive action against such faculty member, the Provost shall initiate an adjudication for resolution of such charges…” (Code Section 28-32.A).

COMMENT: The simple answer to this question, therefore, is No. The foregoing account of the relations between Section 25-71 and E.O. #61 makes clear that a dean’s decision is only preliminary to action taken by the Provost by means of the Adjudication procedures spelled out in Chapter 28.

There is, however, one wrinkle here that deserves attention. Section 25-71.D specifies what is to occur if the “formal statement of charges … might lead to dismissal, reduction of salary, or suspension for more than one quarter.” This appears to leave open the possibility of a dean’s imposing a suspension for one quarter or less without having to follow the procedures under D.2 and E, and Chapter 28.

It does not, in fact, accord power to a dean (or Provost) the power to suspend a faculty member for less than a quarter without the faculty member’s consent, or absent formal concerns about public health or safety (in cases of adjudicative proceedings under Section 28-36.D, or RCW 34.05.479: Emergency adjudicative proceedings). A dean may move to suspend a faculty member for a quarter (or less)—on grounds of misconduct (or otherwise)—without explicitly being directed to comply with D.2 and E. This cannot, however, be interpreted as a “final decision of the University” unless the faculty member accepts the discipline without demurral.

Any lesser suspension imposed by a dean or other administrative official, for whatever reason, may stand, at least implicitly, as the “final decision of the University” if the faculty member accepts it, and does not initiate an adjudication under Chapter 28. Any administrative actions may, of course, may provide grounds for a faculty member to initiate an adjudication by alleging that the actions taken by the dean were in violation of University regulations or constitute an injustice, and that these action affected “the terms, conditions, or course of employment” of the faculty member (28-32.B.1 and 3).

COMMENT: Only if the accused faculty member accepts a dean’s decision in a matter of scientific or scholarly misconduct that results in suspension for one quarter or less can a dean’s findings of such misconduct be inferred to be the “final decision of the University.” But that inference unnecessarily stretches the scope of such a “decision.”

3. Under the Code (Chapter 28), the President has the right to overturn the decision of an adjudication Hearing Panel only with a clear justification specifically by declaring the Panel 1) “arbitrary and capricious,” 2) “materially and prejudicially unfair,” or 3) “not in accordance with the law or University rules or regulations” (28-61.D).

How specific must the justification be? Is there any provision or requirement for further review of that decision and justification? Would such a review by the Faculty Senate or other body (eg. Board of Regents) be against the Code?
Faculty Code Section 28-61.D requires the President to “includ[e] specific findings as to why the decision of the Panel was arbitrary or capricious, or why the procedures followed by the Panel in reaching its decision were materially and prejudicially unfair or not in accordance with the law or University rules or regulations” when reversing or amending an adjudication decision.

This clearly requires the justification to be more specific than a simple statement that the in the President’s judgment the Panel was, e.g., “arbitrary and capricious.” There is no further guidance in the Code as to how specific it should be. Since the President’s decision becomes at this point final, the “findings” must be “specific” enough to withstand scrutiny should the case be advanced to judicial review outside the University.

On the question about further (internal) review of the President’s “decision and justification,” Section 28-61.F specifically permits “any party” to file a petition for reconsideration or clarification within 10 days of the mailing of a final decision. This petition is lodged with the President, who will dispose of the matter by “denying the petition, granting the petition and dissolving or modifying the order or decision, or granting the petition and setting the matter for further hearing.” If, within twenty days, the President does not take any of these actions, the petition is deemed to be denied.

Section 28-61.F explicitly mentions the possibility of “further administrative review or for judicial review, if available.” This is consistent with the introductory paragraphs of Chapter 28, which refers to the Administrative Procedures Act of the Revised Code of Washington: “Subject to the provisions of Chapter 34.05 RCW relating to exhaustion of administrative remedies, parties shall avail themselves of these proceedings prior to seeking review beyond the University.” One can confidently presume that the “specific findings” called for in 28-61.D will be the subject to such “review beyond the University.”

COMMENT: If the faculty member’s petition is denied and s/he considers the President’s decision an injustice, that faculty member may initiate a new adjudication against the President under 28-32.B.3. This adjudication would certainly review the President’s justifications. In such a case the review process would involve Board of Regents (rather than the President) as the final judge (28-61.C).

The Faculty Code does not currently anticipate, and therefore does not permit, any review of the President’s decision by either the Faculty Senate or the Board of Regents. It would require revision of the Code to allow such review. (The Senate may, of course, investigate or discuss anything it wishes and pass resolutions regarding any issue.)

However, since “any authority delegated by the Board [of Regents] shall always be subject to the ultimate authority of the Board.” (Board of Regents Standing Orders, Chapter 1, Section 1), this provision could be interpreted as authorizing the Regents to review and overturn the adjudication decision of the President, if they so choose. But the Board of Regents (Standing Orders, Chapter 1, Section 2) has delegated to the President the “formulating, prescribing and issuing rules, regulations, and executive orders … for the immediate government of the University” and requires consultation with the “University faculty” regarding the same.

While the SEC is authorized to interpret the Faculty Code, it is not empowered to interpret the Board of Regents Standing Orders, or the President’s Executive Orders, to mean that an appeal to the Regents may be made of a Presidential decision in an adjudication.
4. Must an adjudication hearing (or any other faculty review hearing) be held before a dean or Provost can impose any disciplinary or punitive actions against a faculty member? Or is this required just in cases that meet the standards appearing in 25-71.D?

As pointed out above in response to the second question, Section 28-31.A states quite unambiguously that action to discipline or punish a faculty member depends on the action of the Provost:

If the University Complaint Investigation and Resolution Office (UCIRO), a dean or any other authorized administrative official files with the Provost a written report that claims reasonable causes exist to adjudicate charges that a faculty member has violated University regulations or state or federal laws pertaining to the faculty member's performance of his or her duties, the Provost shall determine whether such reasonable cause exists.

and

If the Provost believes such reasonable cause exists, then, before taking any disciplinary or punitive action (emphasis added) against such faculty member, the Provost shall initiate an adjudication for resolution of such charges by filing a petition in the time and manner specified below.

Any “disciplinary or punitive actions” proposed by a dean that involves “dismissal, reduction of salary, or suspension for more than one quarter” (Section 25-71.D) specifically requires the matter be sent to the Provost (Section 25-71.E) for processing under Chapter 28. Any lesser punishment or discipline imposed by a dean or other administrative official which the faculty member does not accept also becomes subject to adjudicative review under Chapter 28 upon petition by the faculty member.

Conclusions

In his letter (May 7, 2003) to Interim President Huntsman transmitting recommended revisions to E.O. #61, Vice Provost Olswang remarked that the revisions incorporated “only the recommendations that were technical in nature.” He noted, however, that in the review of the proposed revisions, he had received “recommendations for both technical and substantive changes.” In closing his letter, he said that “[t]he proposed substantive changes should be reconsidered at some future date when the policy is more comprehensively reviewed.” On the basis of the questions being posed by the SEC, and from their implications, it is clearly now time for the policy to be “more comprehensively reviewed.”

Since the last major revision in 1985 of Chapter 28 (Adjudicative Procedures) a number of administrative changes have been made that have direct bearing on these procedures. Specifically, two new offices have been established: the Office of Scholarly Integrity (OSI) and the University Complaint Investigation and Resolution Office (UCIRO). There is, however, no direct reference to the OSI in the Faculty Code, and the role of UCIRO is ostensibly limited to cases covered by Section 25-71.D.1 (i.e., to address “allegations of unlawful discrimination or sexual harassment”). However, the multiple references to UCIRO in Chapter 28 and in the most recent revision of E.O. #61 seem to imply broader scope to its role.

If nothing else results from this review of the relations between Section 25-71 and E.O. #61, we recommend that the SEC go on record to require a thorough reconsideration of both these sections of the Handbook, and a concerted effort to regularize their underlying policies and procedures.
APPENDIX: A Brief History of the Revisions to Code Section 25-71, and E.O. #61

(prepared by Mícheál F. Vaughan, Chair, Advisory Committee on Faculty Code and Regulations)

1970:
Section 25-71 (Standard of Conduct) was added to Faculty Code Chapter 25 (Tenure of the Faculty) by vote of the faculty and with approval by President Charles Odegaard on June 17, 1970. In its original form, the section comprised, essentially, the current Sec. 25-71.A, a general statement about faculty conduct. It was subsequently amended by faculty vote and with Presidential approval three times: May 24, 1985; December 8, 1992; and July 11, 1994.

1985:
The 1985 revision added a series of new subsections (B-E), detailing specific procedures to be followed by a department chair and, subsequently, by a dean, when such allegations are made. (In that same vote [S-A 73] the faculty approved new statutes in the Faculty Code establishing Chapter 27. Administrative and Conciliatory Proceedings for the Resolution of Differences, and Chapter 28. Adjudicative Proceedings for the Resolution of Differences: and made some related changes to Section 25-51. Grounds for Removal of Persons with Tenure for Cause.)

1989:
On June 14, 1989, President William Gerberding first issued Executive Order 61 (Procedural Guidelines Addressing Allegations of Scientific or Scholarly Misconduct). E.O. #61 has been revised four times: October 2, 1990; April 14, 1994; September 24, 1996; and most recently May 14, 2003.

Its original promulgation came at the instance of Provost Laurel Wilkening, who (in her letter of June 2, 1989) reported that this had been developed by the Vice Provost for Research and Dean of the Graduate School (Gene Woodruff) “in conformance with new federal guidelines.” She noted that the document had been “reviewed by the Board of Deans several times, the Faculty Council on Faculty Affairs, and approved by the Faculty Senate Executive Committee.”

This Executive Order implements procedures for investigating allegations against faculty which are referred to in Faculty Code Section 25-71, and these investigations are referred to as potentially leading to actions under Chapter 28 (Adjudicative Procedures for the Resolution of Differences).

The letter from the President’s Special Assistant (Ruth Mahan) to the Secretary of the Faculty (John Bollard), transmitting the new Order for inclusion in the University Handbook, offered a number of likely places for the Order’s publication, without any expressed preference. She stated that “Since the policy relates functionally to Section 25-71, I think it might be more convenient for handbook users if it were inserted as 25-72.” The Secretary did not, in fact, take any of her suggestions, and subsequently published E.O. #61 as University Handbook, Volume Four, Part II, Ch.1, Section 8. Addressing Allegations of Misconduct in Scientific and Scholarly Research).

In its original version, E.O. #61 assigned responsibility for investigating allegations of to “hands of the College and School Deans,” as specified by “[c]urrent institutional rules [Handbook, Volume II, Section 25-71D]: i.e., the section of the Faculty Code discussed above. The Order proceeded to require that the Vice Provost for Research and Dean of the Graduate School, who “is generally responsible for all research programs and activities carried on at the University[,] shall be kept informed … at all stages of an inquiry or investigation.” The guidelines for the investigation of allegations tracks closely those spelled out in Sec. 25-71, adding some refinements in detail about the “ad hoc advisory committee of at least three scholars who are not directly involved in the matter being considered.” If the dean wishes to discipline or dismiss a faculty member, the proceedings are to be conducted “in accordance with the Handbook (Volume II. Section 25-71E, and Chapter 28).”

1990:
In 1990, as a result of administrative changes, E.O. #61 was revised to delete “for Research” from “Vice Provost for Research and Dean of the Graduate School.”
1994 (April):
In April 1994, more substantive changes were made in E.O. #61 at the instance of Provost Wayne Clough, “to ensure University policies are consistent with federal regulations and other requirements of the Faculty Code.” Having been discussed by the Board of Deans and reviewed by the Faculty Council on Faculty Affairs, whose “additional suggestions for revision … have been incorporated” in the revision issued by the President. The major feature of this revision was the establishment of “an Office of Scholarly Integrity (OSI) under the Vice Provost and Dean of the Graduate School.” The functions of the OSI during the inquiry and investigation stages are spelled out in detail, with regular reporting to the dean of the accused faculty member and the Vice Provost and Dean of the Graduate School, who is the administrative officer supervising the OSI.

At this point the text of Section 8 (Volume Four, Part II, Ch.1: Classified and Proprietary, Research) was relocated in the University Handbook, being moved to its present location as a single chapter in a separate part at the end of Volume Four: i.e., Part IX: Procedural Guidelines Addressing Allegations of Scientific and Scholarly Misconduct.

1994 (June):
In June 1994, substantive revisions were made to Section 25-71. Two new paragraphs were inserted in subsection D to govern cases involving “allegations of unlawful discrimination or sexual harassment” (D.1) or “allegations of scientific and scholarly misconduct” (D.2). The use of a “special investigating committee of three faculty members” to advise the dean (the sole procedure spelled out in the earlier D) was now relegated to “all other kinds of cases” (D.3).

The revision specifies that a dean who determines an “alleged violation is of sufficient seriousness to justify consideration of the filing of a formal statement of charges that might lead to dismissal, reduction of salary, or suspension for more than one quarter … shall follow” one of the procedures spelled out in D.1-3. (In December 1992, Section 25-71 had been slightly revised, with “may” being altered to “shall” at the end of the first sentence of subsection D. In the 1994 revision, “possible” was deleted before “dismissal” in that sentence; and the phrase “suspension for more than one quarter” was inserted, replacing the less definite “disciplinary action of comparable seriousness.”)

The new subsection D.1 required an investigation by the University Complaint Investigation and Resolution Office (UCIRO: here being mentioned for the first time in the University Handbook), while D.2 directed the dean to follow the procedures laid out in E.O. #61.

In cases involving allegations of scientific and scholarly misconduct, D.2 now directs the dean for the first time to “proceed as provided in Volume Four, Part IX, Chapter 1” (i.e., the new Handbook location for E.O. #61).

2003:
In May 2003, further revisions to E.O. #61 were made. Vice Provost Olswang, in transmitting these to the Interim President Lee Huntsman, stated that the proposed revisions “make technical corrections including recognition of changes in the University’s organization and federal regulations dealing with misconduct in research.” In an earlier letter to President Richard McCormick (14 December 2002), Vice Provost Olswang reported that responsibility for supervising OSI had been shifted from the Graduate School to the Office of the Provost.

Some of the 2003 revisions to the Order reflect this administrative change, eliminating references to the Dean of the Graduate School, locating the OSI “within the Office of the Provost,” and identifying the responsible administrator as Vice Provost (not specifying which, but implying that it was Vice Provost Olswang). There are also repeated references added that detail the involvement of UCIRO in the inquiry and investigation procedures. The revised E.O. #61 is, finally, retitled “Policy for Addressing….” rather than “Procedural Guidelines Addressing ….” (When published in the Handbook, however, while the chapter title was changed, Part IX still retained its earlier “Procedural Guidelines” title.)