

**ARTS, SCIENCES & ENGINEERING  
FACULTY MEETING  
COOLIDGE ROOM, BALLOU HALL  
WEDNESDAY, NOVEMBER 3, 2010**

**PAGE**

**Announcements**

University-wide Conference on Teaching  
and Faculty Development.....2

**New Business**

Recommendation for AS&E Degrees for  
November, 2010.....3  
Discussion of Proposed Changes to Student  
Course Evaluation Procedure.....3  
Report on Efforts to Bring Grievance Procedures into  
Compliance with Federal and State Law.....11

**Appendices**

Liberal Arts & Jackson College Degree Candidates.....A  
School of Engineering Degree Candidates.....B  
Graduate School of Arts & Sciences Degree Candidates.....C  
EPC Resolution on Student Course Evaluations.....D  
Tufts Course Evaluation Process (Presentation).....E  
Procedures at Other Universities for Handling  
Grievances Involving Alleged Discrimination.....F  
Reasons Faculty Grievance Committee Should Defer  
Investigation of Discrimination Complaints to University  
Administration.....G

**ANNOUNCEMENTS**

**PRESIDENT BACOW:** Why don't we get started? We're going to begin with announcements, and I know Andrew McClellan is filling up his coffee cup or something right now, but he has our first announcement.

**UNIVERSITY-WIDE CONFERENCE ON TEACHING AND FACULTY  
DEVELOPMENT**

**DEAN MCCLELLAN:** As some of you know already, in December, the 24<sup>th</sup> Conference on Teaching will be happening here on the Medford campus, and it has various parts to it. There's a morning session that will feature individual teachers, drawn from the faculty here, sharing their

best ideas about teaching. There are choices of different panels that you can go to. This will all be properly advertised, if it hasn't been sent to you already, and so you'll be made apprised of all the offerings available to you. A lot of thought has gone into this, and it's actually something that I can say looks genuinely exciting to me in the diversity of things that are on offer: learning from archival sources, new ideas in technology, and various creative ways of injecting new and different perspectives on your pedagogy. We strongly encourage you to come, and pass the word on. Those of you who are department chairs, please devote some time to talking about this conference in your next department meeting so that the faculty who may not come today know it's happening and are aware of just what's on offer.

The second part of the conference is a keynote address by Barbara Walvoord, who is a distinguished national expert on the subject of accreditation and assessment. Now, I know there will be a collective yawn going all around the room at the very mention of that topic, but it is something that we are, of course, all involved in as faculty and as members of departments. I think Harry Bernheim has done a wonderful job of marshaling to people to get on board with this collective endeavor. Barbara Walvoord has had a huge amount of experience across the country talking about creative ways of approaching this topic, ways in which it makes sense for us to get on board with this, ways in which we can all pull together collectively and make this a creative, productive exercise, rather than a chore. She's an emeritus professor in English herself, and as I say, has spoken at over three hundred venues on this topic. We're hoping to have a good turnout of people to hear what she has to say to help us work through and to make the best of the necessity of doing this exercise. So, it's a two-part thing. Please come. Please pay attention to the emails that are coming about this. Spread the word to your faculty.

PRESIDENT BACOW: Thank you, Andrew. Other announcements? Let me make two brief ones. One, to remind people that at 4:30 today, Michael Sandell will give the Snyder Presidential Lecture, and for those of you who've never had the opportunity to hear Michael, he's a political philosopher from Harvard, an extraordinary teacher as well as scholar. He will be speaking over in Cabot Auditorium, and if you haven't seen him on PBS or other things, he gave the Reith Lectures this year for the BBC. This promises to be very, very interesting. So, I wanted to make that announcement.

The other is: some of you may not be aware of it, but our Music Department received a gift this past year which has helped to underwrite a program which brings visiting artists to campus from time to time to perform in Granoff, and the Carolina Chocolate Drops were here, Stephan, about three weeks ago?

PROF. PENNINGTON: Last week was Christine Goerke.

PRESIDENT BACOW: Which I was just going to mention, who was amazing. Adele and I are fortunate because we live on campus, and we get to hear a lot of this stuff ourselves, but I worry sometimes that the faculty are not aware of these. It was standing room only for the Carolina Chocolate Drops, and Christine Goerke's performance was well reviewed in the Boston *Globe* this past weekend. It was really spectacular. If you have a chance, I would encourage you to stop by Granoff and just pick up the brochure, which they publish every semester about all of the events that are taking place there. It's a particularly rich set of programs that are available to the

community, fall and spring. Beyond the normal programming that we do, student and faculty programs, these are visiting artists. So, some fabulous, fabulous stuff, not to be missed.

Any other announcements? Seeing none, I call upon our Provost for his recommendation for degrees.

### **RECOMMENDATION FOR AS&E DEGREES FOR NOVEMBER, 2010**

PROVOST BHARUCHA: Thank you. Members of the faculty, I have the honor to present these candidates from Liberal Arts and Jackson, the School of Engineering, and the Graduate School of Arts and Sciences. It is the function of this faculty to recommend to the Board of Trustees all candidates for degrees in Liberal Arts and Jackson, Engineering, and the Graduate School of Arts and Sciences, as authorized by the trustees, for the award of the degrees in November, 2010, subject to the usual conditions.

I am happy to certify that these candidates have met or will meet -- will meet? When? Apparently, I am personally certifying that they will meet, and I think --

DEAN GLASER: That's 'if' they meet. If they don't meet it, they're pulled off the list.

PROVOST BHARUCHA: That's not what it says, but okay. Jim is going to make sure that the undergraduates finish, and Lynne and Lew will make sure the graduates finish.

The total number of degrees to be recommended is 35. Of those, 7 are Bachelor degrees, 21 are Master's degrees and Certificates of Advanced Study, and 6 are Ph.D. degrees. I can break down the undergraduate degrees and the graduate degrees further, if you like, in terms of their schools, or we can just vote on it. Do I hear a motion?

PRESIDENT BACOW: Is there a motion? Second? Discussion? All those in favor, aye. Opposed? Thank you.

#### *ALL DEGREES APPROVED*

*LIST OF LIBERAL ARTS & JACKSON DEGREE CANDIDATES APPENDED (APPENDIX A)*

*LIST OF SCHOOL OF ENGINEERING CANDIDATES APPENDED (APPENDIX B)*

*LIST OF GRADUATE SCHOOL OF ARTS & SCIENCES DEGREE CANDIDATES APPENDED (APPENDIX C)*

### **DISCUSSION OF PROPOSED CHANGES TO STUDENT COURSE EVALUATION PROCEDURE**

PRESIDENT BACOW: I'd now like to call on Jack Ridge, who's chair of the Educational Policy Committee, who's going to come forward and report to the faculty about changes in our course evaluation procedures.

PROF. RIDGE: Thank you. Since September, 2009, EPC, the Educational Policy Committee, has been working on a revision of the student course evaluation system, and this started in the fall

of 2009 by requesting opinions from departments and faculty about the current system, and I'll explain a little bit about the results of that survey in a minute. After studying the issue, we thought it was a good thing to go ahead with a revision of the student course evaluation system. This necessitates taking the course evaluation system online. Last spring, we presented proposals to the faculty and debated here, and it was quite clear that we had overlooked a lot of political issues associated with changing the course evaluation system. Since that time, in the spring, there was a breakdown of our current system, and things are a lot more desperate than they had been last year, and as a result, EPC has drafted a supporting statement to the administration to take the current student course evaluation form online. The earliest that this could happen is in 2012, and I'd like to start with reading you that supporting statement:

"In order to ensure a student course evaluation (SCE) system that is immediately safe from the threat of failure, and to further EPC's long-term objective of the eventual design and implementation of an improved SCE system, we offer our support for the administration to place the current SCE system online as soon as the new education management system (Sakai) is able to accept it. Re-investment in outdated paper-scan equipment would be a waste of resources, in addition to providing us with none of the advantages of an online system.

"We view the decision to go online as one that should be made as soon as possible by the Tufts administration in light of our current situation regarding course evaluations. However, we view a number of decisions on policy issues regarding the online implementation of the current SCE form and future changes advancing us towards an improved SCE system as requiring the careful discussion and approval by vote of the AS&E faculty."

What happened last spring was that our scanning system broke down, and it's essentially now just rigged. It's able to process forms. It's a very slow process and one that is quite time intensive for the staff that has to do this. This system is at serious risk of failure, as per last spring, and reinvesting in the outdated equipment is not something that's going to happen. It is clear that we cannot reinvest in that type of equipment.

We view the online student course evaluation system as something that's inevitable. It will have to happen in the next couple of years, and we now have the technology available to us with Sakai to accommodate that online. Without any additional cost, I might add.

Our feedback from faculty over the last year on the current evaluation form: the current evaluation form received scathing reviews. Nobody seems to like it, and there are a million excuses why people don't like it. It seems like it's very possible to improve that system, but the only way that we can do that is to take it online, because the current paper-scan system is completely inflexible. We cannot change the questions on the form. That is an impossibility with our current system.

We also realize that there are a number of policy issues associated with the student course evaluations. For instance, who sees the results, and in what types of format are we going to be able to see our own course evaluations? Those things all have to be worked out. But for now, we are recommending that the course evaluation system be taken online.

What I'd like to do at the start of this discussion is actually show you what the current system looks

like, what the hardware looks like. I'm going to call on Jim Glaser to show you a brief PowerPoint that shows you what this looks like.

DEAN GLASER: These are the forms that should be recognizable to most of you. You may not recognize the form on the right. That's done for each course. Just to give you some sense of what goes on in Dowling Hall, this is Yvelle Chery, who is a terrific staff member there, processing the results one evaluation at a time. Here you can see our scanner at work. There are occasional problems. On the left, you see that occasionally a paper gets jammed. On the right, I don't know what a 'skunk mark' is, but if there was no skunk mark, I'm sure it would be not a problem. But this kind of screw-up is frequent and needs to be dealt with by Yvelle and Debbie Mahoney. At the end of the process, the system that we have feeds them out on diskettes. They are beautiful diskettes, but they are diskettes, and those diskettes are distributed to the departments, which have to save old computers to be able to read them.

The EPC did ask my office, my old office, to do a little study, and there are a couple of little bits of information. We did look to see the percentage of students in classes that actually fill out evaluations under the present system. It's about three-quarters of students in all classes. In large classes, it's about seventy percent.

We also did a little evaluation of meaningful comments. Under the new system, we should have a much improved ability to comment on courses, and so the committee was wondering how frequently students take the opportunity to make comments on the back. We did a sampling of five different departments, six courses each. I asked the staff in the departments to do this for me. About seventy percent of evaluations have some comments on them, but when you look at the comments that are more than just 'great class', or 'the professor is super', or whatever is there, the really substantial comments, only about forty percent of evaluations have substantial comments. So, that's forty percent of seventy percent of the students who are giving us meaningful feedback.

Finally, we did a little study of what our peer institutions are doing on this, and you'll see that of eleven institutions, including Tufts, most, in the past six or seven years, have moved to administering their course evaluations online, and we're still down there on the bottom of the list. I'm pleased to see us moving to the top of the list. Thank you.

PROF. RIDGE: I'd like to also make you aware of what's in the document for the agenda today. Not only the statement that I read, but also some supporting information, which includes a list of reasons that EPC thinks that we should move the course evaluations system online. That's on page 1, what we consider the long-term objectives to be. The initial move of the current course evaluation system online would be a first step. We eventually want the course evaluation form to be completely redesigned for going online and to have different questions, which most people do not seem to be very happy with.

And then finally, we recognize, starting on the bottom of page 2 of the handout, some of the policy issues that need to be addressed to go online effectively, and we appreciate the fact that this is not a simple process. We will definitely have to take advantage of the experiences of some other universities where this has happened.

Of immediate concern would be keeping participation rates up high and not letting them drop. It's very possible, using the right carrots and sticks, that the participation rate could actually go up, and people will not necessarily see their course evaluations improve because of that. In fact, they may go down when they include the part of the class that does not show up for the last class of the semester when the forms are filled out.

There are some unknown variables, and we think that moving the current system online allows us to examine how going online influences the results and also the participation before we put a new system online that includes a lot of other variables, like different questions. So, I think that's a more measured way of approaching the situation than just going online with a new form.

I'd be glad to answer any questions, and feel free to send me emails with concerns that you have about this. This is a process that's going to be going on for at least the next year and a half until we finally come online, and we'd appreciate feedback from you.

PRESIDENT BACOW: Can you identify yourself and your department when you speak? Just because, again, Joanne is new, and we want to give her a chance to know the faculty.

PROF. EL NADY: Hi, my name is Rabab, and I teach Arabic in the German, Russian and Asian languages department. My concern is actually about the number of the students who would go online and fill in the evaluation because usually they would have to fill in the evaluation at a time when they are very busy, which is at the end of the semester. Many schools actually have had problems with that because the students wouldn't go and fill out the evaluation unless they have something very negative about the instructor that they want to mention, or maybe something very positive. I'm just wondering what the school is going to do about this, like is there going to be a kind of incentive for the students who are going to go on online, or are they going, for example, to access their data before the other students can, or what's the strategy?

PROF. RIDGE: None of that has been decided yet, but I can tell you some ideas that people have kicked around as to how to deal with this problem. It's a matter of trying to change the culture here, basically, to get students to fill out the form when they might not necessarily have to. One of the things that we can do, and this has been discussed as a potential solution, is to withhold their grades until a week after final exams are over unless they fill out the form. So, they can't see their grade unless they fill out the form for that week after final exams. I know the students in my classes are very anxious to see their grades. I think that's a big incentive.

There are also more carrot-type situations. I've suggested that, for instance, we have a lottery, and for the students that have filled out an evaluation form, there will be a drawing and free tickets to a concert downtown or something like that. Things like that can be used to try to get the participation rate up.

PRESIDENT BACOW: Move them up in the housing lottery.

PROF. RIDGE: Actually, that's been suggested and is a very important thing to students.

PROF. PENNINGTON: Stephan Pennington in the Music Department. I was here for this

meeting last semester when the presentation happened saying we're going to have to go to online, we had a vote, and the faculty said, "No, wait a minute," and I remember the English Department as a whole said, "No, we don't want to go online." There were a lot of really valuable, interesting comments about the pros and cons of going online or not, and then the discussion was tabled, and here we are again.

I just want to be clear. We don't get to vote, correct? I feel as though what's happening is that we are theoretically going to be voting on this, but from everything I hear, we don't get a choice in the matter at all. We're going to go online whether we like it or not. Is this the case?

PROF. RIDGE: Well, it is the case. It's inevitable, let me put it that way. If we don't go online, we will eventually not have a course evaluation system. The machinery is not going to last. I think it could last five years, there's an outside chance it will last ten years, but it is simply not going to last. And right now, we're putting the administrative people, the people that actually process the forms, through hell.

PROF. PENNINGTON: So then, what is the point of this discussion if our vote has to be yes, or if we're not going to have a vote? I'm wondering what the goal of this discussion is for this moment.

PROF. RIDGE: Well, I thought it would be fair to tell everybody that this is going to happen and not just one day you're told that the course evaluations are online. One of the reasons for coming here also is to make sure that we have faculty input for all of the policy issues, and in the spring, those were the things that concerned people the most. The things that seemed to concern people the most were "What will students see from this evaluation?" and the other thing was "What kind of results do I get to see?" And then there were questions specifically about going online. I think changing the character of the form has a lot to do with the validity of the results, and right now, our form is not very good. It asks a lot of ambiguous, sometimes redundant questions, and it confuses students. I just don't think that you can take the form seriously after reading a few of the questions many times.

PROF. EDELMAN: Lee Edelman, the English Department. I just wanted to clarify, Stephan. The English Department did not say that we objected to going online. The English Department was supporting the opt-out option for the reporting of the results for all of its faculty members, and one of the options being discussed was the entire department opting out of the reporting of those results publicly to students because we don't believe it's in the interest of our junior faculty, and we don't believe faculty members should be reduced to a simple statistical number, especially when they're coming up for evaluation.

PROF. RIDGE: Two ways I can respond to that. First of all, our hope is that when we design the new course evaluation form, it will promote more written comments than simple numerical answers. It's very possible that we would entirely get rid of numerical answers on the form. I don't think that's going to happen, but that's a possibility.

These are the types of policy issues that the faculty should be involved in, and we really have to decide on these things before we move forward. I think it's essential that your input be involved

in this process.

PROF. ROTHBAUM: Fred Rothman, Child Development. I just want to thank Jack and the EPC, because I think you've done a wonderful job of navigating some difficult terrain. You've been working on this for a few years. You brought it to the faculty. You were very responsive to the comments you got there. You're dealing with some hard realities of machinery and navigating all that, and I think you've done a great job of representing the faculty and also responding to pressing needs, so thank you.

PROF. RIDGE: Thanks.

PROF. ZAVALA: Hi, Adriana Zavala from Art History. This certainly may fall outside the purview of the EPC, but I'm curious about, given all the variables, how we're going to reconcile this for junior faculty coming up for tenure because things could change. I'm wondering what the nature of the discussion around that has been. Thanks.

PROF. RIDGE: That's a detail that we haven't discussed a lot, but when we put forth proposals for the distribution of the data, for instance, for students, we've always said that first-year faculty would be excluded from that. In other words, you wouldn't be able to see the results for a new faculty person for at least the first few years that they're at Tufts. I think that's the type of thing that has to be worked out in terms of the policy here, and that's certainly something that most people have wanted in terms of the distribution of the data.

PROF. TOBIN: Roger Tobin, Physics and Astronomy. I want to reinforce what Fred said and express appreciation for all the work and openness that you've shown. I'd just like to suggest that, since we have something like a year and a half between now and when this will be implemented, there is time to implement a few changes, maybe not in the form itself, but, for example, to figure out what sort of incentive policy we want to put in place, and I don't see any reason why we couldn't put a preamble in the online form explaining its purpose. I know that's one of the things that was recommended. That wouldn't change the form in any way. It doesn't involve getting into all of these other knottier issues. I would just like to suggest that in the intervening time that EPC at least consider implementing some of these minimal interventions prior to that.

PROF. RIDGE: Yes. One of the things that we've talked about is that students don't really have any sense of how the evaluations are used. In their mind, they think they're used so that they can go online, and they can pick courses. But in fact, they haven't done that in the last five years. There was a vote by the faculty in 2005 that allowed that to happen, but the students simply haven't asked for the results. I hope there aren't any students here. Having the students understand what the course evaluation is for, that it's used to evaluate teaching, it's used to evaluate faculty for tenure and promotion and for salary is an important thing, and we've actually drafted a statement in an earlier proposal that could go on the top of the form that goes online, or it could be read right now in class as the students are about to fill out the written form. Because they really don't have any sense as to what the form is for or what the evaluation process is supposed to accomplish.

PROF. JOHNSON: Vida Johnson; German, Russian, Asian. I have some 1975 and '76 course evaluation booklets, if you'd like to look at what it looked like when everything actually was

published. What struck me, besides the pictures of my colleagues looking thirty years younger, was how responsible they were. You had not all courses for every department. Every year or semester, there'd be a different number of courses that would be put up, and there would be a graph, but also there would be some general sort of summary of the comments and also a professor's response to that that would be part of one or two paragraphs of comments.

What I wanted to add was when students are given the opportunity to actually study and look at the evaluations, I found them to be extremely responsible. For example, just recently there was an article, a complaint by the students in *The Observer*, that students don't have any input in the tenure process, etc., but, in fact, they do. Those reports by the TCU Senate, they send a student over who looks over all the evaluations, and they come up with a summary that faculty look at very carefully when they're voting, and we look at those evaluations both in the raw forms, in the statistics and in the comments, and also in the summary. What struck me was that the summaries always get rid of the outlier comments, sort of like you have an otherwise great evaluation, and someone says, "This is the worst course I've ever taken." You know, you're saying, "Is this person in the same course?" They don't tend to quote those, and I think everyone is concerned about the computerization of all of this and the lack of personal contact. It's one thing when the professor hands out the evaluations, leaves the room, and then the students return it; there is still some contact. But when they can just sit and say whatever they want, their blogging habits, etc., will lead them into different kinds of comments that we might not really find useful. They might just be venting their feelings one way or the other. I'm wondering whether what we need to do is get students involved in the process of changing the evaluation, but also in educating them that, in fact, they have to put in the time and be responsible about it, and then they can have more access to those evaluations.

PROF. RIDGE: I think that's an important part of it. Changing culture here, in terms of what students think about the evaluations, is a hard thing to do. Other schools have taken this on, and some of them have been pretty successful. And so, I think we can gather information from those successes and figure out if there are other things that we could do besides what we're doing now to try to promote more responsible answers.

I have a draft copy of the statement that we put together for the top of the form, if you'd like to hear that. I can show you some of the things that we've thought about already.

PRESIDENT BACOW: Jack, maybe it would be better if we circulated that to the faculty, as opposed to just read it, so that people can study it.

PROF. RIDGE: I can do that.

PROF. ROBINSON: Pearl Robinson, Political Science, and also on this committee. I just wanted to say that I think that this has been a very useful discussion, and I'm certain that the committee will think more about how we can structure more specific input in terms of the policy issues and the process issues so that things like -- particularly, the comment about junior faculty. If people have specific ideas that you want to bring to the committee as we put together a package, we'll bring them back to the faculty in general.

And, I just want to tell you, this man is an extraordinary person to have chair a committee.

PROF. ORIAN: Colin Orians in Biology. I know that one of the complaints about these forms is the categories make means meaningless. The statistical analysis of these things is really problematic, and I guess I would be very interested to hear whether or not we could get Dawn Terkla's office involved in understanding what other departments do so that we could explore ways of having (inaudible) fill in the boxes and have meaningful results come out the other side.

PROF. RIDGE: I think one of the things that we can do is improve what the numbers mean on the current form. If you give somebody a '3', what does that really mean? Are they sort of the average at Tufts? There's no explanation of that on the form, and that's one of the things that we saw in the feedback last year, that students have no idea what the numbers mean. That's something that can be improved.

What EPC wanted to do was to formulate a committee of experts and also people who had something at stake in terms of the course evaluation forms; experts, being people who are used to making up forms or have some expertise in doing that, and then, of course, having the input from students, both undergraduate and graduate students, and faculty to formulate a new student evaluation form. I'd be the last person in the world to make an evaluation form. I have no expertise in that, but I know there are people on campus that would be willing to do that, and a committee formed of people that are experts and also people who have a stake would probably be the best thing to do. And yes, Dawn, you'd be one of the people.

PROF. ROGERS: Laura Rogers, Department of Education. I just wanted to say thank you, too, because I think you've done a really great job of separating out the process and management issues from the policy issues and then outlining how the policy issues could be addressed, which I think is very helpful. I have a question. Are the exit surveys that students complete done online?

PRESIDENT BACOW: Yes.

PROF. ROGERS: So, we're already using a form online, and as a result of that, we've been able to tailor and adapt it. I don't know if people realize that when you go online, it makes it very easy to tuck in a question or two that might be specific to your course or department to get information that's actually very valuable to you as you use the information that students provide to you. I think this opens up a great opportunity in the context of the conversations that we're having about assessment, anyway. What is meaningful in a student evaluation of courses?

PROF. RIDGE: One of the things that I've done is I've looked on the Sakai website, and I've looked specifically in the module for course evaluation, and you do have the ability, if it's set up properly, to ask your own questions in addition to the ones that are standard questions. So, it appears to be a possibility with Sakai and the way it operates.

PRESIDENT BACOW: We've got another big topic. There's going to be plenty more opportunity for input, and I also want to thank Jack and his committee for this.

Just one thought for the faculty as you consider this. I think Jack has framed it correctly. The

issue is not if we are online or not. The whole world is going online; this will go online eventually anyway. But I think it's in the interest of the faculty to be part of this process because if we don't do it, I guarantee you, in a world of Facebook and Twitter and everything else, the students are going to do it on their own, for their own purposes, and there will be no control or management of the information or the assessment process. And so, I think it behooves the faculty to get up in front and, in fact, to do what EPC is doing. So, I applaud the committee for doing this, and there will be plenty more opportunities for input on these policy issues.

## **REPORT ON EFFORTS TO BRING GRIEVANCE PROCEDURES INTO COMPLIANCE WITH FEDERAL AND STATE LAW**

**PRESIDENT BACOW:** The next topic is something that I actually asked Joanne and Linda to introduce, and it has to do with potential changes to our grievance processes to bring them into line with Massachusetts and federal law dealing with investigation of discrimination complaints. So, Linda is going to start the conversation and then turn it over to Joanne, and then we're going to ask Deke Mathieu to just summarize the law. I think, Deke, there was a typo in what was distributed because I think it said, 'Reasons Faculty Grievance Committee should Refer Investigation of Discrimination Complaints to the Administration,' as opposed to 'Defer'. Linda.

**DEAN ABRIOLA:** I just wanted to set the context a little bit. Last year, under the leadership of Vickie Sullivan, A&S started to look at revising the Faculty Handbook because it's so outdated and so many policies have changed and there were references to people in positions that no longer exist. It was the kind of thing that nobody wanted to do because it's just very detail-oriented. So, that process was moving forward, and then Vickie got the School of Engineering involved at some point. One of the things I want to say is that process is still ongoing. We hope to go live eventually with a new handbook, hopefully sooner rather than later because I understand it could be important for NEASC as well. So, it would be nice to have an updated handbook available.

I want to emphasize that this isn't about changing policies. It's about updating the handbook so it reflects the current policies. I'm pleased to say that we're going to go forward with a joint AS&E handbook, and where there are differences in faculty development or workload or things like that, we're going to have separate sections, as we had in the past, and I'm very much in favor of this.

One outcome of this was looking at the Grievance Panel issue, and I want to turn it over to Joanne now for more about that.

**DEAN BERGER-SWEENEY:** I just want to lay a little bit of groundwork for why we're bringing this to you at this point, and I think it's kind of back to Stephan's question of, "Why are you doing this?" And I think it really is to underscore that we're really trying to be as transparent as possible. So, what we thought was important was for you to understand that we are working on a faculty handbook, it will be joint AS&E, and understand that we think that federal and state law necessitates some changes to the Grievance Panel and grievance policy.

The idea is today to present you with some rationale so that you understand the processes to which we are considering later bringing legislation and changes and to really just lay the groundwork and to provide that information for you today in full transparency. So, if I can call on Mark

Cronin-Golomb and Deke Mathieu to take over and explain some of these changes.

PROF. CRONIN-GOLOMB: I'm Mark Cronin-Golomb. I'm the chair of the Grievance Panel this year. Thanks for introducing the topic so nicely.

It's true that last year the administration approached the Grievance Panel with a request to consider ways to bring the current grievance procedures into line with the state and federal laws concerning how grievances involving discrimination are handled, and the proposal that was brought forward at that time was to remove the handling of grievances involving discrimination from the purview of the Grievance Panel and to refer those cases instead to the Tufts Office of Equal Opportunity. And, in fact, quite a bit of work was done working on the wording of the Faculty Handbook along those lines. But then a little bit later, the question came up, "Well, to what extent is it possible to involve both the Office of Equal Opportunity and the faculty Grievance Panel in the resolution of grievances involving discrimination?"

So, I did a little bit of research, actually, to see how discrimination cases are handled at other universities, and the document that I sent to you to look at today includes a handful of the procedures that are followed by some of our colleague institutions. If you look at the case for MIT --

PRESIDENT BACOW: Excuse me, Mark, can I just ask a question? As we consider these, do we know whether or not they've gone through the same process that we're going through now? Because if somebody were to look at our grievance procedures and offer them to others, they would be inconsistent with the law, if you understand what I mean. Do we know that these have been harmonized?

PROF. CRONIN-GOLOMB: I think Deke has done a little bit of work on that, and you'll say a little bit later?

MR. MATHIEU: Sure.

PROF. CRONIN-GOLOMB: Currently, what MIT does is cases are referred by the department involved or by the faculty. That's like what is currently on the books with us now. At Boston University, the cases are referred by the Office of Equal Opportunity, except there are some cases where there has, in the past, been a Grievance Panel-type structure in place, and their regulations allow the Grievance Panel-type procedure to still handle discrimination cases. The University of Massachusetts is very simple. The cases are referred by the Office of Equal Opportunity and Diversity. At Boston College, there are several ways that such cases can be handled. First, the case goes to mediation, and then it can be subject to administrative resolution, or it can be heard by a hearing committee, which is appointed by the Vice President, and that hearing committee can be composed of designated appropriate types of people, including faculty. The case that I personally think is most attractive is one that's followed by the University of Texas, in which case grievances involving discrimination cases are first referred to the Office of Equal Opportunity, and then once the Office of Equal Opportunity knows that such a case exists, it's then referred to the faculty panel, which works in cooperation with the Office of Equal Opportunity to resolve the issue.

So, I think before going too much further along the lines of finalizing or even thinking about drafting a revised grievance policy, it's a good time for a discussion between the faculty and the administration as to how we would like to proceed along these lines and to come up with a result which will be acceptable to both the administration and the faculty.

MR. MATHIEU: Before I dive into the specific topic that I've been asked to address today, I just want to put in a plug for Vickie Sullivan, who served as an academic dean for two, if not three years, and let you know that Vickie put in a tremendous amount of work to try to bring the AS&E Faculty Handbook up to speed. The Faculty Handbook that exists right now states that it was last revised in 1994, and I'm told that that revision was just a minor revision from the handbook that existed, I think, since the '70s. As a result, the handbook, in my opinion, is not a very helpful document to the people that it's intended to serve, i.e., the faculty. When you go to your handbook, you should be able to look at the policies and figure out how they apply to you and who you should go to if you have questions. There have been so many changes in the law, particularly since the '90s, with the FMLA and the ADA and all these other things that apply to faculty as well as staff, which are really spelled out very clearly in the Staff Handbook. But if you as a faculty member are going to go to that handbook to look for your rights and your obligations, I think you will be left scratching your head. So, she's done a lot of work. I don't know where it stands right now, but I would encourage you to get behind the effort to update the Faculty Handbook.

Secondly, Dean Sullivan brought to my attention the fact that the grievance procedure needed some fixing. And trust me, it's not just the AS&E grievance procedure. I think that there are issues with the grievance procedures that exist throughout the university, but I should point out that it's only the AS&E grievance procedure that has the language that I think is problematic from a legal standpoint, and that is that all the other schools will refer cases to OEO. If it involves discrimination, the case goes to OEO. AS&E is the only one that retains jurisdiction, if you will, for the faculty Grievance Panel to hear those cases. Why should the committee give up that right? Why should it cede this authority, if you will? Well, there are many reasons, and I have a handout that I prepared, which has been distributed, I believe, but let me see if I can summarize it without returning to notes.

Discrimination law is a complicated area of the law. First of all, there's the legislation, and there's a ton of case law that has given definition to that legislation. In addition to lawyers having a role in determining what the law is, the university has obligations under the law. Specifically, in Massachusetts, the university is required to have a grievance procedure, and it's required to publicize it, and it's required to put cases that come up under the aegis of discrimination through that grievance procedure. Otherwise, we are not in compliance with state law.

In addition, federal law: the Supreme Court developed a case law around Title VII, which is the Civil Rights Act of 1964, which was the first civil rights act that banned discrimination in this country. I don't want to get into debates about the post-Civil War stuff, but in terms of new age legislation, that statute has been interpreted for years and years and years and years, and finally in the '90s, the Supreme Court gave some guidance to employers.

There are things in the law called affirmative defenses. That means that when a plaintiff brings a case against a defendant, a defendant is able to absolve itself from liability by saying, "Look, court,

we did the things that we are required to do; therefore, we may not be held liable.” And the Supreme Court said that employers can have an affirmative defense if they have a policy and a procedure that promptly addresses discrimination complaints and the complainant fails to avail him or herself of that procedure.

The university has a grievance procedure, and it has application university-wide. It applies to university employees. Now, if you've heard me talk before about ‘the Jordan Rules’, you'll know what I'm about to say. When I came to academia in 2004, my experience was different. I had worked for a law firm. We had represented corporate clients, like Exxon and American Airlines. We're talking about big, big corporations, and they were very corporate. And in some ways, I had a corporate attitude when I came here about ‘the law says this’, and ‘this is how it happens’. And then, you know, it was a screeching halt. This is academia. Things function differently here, and it took me a while to appreciate it. So, I'm fond of saying that in some ways, there are the Jordan Rules when it comes to applying policies at the university.

*Jordan Rules* was a book that was written when Michael Jordan was at the height of his career in the NBA, and essentially the author talked about how because Jordan was a superstar, he got away with certain things. The refs didn't call the travels on him. If he had five fouls, you better believe even if he had somebody, unless that person was bleeding, he wasn't going to be fouled out.

What I realized is that there are instances where it's legitimate to treat faculty differently than you treat staff. Let's face it, you guys are the talent here. If this were a sports franchise, you would be the talent. That's understood. But in the eyes of the law, there's no distinction between faculty and staff. The EEOC, the MCAD, the federal and state courts, they will say, “Okay, why should the university treat faculty and staff differently? Why should the university have a separate policy for staff and faculty?” We had to justify that.

Beyond that, there are real issues involved when someone complains of discrimination. There are standards. As I mentioned, there's a train of case law that needs to be understood. You have to know when to ask questions, who to ask questions. The investigation has to be thorough; otherwise, it's subject to attack. It is very time-consuming. Jackie Hymes, who is the director of OEO, is sitting right here. She can attest to how time-consuming these types of cases are.

I was going to reserve this to the end of my comments here, but in some ways I was thinking, “Why would faculty want to do this?” You're going to be facing claims where people are going to say, “This person was sexually harassed, and here are the facts.” You're going to have responsibility for making sure that you conduct the interviews properly, that you protect confidentiality, and that you make sure that you're keeping the university apprised of what's going on. You're probably going to need training. If you're on the committee, how long are you going to be on the committee? With the turnover, how much time are you going to be able to devote to it? Are you going to defer this to just a subcommittee of the committee, or is the entire panel going to handle this? What about liability? What happens if you get it wrong? Can you be sued? Yes. Can the university be sued? Yes. And at the end of the day, it's the university's responsibility to address discrimination, not any individuals’, and a court's not going to say, “Well, you know, the faculty has special rights.” It's the university's responsibility. So, you need to take that into consideration because at the end of the day, if there's a concern about your

investigation, guess who's going to be defending you? It's the university.

I just have a few more comments, and then if you have any questions, I'd be happy to address them, but I know that you're running out of time here. I just want to comment on the policies that Professor Cronin-Golomb mentioned. I received this document yesterday, as I think you all did, and I called a couple of my colleagues in the Office of the University Counsel at Boston University and MIT, just to get an idea of what their policies say and how they deal with those policies because first of all, you must understand that even if one hundred universities are not complying with the law in some respect, that doesn't mean that we should follow them in not complying.

What I did learn, and I'll share this with you, is that at BU, there are these legacy panels that traditionally have investigated not just discrimination claims, but anything having to do with a faculty member. Faculty investigate faculty. That was the mind set there. As I understand it, there were attempts to revise this policy. There were some reasons why it didn't happen, political in nature, and I don't think we need to get into that. But it didn't happen. What the legal counsel told me at BU is that when the next Provost comes, there's going to be a discussion about whether they're going to be changing that policy. So, you should know that. In addition, at MIT, they also have a vestigial policy that functions -- I don't know how they make it work, honestly. But I was told that there is a significant concern in the legal counsel's office about whether that policy can get that university in trouble as well.

Before I wrap up, could I just see by show of hands, how many of you have served on the Grievance Panel? How many of you have actually heard a discrimination case? I'd like to talk to you at some point. Having said that, my advice to you, as legal counsel, is that you defer -- and I use that term advisably -- to allow the university to handle this administrative responsibility. It doesn't mean that the faculty cannot grieve. In my opinion, it doesn't mean that the faculty cannot grieve an administration decision that they feel is inappropriate or somehow violative of their rights. If the administration says, "I'm going to fire you because you were found to have discriminated against the complainant," that is a decision that you could grieve. The question is, is it necessary for the faculty to retain jurisdiction over the nitty-gritty fact gathering and decision making? I would suggest that that's one fight in which you may not want to engage.

The last time I addressed the faculty on an issue of law versus university policy it involved FERPA, the Family Educational Rights and Privacy Act, and it concerned whether or not the university was in compliance with federal law in the way that it was treating student records. There was resistance because it meant change. It meant that the way you were used to doing things would have to change. We're humans; we don't always embrace change. But I think this is appropriate change, and I would urge you to consider it.

PRESIDENT BACOW: Questions for Deke or Mark?

PROF. SCHWARTZBERG: Sharon Schwartzberg, Occupational Therapy. Thank you for your report. I have a question. I have been on the Grievance Panel and chair of an academic department, and I really value having something simple and compliant with the law. My question is about graduate students who are teaching assistants. Where do they fall? Perhaps you addressed that in the materials, and I apologize if you did.

MR. MATHIEU: I did not, Sharon. You raise a hot topic because there was litigation right around the time I came to Tufts because the litigation had just been resolved by the National Labor Relations Board, and as many of you know, the National Labor Relations Act was enacted back in 1984, thereabouts, about the same time that the Fair Labor Standards Act was enacted, and it gave certain rights to employees to collectively bargain, to form unions and so on.

One of the main issues that has been litigated over the years is whether people who are trying to form a union are employees -- if they are employees under the act. For example, supervisors are not employees under the act, so they can't form a union. There's a Supreme Court decision called *Yesheva University*, which talks about faculty and whether faculty are considered employees under the act or whether they are supervisors. In that particular case, the Supreme Court said that the faculty were more like representatives of the university in the way they function, so they could not form a union. Of course, there are faculty unions. Many of them are formed because of state law.

Then the question was litigated back in the early 2000s about whether graduate students are employees under the act. In fact, there had been a New York University decision that I believe said 'yes'. And so they ran and formed a union at NYU, and then there were attempts to organize here at Tufts. There was an attempt to organize at Brown University. In fact, there was even an election here at Tufts, and the ballots were collected and were impounded because the NLRB was considering these cases. At that point we had President Bush, who had appointed two of the three members of the National Labor Relations Board, and that board decided that graduate students are not employees under the act; they're more like students, even though they have certain qualities that teachers have, and therefore cannot organize. Recently, if not last week, then the week before, the National Labor Relations Board indicated that it's going to look at this issue again, and they consider it a live issue. My prediction is that they are going to reverse the Brown decision, and they are going to say that graduate students are employees under the act, and therefore can organize.

I gave you that background just so you know that there are a lot of issues floating around whether or not they are or are not employees. If that law changes, then you should prepare yourselves for some organizing activity around graduate students. But as far as how they fit into this rubric, my understanding is that they would be treated as staff, and that they would have access to the Staff Handbook, as opposed to the Faculty Handbook, and therefore, they would even be considered if a claim was brought against them. Now, if they bring a claim against a faculty member, then what we're talking about would be implicated in terms of jurisdiction.

DEAN BERGER-SWEENEY: I just wanted to make a statement to underscore a little bit what Deke has said. You asked how many people in the room had been on the Grievance Panel here, and I could not raise my hand because I've only been here two months. But as an associate dean at Wellesley College, I actually had to do investigations related to discrimination cases there, several. A couple of things I will tell you: it was perhaps one of the most time-consuming things that I did as an associate dean, and I thought it was one of the least pleasant things that I did as an associate dean. And so, I know that when I started to read this grievance policy and first met with the two of them, all I could think of was if there is anything that I would most like my faculty not to be burdened with doing, this is probably it. There are so many other things that I hope and expect the

faculty to do. This was not one that I would like to burden any particular faculty members with. So, I probably feel somewhat strongly about it, having been involved with it several times and seeing how much time -- and the only way I think I was able to get through it was, almost every step, I was on the phone with the legal counsel at the college to be able to move through. I just felt as though I had to share that particular experience.

PROF. BRATT: Rachel Bratt, Urban and Environmental Policy and Planning. I'd like to first join the chorus of people who are thanking our colleagues for such coherent and informative presentations. Deke in particular, you almost make the law sound interesting.

Speaking as a mother of a lawyer, as well as somebody who's been on the Grievance Panel several times, I just wanted to note that I believe the last time that I served on the Grievance Panel, we did have a discrimination case, and we did consult with you, Deke. We just couldn't wait to divest ourselves of the issue and give it to your office because we felt it was way above and beyond anything we wanted to touch. And I would just second Dean Berger-Sweeney's comment. I once served on a hearing. It was awful. It was time-consuming. It was stressful. It was draining, and I was glad I wasn't also dealing with the legal issues that I would have felt completely out of my domain to deal with. Thank you.

PRESIDENT BACOW: This is why God invented lawyers.

PROF. HIRSCH: I guess I was one of the few who raised my hand for having actually been on a case, and it was a case that actually had some troubling ambiguities, which makes me just ask questions about what I think is being posed here, which is that any case that involves discrimination or harassment goes directly to OEO, and the faculty Grievance Panel has no role in it. It was a case that initially, as we were talking to the person, it was clear that it was complicated, that there were various possible motives for what had happened, and one could imagine in this case that racial discrimination was a part of it. The grievant chose not to go that route.

And so, my questions have to do with that; that is, are we comfortable with, in a way, taking away from the grievant some of that choice about how they choose to pursue it? Does that possibly, in some cases, become a kind of inhibiting factor for people actually bringing cases forward, if they're uncomfortable with it going formally into the administration system? Who decides at what point it needs to be carried forward? Would we be required at that point to decide what we think has got an element of that, and take that choice away from the grievant?

MR. MATHIEU: If the Grievance Panel is behaving as regent of the university, then it has an obligation to let the employer, the university, know that there's potential discrimination afoot. If you don't, then Tufts could be held strictly liable. You need to understand that, and I would expect that if the faculty were to retain some responsibilities in this area that there would be a direct line to University Counsel or to someone in the administration.

I have to say, I was troubled by what I heard was a suggestion that there are grievances that could arise that could be brought to the attention of the Grievance Panel and that the Grievance Panel would not share that with the dean of the school. To me, that's troublesome, particularly if the

grievance were to involve discrimination. Maybe the person who said that was thinking about other cases. But the fact that that possibility exists out there is troublesome to me.

So, who makes the decision? I mean, OEO has a formal and an informal process, and I know from working with Jackie and with her predecessor and with others in OEO that ordinarily, the complainant is not forced to go into the formal process. There will be some instances when, if the university has notice, and the complainant doesn't want to go forward, that the university will want to engage in an investigation and amend the event, meanwhile maintaining confidentiality. Because once you have notice, as I stated earlier, you have an obligation to do something. Now, if the complainant is saying, "I don't want to go forward, I want to keep this completely confidential," then there's a defense to the employer, too. The employee cannot later say, "Well, I told the employer, and they didn't do anything about it," if you can establish that the employee told you but convinced you that you shouldn't do something about it.

PROF. HIRSCH: For the record, the panel was in consultation with University Counsel.

MR. MATHIEU: Yes, I remember. Not yours.

PROF. JOHNSON: I wanted to ask whether AAUP has been at all consulted or at least whether you know some of the AAUP policies that deal with faculty because I don't even know what our relationship truly is between some of the guidelines at Tufts and what AAUP puts forth. But I just wondered whether this is something that at least should be explored because AAUP does advise faculty on issues such as that, when, for example, they're being accused of discrimination, etc.

And then a suggestion: if the Faculty Handbook is going to be updated, there should be really clear guidelines as to how this process unfolds if there is discrimination. That is, what is the procedure that a faculty member, let's say, who's accused of discrimination, will end up undergoing? I'm thinking about tenure, and not granting tenure, that this is where most likely the discrimination case might come up. It could be racial, gender, ethnic, religious, or whatever grounds that it could occur -- how the university protects or doesn't the faculty member who is being accused. I think having very clear -- because the stakes are very high in all this -- having very clear procedures for the grievant as well as for the person, department, etc. that's being accused would actually be extremely helpful.

MR. MATHIEU: Good question.

PROF. CRONIN-GOLOMB: That's actually a very interesting point for you to raise. If you look at the bylaws that refer to the Grievance Panel, they're actually quite broad, and that is concerning appeals for (inaudible) certainly are something that should be considered. I would agree that AAUP should be consulted in this matter.

MR. MATHIEU: Should I just make a quick point in response to Vida's question about protections for faculty and what the rules are? You can go onto the OEO website, and there are links to the policy and the procedure for investigating cases. You'll see also that there are references to protection against retaliation.

In terms of what the university would do to protect a faculty member, you won't find anything like that there, but I will say that the university, when it receives a complaint, cannot make assumptions about who's responsible, who's guilty. False complaints would be subject to disciplinary action and perhaps even termination. So, you won't find any specific references there, but these are things that I think are worthy of consideration and discussion.

PRESIDENT BACOW: I'm mindful of the time, that it's 1:20, which is why we're losing faculty members. It's time for adjournment. If people have additional questions, I would encourage you to come up and ask Mark, Deke, and Jackie, as well. The purpose of this discussion was to alert the faculty that this is an ongoing process to try to bring our policies into alignment with federal and state law.

Any other business to become before the faculty? All those in favor of adjourning, please rise.

## **MEETING ADJOURNED**

Respectfully Submitted,

Jillian Dubman  
Secretary of the Faculty for Arts, Sciences & Engineering