

JOURNAL OF THE FACULTY SENATE (Norman campus)

The University of Oklahoma

Regular Session -- October 6, 1980 -- 3:30 p.m., PHSC 108

The Faculty Senate was called to order by Professor Greg Kunesch, Chairperson.

Present:

Baker	Dunn	Hardy	Lindstrom	Rinear
Biro	Eick	Hayes	Lis	Scherman
Brown, H.	El-Ibiary	Hebert	Locke	Self
Brown, S.	Etheridge	Hibdon	Menzie	Smith
Carpenter	Flowers	Kantowski	Moriarity	Sorey
Cheung	Foster, J.	Karriker	Neely	Thompson
Covich	Foster, T.	Kunesch	Patten	Unguru
Cozad	Gabert	Lanning	Pfiester	Ward
Davis	Graves	Lehr	Reynolds	West
				Whitmore

Provost's Office representative: Ray

PSA representatives:	Cowen	Eichenfield	Little
	Edwards	Guyer	

Absent:

Catlin	Kiacz	Rowe	Vardys	Welch
				Whitney

PSA representative: Chism

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APPROVAL OF MINUTES

The Journal of the Faculty Senate for the regular session on September 15, 1980, was approved.

ANNOUNCEMENTS

General Faculty meeting: The fall semester meeting of the General Faculty on the Norman campus will be held at 3:30 p.m., on Wednesday, October 15, 1980, in Adams Hall 150.

Joint meeting of OSU/OU Executive Committees: The Executive Committees of the Faculty Council, Oklahoma State University, and the Faculty Senate, Oklahoma University, will hold their annual joint session on the Norman campus on Monday evening, November 17, 1980.

Meeting of Inter-Senate Liaison Committee: The Inter-Senate Liaison Committee, composed of the officers of the Norman and the HSC Faculty Senates, will hold its October 28, 1980, fall semester meeting at the Health Sciences Center on Tuesday evening.

Fall meeting, State Conference of Faculty Organizations: The State Conference of Faculty Organizations, representing public and private institutions of higher education throughout Oklahoma will hold its fall meeting on Friday, November 7, at the University of Science and Arts in Chickasha.

Members of the Senate, as well as other interested faculty members, are requested to contact the Senate Secretary (OMU 242 - 5-6789) either to volunteer to join the Oklahoma University delegation or to obtain details about the organization and the November 7 meeting.

AAUP meeting - October 9: The Norman chapter of the American Association of University Professors will meet in the Dale Tower lounge at 7:30 p.m., on Thursday, October 9. Dean Barbara Lewis, immediate past Senate Chair and Dr. Greg Kunesh, Senate Chair, will address the group at that time. Interested faculty members are cordially invited to attend.

SELECTION OF SENATE REPLACEMENT: College of Law

Professor Osborne Reynolds has been recently selected to replace Professor Gordon Christy as a College of Law representative.

INTRODUCTION OF PSA REPRESENTATIVES

The Senate Chair next introduced the representatives from the Professional Staff Association for 1980-81:

Present: Chester Cowen (Advanced Programs)
John Edward (Law Center)
Gregg Eichenfield (Counseling Center)
Dan Guyer (Goddard Health Center)
Sue Little (Counseling Center)

Absent: Joseph Chism (Information Systems Program)

SPECIAL REPORT: Athletics Council

In response to several faculty requests, the University Athletics Council has issued the following special report concerning class cuts and conflicts between final examinations and scheduled athletic events. The Council, furthermore, during 1979-80, either approved or reaffirmed the policies.

Special report of the Athletics Council

September 30, 1980

Several faculty members have asked about the policy of the Council concerning class cuts and conflicts between final examinations and scheduled athletic events, the Council is reporting its policies on these two matters. In 1979-80 the Council approved or reaffirmed policies dealing with these matters.

Class Cuts

The competition schedules of all intercollegiate athletic teams must be approved by the University of Oklahoma Athletics Council. Accordingly, the Council evaluates each schedule to ensure that it is consistent with the educational needs of the student athletes, as well as such other considerations as the Council deems appropriate. No team schedule for any season is approved if it provides that team members will miss more than ten days of classes in any semester as a result of such schedule. Exceptions may be granted by the Council for good cause, to be reported in the Council's minutes, upon the appearance of the head coach of the involved team before the Council.

This policy has been followed by the Council for a number of years and reflects satisfaction with the experience. It should be noted that O.U. is the only school in the Big Eight that has a policy limiting the number of class cuts for student athletes.

Final Examinations and Scheduled Athletic Competition

At its meeting February 14, 1980, the Council unanimously approved the following: (1) there shall be no known conflicts between final examinations and scheduling of athletic events; (2) present contracts for such athletic events will be honored; (3) a long-range academic calendar is needed to avoid future conflicts; and (4) exceptions that cannot be resolved shall come before the Council on an individual basis.

Following this motion, a long-range academic calendar was furnished and future conflicts generally will not be approved by the Council. In the event that a student does experience a conflict between scheduled athletic competition and a final exam, the individual faculty member has the prerogative to deny the student the right to miss the final exam.

Joseph Reiger, Chair
Athletics Council

REPORT OF SENATE EXECUTIVE COMMITTEE

Meeting with Provost Morris: Dr. Kunesh, Committee Chair, reported that the following items were discussed at the Committee's recent meeting with Provost J. R. Morris:

(1) Deans' search committees: The Senate Committee on Committees is now working on a recommendation regarding Senate nominations of faculty members for deans' search committees. There has been faculty criticism about the Senate's becoming "merely a rubber stamp" for faculty nominations submitted by the colleges involved.

(2) M & O (formerly C) budgets: The Committee relayed faculty concerns about the small budget increase this year. Provost Morris reported that, because the administration is also concerned about this matter, M & O budgets are a high-priority item in the 1981-82 "request budget" to be presented to the State Regents later this month.

(3) Proposed new colleges: The Committee also shared with the Provost faculty concerns about the recently announced proposal to establish three new colleges on the Norman campus--the Honors College, the Graduate College of Business Administration, and the College of Geosciences. The Provost stated that, at this time,

all three colleges are merely "a proposal." He added that the Academic Program Council had been contacted by the administration for its recommendations and reactions to the proposal.

Senate "small group" sessions: Dr. Kunesh, Senate Chair, complimented the Senate members on their 80 percent participation in the recent four "small group" evening sessions. Senate officers observed that these discussions had dealt almost exclusively with academic excellence, program funding, and library support.

Senate ad hoc Committees, 1981 position papers: As a result of the above-mentioned "small group" sessions, the Senate officers have decided to appoint shortly the following Senate ad hoc Committees to prepare the 1981 position papers:

- Academic Standards
- Budgetary Priorities
- Educational Priorities
- Faculty Career Development
- University Governance

Two committees utilized for the past three years will not be appointed--(1) the Salary and Fringe Benefits Committee because a new standing Committee of the Senate was approved last spring and (2) the University Image Committee because, in the Senate officers' opinion, this topic is no longer a major faculty concern.

The old Faculty Governance Committee will be replaced by the University Governance Committee that will have a broader scope and charge.

The new Academic Standards Committee reflects growing faculty concern in this area and will follow up on the report of the Senate ad hoc Committee on Junior College Articulation to be considered by the Senate at the November 10 meeting.

Professor Kunesh urged faculty members to express their preferences for committee assignments, as soon as possible, to the Senate Secretary, OMU 242.

REPORT OF SENATE COMMITTEE ON COMMITTEES

Dr. Gary Thompson, Committee Chair, announced the following membership of that Committee:

- Ted Hebert (Political Science)
- Thomas Hill (Mathematics)
- Heidi Karriker (Modern Languages)
- Carl Locke (Chemical Engineering)
- Mary Esther Saxon (University Libraries)
- Gary Thompson (Geography)

He solicited faculty ideas and suggestions for Committee consideration concerning the new policy for faculty nominations for deans' search committees.

He also requested nominations for a faculty vacancy on the Film Review Committee.

REPORT OF SENATE COMMITTEE ON FACULTY COMPENSATION

Dr. William Eick, Committee Chair, announced the following membership of that Committee:

- William Eick (HPER)
- James Hibdon (Economics)
- Stan Neely (Chemistry)
- Patricia Self (Psychology)
- Gary Thompson (Geography)

The Committee is studying the following topics:

- (1) Equity adjustments in salaries made last year by the administration.
- (2) Faculty views regarding distribution of another expected 12 percent salary increase for 1981-82, in line with President Banowsky's announced commitment to that goal.

Faculty input was solicited.

REPORT OF SENATE COMMITTEE ON FACULTY WELFARE

Dr. Stephen Whitmore, Committee Chair, announced the following membership of that Committee:

Teree Foster (Law)
Lois Pfeister (Botany)
John Seaberg (Education)
Stephen Whitmore (Physics)
David Whitney (Sociology)

Recent Committee deliberations have been focused on the proposed policy on unprofessional conduct.

The Committee is attempting to collect information from other institutions regarding faculty welfare programs. The Committee plans to study proposals concerning dental insurance and early retirement programs.

This Committee, also, would appreciate faculty suggestions and ideas.

PROPOSED UNIVERSITY COPYRIGHT POLICY

Background information: Since 1973, the Senate submitted to the University administration two separate proposals for a University copyright policy. No final action was ever taken on either proposal by the administration.

In responding to a request by the HSC Senate for reactivation of efforts to establish such a policy, President William S. Banowsky on June 22, 1979, directed the University Chief Legal Counsel to prepare a draft proposal for subsequent consideration by both Faculty Senates.

The University Chief Legal Counsel submitted his seven-page draft proposal to both Senates on August 3, 1979. The Norman campus Senate officers referred that draft to the University Patent Advisory Committee for its review and recommendations.

On October 8, 1979, the Norman campus Senate approved the PAC recommendation that the draft be returned to the Legal Counsel for major revisions. On October 19, President Banowsky acknowledged the Senate action and indicated that the Legal Counsel would review the PAC recommendations. (See page 2 of the Senate Journal for November 12, 1979.)

On November 19, 1979, the Norman Senate officers appointed a seven-member ad hoc committee to study this question in consultation with a counterpart committee at the Health Sciences Center and the University Patent Advisory Committee. The final report of the ad hoc Committee was submitted to both Senates late in April, 1980.

The HSC Senate approved that report on May 22, 1980. The Norman Senate gave its approval on June 16. (See pages 14-20 of the Senate Journal for the special session on June 16, 1980.)

On August 12, 1980, President Banowsky submitted to the Chairs of both Faculty Senates the administration's revised proposal with four additions to the Senates' proposal. Copies of that proposal were distributed to Norman campus Senate members on September 8, as well as to the Senate ad hoc Committee.

On September 15, the Senate approved giving the ad hoc Committee additional time to study two of the four revisions proposed by the administration. (See page 3 of the Senate Journal for September 15, 1980.)

At this meeting, Dr. Michael Abraham, Committee Chair, distributed copies of the following report of his Committee, dated October 3:

 The ad hoc Copyright Policy Committee reviewed the suggested changes to our April 1, 1980 draft made by the University Administration. Following are proposed admendments to those changes.

Section III.F. - Changes to the underscored section are suggested as indicated:

"However, in those instances in which a written agreement has not been finalized prior to the completion of the copyrightable product, the standard distribution of royalties will be provided to creator with (15%) of the gross income when production and distribution is accomplished by the University or 50% of the gross income when production and distribution is accomplished by an outside entity. If this standard is unacceptable to either party, the matter shall be referred to the University Copyright Committee for final recommendation to the President."

mass

change to
50%

change to
net

Rationale: The 15% was based on the assumption that 70% of the total cost of a project would be due to mass production and distribution expenses. This would leave 30% which would be split 50-50 between the University and the creator. The University share would be used to pay developmental production expenses incurred by the University. This suggestion would be the same as 50% of net income. Using net income seems more fair. Since the above does not distinguish between developmental production (the production of a prototype) and mass production, the word "mass" is inserted.

Section IV.B. It is suggested that Section IV.B. be deleted and section IV.A. be revised as follows:

"The University shall have a standing University Copyright Committee which shall consider and investigate disputes among administrators, faculty, or staff and shall recommend appropriate solutions to the President. The Committee's responsibilities shall include, but not be limited to, disputes concerning:

1. Ownership of University-commissioned works.
2. Terms of commissions.
3. Distribution of royalties for University-produced works.
4. Distribution of royalties for works which may have required specific and unusual University expenses."

Rationale: This form of the section more specifically spells out the function of the University Copyright Committee and broadens that function from the previous draft.

This change still leaves the matter of what constitutes a "specific and unusual expense" undefined. This may be necessary given the wide differences in departmental custom and the problems associated with specifying who defines what is "specific and unusual." Since this issue would probably be decided before the fact by department policies, it may not be a problem.

Senate action: Dr. Abraham, Committee Chair, reported on the Committee's meeting on September 25 with Dr. R. Gerald Turner, Executive Assistant to the President.

In formally presenting his Committee's report, he commented that the Committee's recommendations represent, to a certain extent, a compromise between the view of the administration and those of the Committee. He noted that the Committee views are majority opinions of the group and that, in the words of the administration, "this package needs to be sold to the Regents."

In Professor Abraham's words, "the administration has come a long way from the original version." He added, "Although we lost a few skirmishes, we did win the war."

Furthermore, he posed no objection to the HSC Senate proposal approved on August 28, that this Committee's faculty membership be divided between the two campuses, i.e., two for each. He stressed the need for top-level coordination with the HSC Senate regarding the latest recommendations of his Committee.

Subsequently, Professor Abraham moved approval of his Committee's recommendations, including the equal distribution of faculty membership from both campuses. The Senate approved the motion without dissent.

The Senate Chair then stated that this matter would be considered by the Inter-Senate Liaison Committee (composed of officers of both Senates) at its fall meeting on October 28 in Oklahoma City. Action taken at that time will be reported to the President without delay.

As approved, the revised proposal for a University copyright policy reads as follows:

I. POLICY

The University recognizes and encourages its faculty, staff, and student body to participate in creative and scholarly activities as an inherent part of the educational process. It is the broad policy of the University to promote creativity and scholarly activities and to expand the frontiers of human attainment in those areas to which the pursuits of the University are dedicated.

II. BASIC OBJECTIVES

Copyrights are created by the Constitution and the Laws of the United States to promote the progress of science and the useful arts by securing for limited times to authors the exclusive rights to their works and writings. The basic objectives of the University's policy concerning copyright include the following:

- A. To maintain the University's academic policy of encouraging research and scholarship as such without regard to potential gain from royalties or other income.
- B. To make copyrightable materials created pursuant to University objectives available in the public interest under conditions that will promote their effective utilization.
- C. To provide adequate incentive and recognition to faculty and staff through proceeds derived from their works.

III. COPYRIGHT OWNERSHIP AND ROYALTY DISTRIBUTION

- A. Under the Copyright Revision Act of 1976, 17 U.S.C. §101 et seq. (1976), works of original authorship are protected by copyright from the time they are fixed in a tangible medium of expression, now known, or later developed.
- B. All University personnel, in accordance with the University's policy and basic objectives of promoting creative and scholarly activities, are free to develop, create, and publish copyrightable works.
- C. Copyrighted works produced by University faculty and staff are the property of the creator of that work. All rights afforded copyright owners under §105

of the Act reside with the creator unless he or she has assigned or licensed any of the enumerated rights. Decisions relative to registering of these works with the Copyright Office are left to the individual creator.

- D. Copyright in works specifically commissioned by the University under ~~§~~ 201(b) of the Act shall belong to the University. As copyright owner, the University shall make decisions relative to registering commissioned works. Royalties for University-commissioned copyrighted works may be shared by the University and the creator(s) of the work. The terms of any grant or contract relative to royalties shall take precedence over this policy should there be a conflict between them. Disputes arising over royalty sharing for University commissioned works shall be referred to the University Copyright Committee.
- E. Works produced under a specific contract or grant agreement between the University and a governmental or other agency or organization are subject to the terms of the grant or contract for purposes of copyright. If copyright ownership is not specified, such rights shall reside in the creator.
- F. Where University service units (such as a media production department) are involved with the production of a substantially completed copyrightable product, royalties shall be distributed between the copyright owner, i.e., faculty or staff creator, and the University as provided for in a written agreement concluded prior to work being done. However, in those instances in which a written agreement has not been finalized prior to the completion of the copyrightable product, the standard distribution of royalties will be provided to creator with 50 percent of the net income when mass production and distribution are accomplished by the University or 50 percent of the gross income when mass production and distribution are accomplished by an outside entity. If this standard is unacceptable to either party, the matter shall be referred to the University Copyright Committee.

IV. UNIVERSITY COPYRIGHT COMMITTEE

- A. The University shall have a standing University Copyright Committee that shall consider and investigate disputes among administrators, faculty, or staff and shall recommend appropriate solutions to the President. The Committee's responsibilities shall include, but not be limited to, disputes concerning:
 1. Ownership of University-commissioned works.
 2. Terms of commissions.
 3. Distribution of royalties for University-produced works.
 4. Distribution of royalties for works that may have required specific and unusual University expenses.
- B. The University Copyright Committee shall have as its members: one member appointed by and serving at the pleasure of the President, two appointments made by the President from at least four nominations made by the Employee Executive Council, and four members appointed by the President from at least four nominations each from the Faculty Senates on the Norman campus and at the Health Sciences Center

The four appointed from the nominations submitted by the two Faculty Senates shall serve four-year, staggered terms to be determined by the President. The two appointed from Employee Executive Council nominations shall serve two-year terms with one member's term expiring each year. As members retire, the appropriate group shall send at least two nominations for each vacancy for the President's consideration.

Each member of the Committee shall have one vote. The Committee shall keep its own records, determine its own procedures, and elect its own chair who shall report to the President. The Committee may also review this policy from time to time and may recommend changes to the President.

PROPOSED UNIVERSITY POLICY ON UNPROFESSIONAL CONDUCT

Background information: Last fall, Provost J. R. Morris requested Senate advice and assistance with the drafting of an appropriate University policy on sexual harassment. The Senate Executive Committee subsequently appointed an ad hoc Committee to study this matter. Early in its deliberations, the Committee decided to broaden its scope to "unprofessional conduct."

A preliminary report of that Committee was considered by the Senate on July 21, 1980. At that time, the Senate requested the ad hoc Committee to continue its deliberations and hold public hearings in the fall before presenting its final report to the Senate. (See page 4 of the Senate Journal for the special session on July 21, 1980.)

Open hearings were held on September 16 and 18. (See page 2 of the Senate Journal for September 15, 1980.)

On September 30, the Senate Secretary distributed to Senate members copies of the following items reproduced here, in turn:

- (1) Revised report of the Senate ad hoc Committee on Unprofessional Conduct (September 14, 1980).
- (2) Professor Laura Gasaway's memorandum to the Senate (September 15, 1980).
- (3) Alternative proposal offered by Professors Marilyn Flowers and Shane Moriarity (September 19, 1980).
- (4) Professors Flowers and Moriarity's response to Professor Gasaway's memorandum (September 29, 1980).

Revised: September 14, 1980

- (1) FINAL REPORT: Senate ad hoc Committee on Unprofessional Conduct

Statement concerning Unprofessional Conduct

Members of the University community - students, staff, administrators, and faculty¹ - are entitled to a professional working environment, free of harassment or interference for reasons unrelated to the performance of their duties. Since some members of the community hold positions of authority that may involve the legitimate exercise of power over others, it is their responsibility to be sensitive to that power, so as to avoid actions that are abusive or unprofessional. Faculty and supervisors in particular, in their relationships with students and supervisees, need to be aware of potential conflicts of interest and the possible compromise of their evaluative capacity. Because there is an inherent power difference in these relationships, the potential exists for the less powerful person to perceive a coercive element in suggestions regarding activities outside those appropriate to the professional relationship. It is the responsibility of faculty and supervisors to behave in such a manner that their words or actions cannot reasonably be perceived as coercive.

Unprofessional conduct includes, but is not limited to, the following:

- (1) exploitation of another person for private advantage;
- (2) appropriation of another person's work without appropriate credit;
- (3) sexual harassment;
- (4) unreasonable and substantial interference with another person's work performance;
- (5) creating an intimidating, hostile, or offensive working environment based on sex, race, religion, age, political belief, or national origin.

¹For purposes of this document, "faculty" also includes an individual holding an academic appointment such as adjunct professor, visiting professor, lecturer, instructor, or teaching assistant.

Nothing contained in this policy shall be construed either to limit the legitimate exercise of right of free speech or to infringe upon the academic freedom of any member of the University Community.

Procedures for Proposed Council on Unprofessional Conduct

The Council on Unprofessional Conduct shall be composed of five staff members elected by the Employee Executive Council and six faculty members elected by the Faculty Senate. The terms of appointment shall be for three years with initial appointments of one, two, and three years in each category to provide for staggered membership.

When an allegation of unprofessional conduct is made, it shall be the responsibility of the council to investigate the allegation and resolve the matter to the satisfaction of the parties involved if possible. In the event that no satisfactory solution is reached or if the Council finds that unprofessional conduct does exist, the Council shall make its findings known to the proper administrative officer² and recommend disciplinary action, if appropriate.

Procedures:

1. Any member of the Council may receive a complaint. Any complaint must be filed within 45 days of occurrence or discovery of the act of alleged misconduct. Upon receiving a complaint regarding unprofessional conduct, the member shall refer the complaint to the Chair of the Council who shall appoint an investigative subcommittee composed of two members of the council acceptable to both parties. Each complaint as received shall be assigned a unique number and that number will be used to identify the sealed record referred to in paragraph 5.

2. Initial or informal proceeding.

Either party has an absolute right to refuse to participate in the initial or formal proceeding. Such refusal shall result in a formal hearing as provided in paragraph 4 if either party so requests.

The two-member subcommittee shall investigate the alleged unprofessional conduct. The subcommittee is empowered to interview parties involved and to hear testimony pertaining to the matter and to gather any pertinent evidence. Upon completion of its investigation, the subcommittee is authorized to:

- a. Find that no unprofessional conduct exists and dismiss the complaint,
- b. Resolve the matter to the satisfaction of both the complainant and the party accused of unprofessional conduct, or
- c. Find that unprofessional conduct exists and/or that the parties are unable to resolve the matter informally. In either of those events, the subcommittee shall refer the matter to the Council as a whole with or without recommendation.

The subcommittee shall make a written report that shall be transmitted to the Chair of the Council and maintained under seal. A copy of any records that the subcommittee may have elected to keep shall be included in or appended to the report. Each member of the Council is individually charged to preserve confidentiality with respect to any matter investigated.

3. Individual allegations of unprofessional conduct that are either dismissed for lack of cause or settled at the informal stage shall not be considered in personnel decisions such as salary, promotion, or tenure. No mention of the complaint shall be made in the personnel or student records of either party.

The informal investigation shall be completed with 30 working days³ of receipt of the complaint. (This time period may be extended either by mutual agreement

²The proper administrative officer shall be that person so designated by the President of the University of Oklahoma.

³According to the University's academic calendar

of the parties involved or by the Chair of the Council on Unprofessional Conduct.) If a resolution satisfactory to both parties is reached through the efforts of the subcommittee, a written statement, a copy of which shall be attached to the report of the subcommittee, shall indicate the agreement reached by the parties and shall be signed and dated by each party and by the members of the investigating subcommittee. At that time, the investigation and the record thereof shall be closed.

If either the proposed resolution is not satisfactory or the subcommittee recommends dismissal of the complaint, either party has the absolute right to demand a formal hearing by the Council as a whole.

4. Formal proceeding

Either party has an absolute right to refuse to participate in the initial or informal proceeding. Such refusal shall result in a hearing by the Council as a whole if either party so requests. The hearing by the Council as a whole may be convened at the written request of the party against whom the allegation is made. The complaining party may require a formal proceeding only if a formal written complaint is lodged, setting forth in detail the grounds upon which unprofessional conduct is alleged.

If an informal process outlined above has not preceded the hearing, the Chair of the Council may appoint two members to serve as an investigatory body prior to the formal hearing. That subcommittee may investigate in the same manner as if the proceeding were informal. It may present its findings to the Council, but the two-member subcommittee that has investigated the complaint either in an informal proceeding or pursuant to the direction of the Chair of the Council in a formal proceeding may not participate either in the deliberations of or the decision made by the Council.

The procedures to be followed by the Council in conducting formal proceedings shall be established by the Council and shall provide that the parties to a proceeding may be represented by legal counsel and the parties may present all of the evidence that they consider germane to the investigation. Further, the parties may call witnesses to testify and may cross-examine witnesses called by the other party. A written record of the proceedings shall be maintained.

If any member of the Council is unable to maintain the requisite objectivity in any proceeding before the Council (formal or informal), that member shall be disqualified from participating in any stage of the proceeding. Further, either party may request the Chair of the Council to disqualify any member upon showing of cause. If the objectivity of the Chair of the Council is challenged by either party, the Chair may be disqualified by a majority vote of the Council.

5. Confidentiality of proceedings and records

Under the rubric of unprofessional conduct, disclosure of confidential information by a member of the Council on Unprofessional Conduct constitutes per se unprofessional conduct.

A record of the complaint and the informal and/or formal proceedings of the Council on Unprofessional Conduct or a subcommittee shall be maintained under seal for a period of five years. This record is to be identified only by the unique number assigned to it by the Chair of the Council on Unprofessional Conduct. The record is to be opened only upon authorization of the Chair of the Council on Unprofessional Conduct and only in the event of a subsequent allegation of unprofessional conduct. In the event that the opening of the record is warranted, the Chair of the Council must give written notice⁴ to the individual whose record is to be opened no less than five working days prior to the opening of the record.

⁴According to the University's academic calendar.

A record of the informal proceedings shall be made and shall be maintained under seal in the locked test storage area of the Counseling Center of the University in a filing cabinet that has two locks. The key to one lock will be maintained in the office of Legal Counsel and the key to the other lock will remain in the possession of the Chair of the Council. A log will be maintained requiring the signature of each key-holder and a statement of files added to storage or files removed and the reason therefor. When a file is to be destroyed, the destruction of the sealed file shall be attested by Legal Counsel and the Chair of the Council on Unprofessional Conduct. The documents (containing code numbers only) attesting to destruction will be maintained by Legal Counsel.

The Chair of the Council on Unprofessional Conduct shall maintain a confidential log in which are recorded the name and the identifying number of the sealed record relating to that complaint. A confidential log shall also be maintained in which are recorded the name and the identifying number of the complaining party. The Chair is charged with maintenance of the absolute confidentiality of the logs and is directed to not make the logs available to any individual including the other members of the Council. Upon completion of the term as Chair of the Council, the Chair shall transfer to the succeeding Chair of the Council the logs and the key to the filing cabinet in which the records are maintained.

6. Destruction of Records

Upon termination of the five-year period without additional complaint, all records regarding the complaint shall be destroyed, and no record is to be maintained that would indicate that there had ever been such record.

7. Sanctions

In the event that no solution satisfactory to both parties is reached or if the Council finds that unprofessional conduct does exist, the Council shall make its findings known to the proper administrative officer⁵ and recommend disciplinary action if appropriate. In arriving at a determination of the existence of unprofessional conduct, the Council or any investigative sub-committees may take into consideration the history of complaints that have been filed by the complaining party.

A pattern of informally settled complaints or a history of formal findings of unprofessional conduct may be considered by the Council. However, allegations of unprofessional conduct that were dismissed for lack of cause shall not be taken into consideration.

Upon a finding of unprofessional conduct, the Council may recommend any of the sanctions contained in ~~§~~3.3 of the Faculty Handbook or ~~§~~3.7.4 of the Staff Handbook.

8. Use of University procedures embodied herein shall not constitute a waiver by the complainant or respondent of any other legal rights they may have.

⁵ As designated by the President of the University of Oklahoma.

ADDENDUM: Recommendations

1. The Council should consult with an appropriate student representative in establishing its internal procedures.

2. Contingent upon the modification of the Student Code to create a sanction equivalent to the sanctions applied to faculty and staff for violation of confidentiality of the Council's proceedings, we recommend expanding the Council membership to include ex officio student representation.

3. We recommend a position in the University Counseling Center be identified as a permanent contact point for complaints an/or concerns. In addition to receiving complaints, this person will be responsible for advising anyone (complainant or respondent) on the procedures of the Council. This person will ensure that all members of the University community are adequately served.

(2) Memorandum dated September 15, 1980, from
Professor Laura N. Gasaway (Law Center)
to the Faculty Senate (Norman campus):

For several years, I have taught law courses in employment rights and the law of sex-based discrimination. Sexual harassment is a topic of great current interest to practicing attorneys, legal scholars, and others in this field. There have been several cases dealing with these opinions and with the current emphasis of the Equal Employment Opportunities Commission (EEOC) on developing for employers guidelines on sexual harassment.

The ad hoc Committee's draft statement on unprofessional conduct appears to me to be a good one. In the University setting, we must be concerned not only with sexual harassment in the employment relationship but also with teacher/student problem. Except as a faculty member myself, I have no extraordinary qualifications for addressing myself to the student/teacher issue. However, I do believe I am qualified to address the guidelines as they apply in the employment situation.

Case law now affords relief to employees who suffer sexual harassment from supervisors and other superiors when submission to such demands for sexual favors becomes a condition of employment.¹ Submission is a condition of employment when the employee complains and the employer makes no effort to investigate or takes no action to remedy the situation.² To avoid liability for acts of sexual harassment by supervisors, companies nationwide are adopting formal policies prohibiting such conduct and are establishing procedures for handling complaints against its supervisory personnel.³

On March 11, 1980, the EEOC published proposed guidelines that define conduct constituting sexual harassment in the employment relationship. These guidelines recommend to employers that prevention is the best tool and that, among other actions, employers develop appropriate sanctions for such conduct and inform employees of their rights to raise and how to raise the issue of sexual harassment under Title VII of the Civil Rights Act. Although the EEOC guidelines are proposed and not final, if I were advising the University on how to avoid liability for sexual harassment of its employees, the first step would be to develop a policy and a formal grievance procedure and to give it wide distribution within the University.

In my opinion, the primary issue facing the Faculty Senate is not whether O.U. should have a policy dealing with sexual harassment but who should be responsible for drafting a policy and procedures--the faculty or the administration. In order to protect itself, the University must have a policy. I believe it is an abrogation of faculty responsibility not to come forward with a policy and procedures that both deal with the problem and yet provide protection for the faculty member who supervises employees. While the Senate may want to amend the draft guidelines, I urge the Senate to adopt some guidelines rather than leaving it to the University whose primary interest must be protecting itself from liability rather than safeguarding faculty rights.

¹William v. Saxbe, 413 F. Supp. 654 (D.D.C. 1976)

²Tompkins v. Public Service Electric & Gas Company, 568 F.2d 1044 (3d Cir. 1977)

³Known as the "Miller exception." The employer is not liable when it can demonstrate a policy of discouraging such conduct and a functioning procedure for handling sexual harassment complaints, Miller v. Bank of America, 418 F. Supp. 233 (N.D. Cal. 1976).

September 19, 1980

(3) A policy statement on unprofessional conduct offered as an alternative to the report of the Faculty Senate ad hoc Committee on Unprofessional Conduct

(submitted by Professors Marilyn Flowers and Shane Moriarity)

A university is a community of individuals engaged in the pursuit and support of education, scholarly research, and other service to society. It is vital to the successful functioning of the institution that all members of the university community - faculty, staff, and students - treat one another with mutual respect for and deference to the rights of the individual. This attitude of respect is an important - perhaps the most important - element of professional conduct.

Unprofessional conduct, though not capable of a precise definition, includes such items as (a) the abuse of authority; (b) failure to execute one's responsibilities; (c) sexual harassment; and (d) engaging in illegal actions in the performance of one's duties. Similarly, the proper reaction to professional misconduct is difficult to describe precisely without knowledge of specific facts. However, appropriate actions do range over, but are not limited to, (a) counseling the individual to make that person aware that certain actions are not acceptable; (b) issuing a reprimand and informing the individual that sanctions may be taken in the future; (c) imposing an economic penalty, such as denial of otherwise appropriate salary increases; (d) termination of employment; and (e) referral of alleged illegal actions to appropriate civil authorities.

In many cases, counseling is the appropriate and sufficient reaction to an instance of unprofessional conduct. In such cases, it is both proper and appropriate that persons placed in supervisory roles exercise their duty to assure that subordinates work and act in a manner consistent with the goals of the organization. Accordingly, persons who either observe or are victims of unprofessional conduct should inform the immediate supervisor of the offending individual of the alleged incident. (Failure of an administrator to respond appropriately to such a complaint is itself unprofessional and, accordingly, should be reported to that individual's supervisor.)

Obviously, if a persistent pattern of unprofessional conduct is observed and if the individual involved is not responsive to counseling, appropriate sanctions must be imposed to redress the undesirable behavior. In these cases, the responsibility of the supervisor or supervisors considering such sanctions is to inform the individual in question of the sanctions being proposed and of the reasons for such sanctions. This is to ensure that the individual in question has access to established appeals procedures.

From the foregoing, the Faculty Senate concludes that no change should be made in the current procedures described in the Faculty Handbook for dealing with matters of unprofessional conduct.

Furthermore, the Faculty Senate (Norman campus) recommends:

- (1) That the following words be added to Section 3, 8, 2 of the Faculty Handbook and that the subsequent items be redesignated accordingly.

"(b) Sexual harassment"

- (2) That the administration of the University annually remind all persons in supervisory positions to be sensitive and sympathetic to complaints involving unprofessional conduct and take any steps that may be necessary to ensure that this is the case.

(4) THE UNIVERSITY OF OKLAHOMA INTEROFFICE COMMUNICATION

To Faculty Senate _____ Date September 29, 1980 _____
 From Professors Marilyn Flowers and _____ Subject Response to Prof. Gasaway's letter _____
 Shane Moriarity

We agree with one point made by Professor Gasaway and disagree with a second point. Obviously, the University must establish procedures that serve both to protect it from legal liability in cases of sexual harassment and which deal effectively with any problems which actually arise. We did not address this issue in our alternative proposal because we were primarily advancing a statement of policy. We presumed that procedures would follow the Faculty Handbook that places primary enforcement responsibility in the hands of the administration. We were unaware, prior to Professor Gasaway's letter, that the EEOC may have some procedural guidelines for sexual harassment cases which might require some adjustments in the existing procedures at OU for these particular types of cases.

If this is, in fact, the case, it seems to us that the Faculty Senate has several options in addition to adoption of the ad hoc committee's proposal. These include:

- 1) Accepting the Flowers-Moriarity proposal as a statement of policy together with either
 - a) appointing a new committee to propose procedures consistent with that policy and with EEOC guidelines
 - or
 - b) allowing the administration to propose procedures consistent with the stated policy and with such procedures subject to review by the Faculty Senate.
- 2) Tabling the Flowers-Moriarity report for one month. We would be happy to work with Professor Gasaway to remedy what she sees as the procedural inadequacies in our document,
- 3) Forming a new ad hoc committee.

It is obvious from the fact that we have offered an alternative proposal that we disagree with the policy and procedures proposed by the ad hoc committee. We will state these reasons at the Senate meeting. Therefore, we do disagree with Professor Gasaway's endorsement of the ad hoc committee report.

Finally, we would like to express our appreciation to Professor Gasaway for offering the Senate the benefit of her professional expertise in the procedural area. We regret that we were unaware of her interest and expertise until it was too late to try to work with her to gain a better understanding of the legal issues involved and to perhaps make some further adjustments, if needed, in our proposal.

However, even if some alternative to adoption of the ad hoc committee report involves some delay in final action by the Senate, that seems to us to be a preferable alternative to adopting what we believe to be an undesirable policy.

Senate action: Dean Barbara Lewis, Chair of the Senate ad hoc Committee, formally presented that Committee's revised proposal. In her view, the proposed procedures are "an effort to make easy access available to parties who feel that they have a valid complaint while, at the same time, providing maximum protection for those who are being complained against."

According to Dean Lewis, the following two issues are facing the Senate:

- (1) Are the guidelines acceptable to the University community?
- (2) Will the Senate live up to its responsibility for and commitment to faculty governance?

She then moved that the Senate adopt the proposed policy on unprofessional conduct. The motion was immediately seconded.

At this point, Dr. Kunesh, Senate Chair, indicated that he would recognize members of the ad hoc Committee to speak to the Senate. At the request of that Committee, furthermore, two other individuals would be given the opportunity to address the Senate--viz., Ms. Anne Livingston, Chair of the Student Congress, and Mr. Tom Blakely, Public Defender, Norman campus. Dr. Larry B. Hill (Political Science) may also be addressing the Senate during the ensuing debate.

The Chair then called on Ms. Anne Livingston. Dr. John Biro rose to a point of order and requested a ruling by the Chair as to whether or not her comments would constitute "debate on the motion." Dr. Kunesh ruled that Ms. Livingston's remarks would be in the nature of "sharing pertinent information."

Ms. Livingston then read the following resolution adopted by the Student Congress on September 30, 1980:

CONGRESSIONAL BILL NO. 241212

Title: A RESOLUTION IN SUPPORT OF THE PROPOSED FACULTY SENATE
UNPROFESSIONAL CONDUCT CODE

- WHEREAS: The need for an unprofessional conduct code has become apparent, and;
- WHEREAS: The Faculty Senate, upon the request of the O. U. Administration, has proposed such a code, and;
- WHEREAS: This code outlines a procedure for bringing grievances and for dealing with instances of unprofessional conduct, including sexual harassment, and;
- WHEREAS: There have previously been no avenues for redress of grievances along this line, and;
- WHEREAS: This procedure will benefit faculty, staff, and students.

BE IT, THEREFORE, RESOLVED BY THE UOSA CONGRESS THAT:

Section 1: The UOSA Congress supports passage of this proposed code through the Faculty Senate, contingent upon the inclusion of Addenda #2 and that it also provide for an equitable number of voting student representatives, who shall not sit as members of the Council when considering issues not directly involving students.

Section 2: The UOSA Congress urges all other branches of the Student Association to join Congress in support of this proposed code.

She added, "We strongly support this proposal and hope that the Senate will support it also." The Student Congress would very much like to see students involved in the process, especially whenever students are involved.

She indicated that she was also speaking for Mr. Ray Oujesky, UOSA President, who could not attend this meeting because of a conflicting meeting with a Regents' committee. Ms. Livingston, in closing, applauded the Faculty Senate Committee for its work.

Mr. Tom Blakely, Public Defender (Norman campus), next addressed the Senate. He expressed a particular interest in the "sexual harassment" aspect of the proposed policy. Last year, he handled two such cases. The task was made very difficult by the fact that there are no established policies for handling complaints against faculty and staff members. The question of including students in the process was immaterial to him. In his opinion, the University should adopt a "desperately needed" procedure for having complaints against faculty and staff heard by unbiased parties. "For anyone to assume that this is not a problem and, therefore, does not need to be addressed is shortsighted!"

Dr. John Biro then moved approval of the following motion:

"The Faculty Senate expresses its concern about the need for a strong policy concerning unprofessional conduct (especially sexual harassment) and for firm and effective procedures for carrying out such a policy. It regards it as vital that all realistic proposals for procedures be fully considered before action is taken.

"Therefore, the Senate postpones consideration of the motion until the November 10 meeting and appoints an ad hoc committee of three Senators to work out a detailed proposal for an ombuds-person system at the University of Oklahoma to be considered at that meeting, along with existing proposals. The committee is instructed to seek the advice of all interested parties."

Professor Biro added that he was proposing a postponement with great reluctance and some hesitation because he shared the faculty concern and desire for action in this matter as soon as possible. His conversations with fellow Senators and faculty colleagues across the campus have indicated considerable division among the faculty about the appropriate procedures to be selected. In his view, the ad hoc Committee proposal would be a separate alternative and not an addition to either one of the existing proposals. On November 10, therefore, the Senate would have three distinct, separate options to consider on their respective merits.

Professors Lewis and Kenderdine, members of the ad hoc Committee, called attention to recommendation #3 in the addendum to that Committee's final report. In their view, that recommendation reflects the Committee's consideration of some aspects of the ombudsperson concept.

Senators Davis and Self spoke against the motion to postpone; Senators Baker, Flowers, and Moriarity favored postponement.

Professor Davis moved the previous question. In a show-of-hands vote, the Senate approved the motion 21 to 18.

Five Senators requested a roll call vote on Professor Biro's motion. The vote yielded the following results:

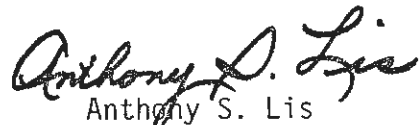
Baker	Aye	Kantowski	Aye
Biro	Aye	Karriker	Nay
Brown, Homer	Aye	Lanning	Aye
Brown, Sidney	Nay	Lehr	Nay
Carpenter	Nay	Lindstrom	Nay
Cheung	Nay	Locke	Aye
Covich	Nay	Menzie	Aye
Cozad	Aye	Moriarity	Aye
Davis	Nay	Neely	Aye
Dunn	Aye	Patten	Aye
Eick	Aye	Pfiester	Aye
El-Ibiary	Nay	Reynolds	Nay
Etheridge	Aye	Rinear	Nay
Flowers	Aye	Scherman	Aye
Foster, John	Nay	Self	Nay
Foster, Teree	Nay	Smith	Aye
Gabert	Aye	Sorey	Aye
Graves	Nay	Unguru	Aye
Hardy	Nay	Ward	Aye
Hayes	Nay	West	Nay
Hebert	Nay	Whitmore	Aye
Hibdon	Aye		

The motion carried, 24 to 19. Six Senators (Catlin, Kiacz, Rowe, Vardys, Welch, and Whitney) were absent; three (Kunesh, Lis, and Thompson) were ineligible to vote.

ADJOURNMENT

The Senate adjourned at 4:46 p.m. The next regular session of the Faculty Senate will be held at 3:30 p.m., on Monday, November 10, 1980, in Physical Sciences Center 108.

Respectfully submitted,



Anthony S. Lis
Professor of

Business Communication
Secretary, Faculty Senate