

## AGENDA

### **UW-GREEN BAY FACULTY SENATE MEETING NO. 2**

Wednesday, 27 September 2006, 3:30 p.m.

Phoenix Room C, University Union

Presiding Officer: Christine Style, Speaker

Parliamentarian: Professor Clifford F. Abbott

#### **1. CALL TO ORDER**

#### **2. APPROVAL OF MINUTES OF FACULTY SENATE MEETING NO. 1, SEPTEMBER 13, 2006 [page 2]**

#### **3. CONTINUING BUSINESS**

##### **A. Resolution for Board of Regents on UWS 7**

Senators:

The agenda includes alternative resolutions for our consideration at the September 27 meeting of the Faculty Senate. The first is the same resolution as a couple of weeks ago with a change that we will attach a letter to the Board of Regents with suggested changes to the Administrative Code Chapter 7, as you will see. The other is a resolution that accepts the Chapter 7 code under the conditions of such changes. I am also providing you with some of the other UW schools' resolutions and a letter discussing potential issues if the faculties do not approve the resolution. Finally, there is reason to believe that the Board of Regents is looking forward to hearing and considering all the comments from the Faculty Senates of the System and may not be putting this item up for a vote at its October meeting but instead will reconvene a committee to try to address the comments.

Scott Furlong, Chair, University Committee

1. The resolution presented at the September 13, 2006, Senate [attachment 1, page 5]
2. A "comment" letter on suggested changes [attachment 2, page 6]
3. An alternative resolution [attachment 3, page 8]
4. Background materials on other UW school resolutions [attachment 4, page 10]

#### **4. ADJOURNMENT**

## MINUTES 2006-2007

### UW-GREEN BAY FACULTY SENATE MEETING NO. 1

Wednesday, September 13, 2006  
Phoenix Room C, University Union

Presiding Officer: Christine Style (COA-UC), Speaker

Parliamentarian: Clifford Abbott, Secretary of the Faculty and Academic Staff

PRESENT: Derryl Block (NUR), Peter Breznay (ICS), Francis Carleton (URS), Sally Dresdow (BUA), Scott Furlong (PEA-UC), Clifton Ganyard (HUS), Alison Gates (COA), Cheryl Grosso (COA), Stefan Hall (HUS), Sue Hammersmith (Provost, *ex officio*), Tian-you Hu (NAS), John Katers (NAS), Harvey Kaye (SCD), Mark Kiehn (EDU), Anne Kok (SCOW), Michael Kraft (PEA), Pao Lor (EDU), Kaoime Malloy (COA), Daniel Meinhardt (HUB), Steven Meyer (NAS), Timothy Meyer (ICS), Terence O'Grady (COA-UC), Debra Pearson (HUB), Donna Ritch (HUB-UC), Kevin Roeder (SOCW-UC), Meir Russ (BUA), Bruce Shepard (Chancellor, *ex officio*), Brian Sutton (HUS), Kristin Vespia (HUD), Dean Von Dras (HUD-UC)

REPRESENTATIVES: Paula Ganyard (Academic Staff Committee)

GUESTS: David Coury (HUS), Dean Fritz Erickson, Associate Dean Regan Gurung, Interim Dean Fergus Hughes, Peter Kellogg (HUS), Associate Provost Kathy Pletcher, Lisa Poupart (HUS), Associate Provost Timothy Sewall, Assistant Chancellor Steve Swan, Denise Sweet (HUS), Associate Provost Jan Thornton

**1. Call to Order.** With a quorum present, Speaker Style called the Senate to order at 3:08 p.m.

**2. Approval of Minutes of UW-Green Bay Faculty Senate Meeting No. 8, May 10, 2006.** The minutes were approved with no objection.

**3. Introduction of Senators.** The speaker invited the senators to introduce themselves and their constituencies, and they did so.

**4. Chancellor's Report.** The Chancellor warned that there probably wouldn't be much progress to report on the budget until the November election and he urged all to press candidates on their positions on the growth agenda. He also talked about the recent scholarship dinner and capital campaign and appreciated the faculty involvement in both these and other fund-raising efforts, especially when rewards are uncertain or long-term.

**5. Continuing Business.**

a. Proposed Code Change to UWGB 3.09.2. This change to personnel procedures clarified that the same guarantees in UW System rules apply in UW-Green Bay Code. **Senator Dresdow moved (Senator O'Grady seconded) to approve the Code change. The motion passed (29-0-0).**

b. Curriculum Planning and Procedures Guide. UC Chair Furlong introduced Associate Provost Sewall and between the two of them a number of points were made:

- The Guide does not change codified procedures but it does consolidate policies and extend implications and clarify where the Code is silent. It also provides for a paper trail to ensure correct procedures are followed.
- The Senate will be asked in October not to approve the Guide (approval may not strictly be necessary) but to endorse it as a working guide.
- The UC intends to monitor the operation of this guide for a trial period and may bring proposals to the Senate if change seems warranted.
- The draft of the Guide before the Senate has been revised slightly from what the Senate saw at its last meeting and additional revisions are still intended and will be made available on the SOFAS website soon.
- The Guide itself does not resolve a question on specifically what “recommend” means when it is used in Code. That issue is still under discussion in the UC and may result in a proposal for a Code change.

(Most of the discussion of this item took the form of questions and responses about the Guide and expressions of concern about the meaning of “recommend.” There was little talk on the actual content of the Guide. One senator did report a colleague's allegation that the current administration has a complete disregard for shared governance, a allegation that caused the Provost and at least one other senator to take umbrage.)

c. Proposed Major in First Nations Studies. **Senator Sutton moved (Senator Malloy seconded) to approve the major in First Nations Studies. The motion passed (28-0-1)** with no discussion.

d. Discussion of General Education Council's Proposal for Domain Committees. UC Chair Furlong introduced this issue by saying no action is needed by the Senate. After the introduction of the following agenda item, there was a question about the status of the domain committees and Associate Dean Gurung reported that the matter was being given to the Committee on Committees and Nominations for their consideration.

e. Discussion of General Education Council's Four Plans for General Education. UC Chair Furlong introduced this item by asking Senator Sutton to report on the status of the four plans within the GEC. Senator Sutton reported that while the GEC would be glad to hear discussion of the four plans by the Senate (there was none), the GEC would probably be deciding about endorsing the plans individually in the near future and then may bring more specific proposals before the Senate.

## 6. New Business.

a. Election of Deputy Speaker for 2006-2007. **Senator Ritch nominated (Senator Furlong seconded) Senator O'Grady as Deputy Speaker of the Senate for 2006-2007. There being no other nominations, Senator O'Grady was elected (28-0-1).**

b. Resolution for the Board of Regents on UWS 7. This resolution is being put before many of the UW campuses in response to the Board's actions earlier this year to alter policies on faculty dismissal without adequate consultation with faculty governance. Before a motion was actually made, UC Chair Furlong reported that UW-Whitewater had recently rejected the resolution but passed a substitute resolution considered somewhat stronger. Questions, answers, and discussion seemed to convince several senators that this Senate should act similarly. Since no language for a substitution was immediately available, the discussion seemed to favor that the UC should draft such language and bring it back to the Senate; and since action was needed

before the next Board of Regents' meeting, a special meeting of the Senate would be needed. (Senator Breznay expressed some frustration that problems at one particular campus often lead to more work for the other campuses to repair. This met with some sympathy but no suggestions for action.) To formalize this **Senator Furlong moved (Senator Ritch seconded) to suspend the rules to act on the Resolution (as presented to the Senate). The motion passed (27-1-1). Senator Furlong then moved (Senator Grosso seconded) the resolution as written on page 33 of <http://www.uwgb.edu/sofas/facGov/facsenate/AGENDAS/agenda06-07.9-13-06.pdf>. The motion failed (0-28-1).** There was discussion on whether the UC should be charged to draft and deliver an alternative resolution to the Board of Regents or to draft an alternative and return it the Senate for action at a special meeting. There was no action by the Senate but Speaker Style read the discussion as preferring the UC draft an alternative, circulate the resolutions of other campuses to senators, and schedule a special meeting of the Senate for their action.

c. Requests for Future Senate Business. Aside from the previous item, there were none.

**7. Provost's Report.** The Provost presented her report (previously distributed and posted on page 34 of <http://www.uwgb.edu/sofas/facGov/facsenate/AGENDAS/agenda06-07.9-13-06.pdf>) and asked for questions. Senator Carleton asked about the progress of the Global Studies Committee. Senator Meinhardt responded that the Committee had begun meeting and work was going apace.

**8. 2005-2006 University Committee Annual Report.** Previous UC Chair Dresdow presented the report (page 36 of the website cited in the above paragraph), expressed thanks at having the opportunity to serve, and even admitted that at times it was fun.

**9. University Committee Report.** UC Chair Furlong noted a couple of items the UC was working on including in addition to the items already discussed on the Senate's agenda: merit and tenure procedures and criminal background checks.

**10. Closed Session.** **Senator Furlong moved (Senator Katers seconded) to go into closed session to consider a candidate for an honorary degree pursuant to Wis. Statutes, Sec 19.85 (1)(f). The motion passed (29-0-0).** The remainder of the Senate's meeting was conducted in closed session.

**11. Adjournment.** The Speaker adjourned the meeting at the end of business in closed session at 4:55 p.m.

Respectfully submitted,

Clifford Abbott, Secretary of the Faculty and Academic Staff

**[Minutes amended and approved on 9/27/06]**

**Attachment #1**

**UWGB Faculty Senate Resolution  
On Proposed UWS Administrative Code Chapter 7  
(Procedures for Dismissal of Faculty in Special Cases)**

Whereas, s. 36.13 (3), Wisconsin Statutes, provides:

RULES. The board and its several faculties after consultation with appropriate students shall promulgate rules for tenure and probationary appointments, for the review of faculty performance and for the nonretention and dismissal of faculty members. Such rules shall be promulgated under ch. 227 [Wisconsin Statutes]; and,

Whereas, s. 36.13(5), Wisconsin Statutes, provides:

PROCEDURAL GUARANTEES. Any person having tenure may be dismissed only for just cause and only after due notice and hearing. Any person having a probationary appointment may be dismissed prior to the end of the person's contract term only for just cause and only after due notice and hearing. The action and decision of the board in such matters shall be final, subject to judicial review under ch. 227 [Wisconsin Statutes]. The board and its several faculties shall develop procedures for the notice and hearing which shall be promulgated by rule under ch. 227 [Wisconsin Statutes]; and,

Whereas, the board and the several faculties of the University of Wisconsin System affirm the importance and necessity of working together to develop rules relating to faculty dismissal; and

Whereas, the board and the several faculties of the University of Wisconsin System endorse the importance and necessity of rules that will deal effectively with those infrequent cases when faculty members are involved in serious criminal activity that substantially impairs the safety, operation, or integrity of the university; and,

Whereas, the board and the several faculties agree that prompt and expedited attention to such cases of serious criminal activity best serves the state, its citizens, the university, the faculty, and the faculty member concerned; and

Whereas, the board and the several faculties believe that in cases involving serious criminal activity the proposed UWS 7 is appropriate in, among other things, specifying just cause for dismissal, ensuring due process, and protecting academic freedom;

Therefore, be it resolved that the faculty of the University of Wisconsin-Green Bay joins with the Board of Regents of the University of Wisconsin System to endorse and approve the promulgation of rules in ch. UWS 7, Wisconsin Administrative Code, as proposed by the board at its June 9, 2006 meeting (a copy of the proposed board order follows), and including such non-material amendments as may result through the process under ch. 227, Wisconsin Statutes, (Administrative Procedure and Review).

[texts of UWS 7 and UWS 11]

UNIVERSITY of WISCONSIN  
**GREEN BAY**

TO: University of Wisconsin Board of Regents  
FROM: University of Wisconsin-Green Bay Faculty Senate  
SUBJECT: Promulgation of UWS Chapter 7

The University of Wisconsin-Green Bay Faculty Senate met on September 27, 2006 to discuss what has been referred to as the Spector/Mathieu Resolution along with the proposed Chapter UWS Chapter 7, Wisconsin Administrative Code Procedures for Dismissal of Faculty in Special Cases. The UW-Green Bay Faculty Senate strongly affirms the legal requirement for the Board of Regents and the several faculties of the University of Wisconsin System to jointly work to develop rules relating to faculty dismissal as required by s. 36.13(3). The UW-Green Bay Faculty Senate also affirms the procedural guarantees as required by s. 36.13(5) regarding the dismissal of any person having tenure, which states, in part, that “the board and its several faculties shall develop procedures for the notice and hearing which shall be promulgated by rule under ch. 227 [Wisconsin Statutes].

On September 27, 2006, The University of Wisconsin-Green Bay Faculty Senate approved the attached Spector/Mathieu Resolution as a statement that fully confirms the importance of shared governance within the University of Wisconsin System.

While the University of Wisconsin-Green Bay Faculty Senate approved of the resolution, it strongly urges that the Board of Regents to include or reference language in UWS 4 (4.01.2) and make the following changes to UWS Chapter 7 to clarify the meaning of “Serious Criminal Misconduct” and to ensure the protection of due process and other constitutional rights of the individual.

Changes in italics.

**UWS 7.02 Serious criminal misconduct.** (1) In this chapter, "Serious Criminal Misconduct" means:

(a) *Pleading guilty or no contest to, or being convicted of a felony*, in state or federal court, that involves:

1. Causing serious physical injury to another person;
2. Creating a serious danger to the personal safety of another person;
3. Sexual assault;
4. Theft, fraud or embezzlement;
5. Criminal damage to property; or
6. Stalking or harassment; and that

(b) Clearly poses a substantial risk to the safety of members of the university community or others; *and that*

(c) Seriously impairs:

1. The public trust in the university;
2. The university's ability, or the ability of the charged faculty member's colleagues, to fulfill teaching, research or public service missions;
3. The charged faculty member's fitness or ability to fulfill the duties of his or her position; or
4. The opportunity of students to learn, do research, or engage in public service.

and changing UWS 7.04 to read:

**UWS 7.04 Reporting responsibility.** Any faculty member who *pleads guilty or no contest to, or is convicted of a felony*, in state or federal court, shall immediately report that fact to the chancellor.

and changing ch. UWS 7.06(1)(a) to read:

**UWS 7.06 Temporary suspension from duties.** (1) The chancellor, after consultation with appropriate faculty governance representatives, may suspend a faculty member from duties without pay pending the final decision as to his or her dismissal where:

(a) The faculty member *has pled guilty or no contest to, or been convicted of a felony* and the chancellor finds, in addition, that one or more of the elements of serious criminal misconduct listed in s. UWS 7.02(1) are present, and that there is a substantial likelihood that the faculty member has engaged in the conduct as alleged; or [. . .]

Attachment #3

**UWGB Faculty Senate Resolution  
On Proposed UWS Administrative Code Chapter 7  
(Procedures for Dismissal of Faculty in Special Cases)**

The University of Wisconsin-Green Bay Faculty Senate affirms the legal requirement and effectiveness of the Board of Regents' and the several faculties' of the University of Wisconsin System working jointly to develop rules relating to faculty dismissal, as such joint effort is required by s. 36.13(3), Wisconsin Statutes, which provides [*italics added*]:

RULES. The board and its several faculties after consultation with appropriate students shall promulgate rules for tenure and probationary appointments, for the review of faculty performance and for the nonretention and dismissal of faculty members. Such rules shall be promulgated under ch. 227 [Wisconsin Statutes]; and,

Whereas, s. 36.13(5), Wisconsin Statutes, provides:

PROCEDURAL GUARANTEES. Any person having tenure may be dismissed only for just cause and only after due notice and hearing. Any person having a probationary appointment may be dismissed prior to the end of the person's contract term only for just cause and only after due notice and hearing. The action and decision of the board in such matters shall be final, subject to judicial review under ch. 227 [Wisconsin Statutes]. The board and its several faculties shall develop procedures for the notice and hearing which shall be promulgated by rule under ch. 227 [Wisconsin Statutes].

The University of Wisconsin-Green Bay Faculty Senate understands the importance of rules which effectively and justly govern those infrequent instances in which a faculty member is involved in serious criminal activity which substantially impairs the safety, operation, or integrity of the university. The University of Wisconsin-Green Bay Faculty Senate also affirms the necessity of adequately protecting constitutionally protected due process rights of individuals.

Therefore:

The University of Wisconsin-Green Bay Faculty Senate approves the promulgation of rules in ch. UWS7 of the Wisconsin Administrative Code as proposed by the board at its June 9, 2006 meeting **with the condition that changes are made in the proposal** so that it reads as follows: (changes in italics)

**UWS 7.02 Serious criminal misconduct.** (1) In this chapter, "Serious Criminal Misconduct" means:

(a) *Pleading guilty or no contest to, or being convicted of a felony*, in state or federal court, that involves:

1. Causing serious physical injury to another person;
2. Creating a serious danger to the personal safety of another person;
3. Sexual assault;
4. Theft, fraud or embezzlement;

5. Criminal damage to property; or
6. Stalking or harassment; and that

(b) Clearly poses a substantial risk to the safety of members of the university community or others; *and that*

(c) Seriously impairs:

1. The public trust in the university;
2. The university's ability, or the ability of the charged faculty member's colleagues, to fulfill teaching, research or public service missions;
3. The charged faculty member's fitness or ability to fulfill the duties of his or her position; or
4. The opportunity of students to learn, do research, or engage in public service.

and changing UWS 7.04 to read:

**UWS 7.04 Reporting responsibility.** Any faculty member who *pleads guilty or no contest to, or is convicted of a felony*, in state or federal court, shall immediately report that fact to the chancellor.

and changing ch. UWS 7.06(1)(a) to read:

**UWS 7.06 Temporary suspension from duties.** (1) The chancellor, after consultation with appropriate faculty governance representatives, may suspend a faculty member from duties without pay pending the final decision as to his or her dismissal where:

(a) The faculty member *has pled guilty or no contest to, or been convicted of a felony* and the chancellor finds, in addition, that one or more of the elements of serious criminal misconduct listed in s. UWS 7.02(1) are present, and that there is a substantial likelihood that the faculty member has engaged in the conduct as alleged; or [ . . . ]

**Attachment #4**

**Background Material**

**UW-Milwaukee**

UWM Faculty Senate Resolution on Proposed UWS Administrative Code Chapter 7 (Procedures for Dismissal of Faculty in Special Cases)

Unanimously approved by the UWM Faculty Senate on 21 September 2006.

Whereas, the UWS Board of Regents has requested feedback from all UWS institutions and their faculty governance bodies on the proposed UWS 7 (June 2006); and,

Whereas, s. 36.13 (3), Wisconsin Statutes, provides:

RULES. The board and its several faculties after consultation with appropriate students shall promulgate rules for tenure and probationary appointments, for the review of faculty performance and for the non-retention and dismissal of faculty members. Such rules shall be promulgated under ch. 227 [Wisconsin Statutes]; and,

Whereas, s. 36.13(5), Wisconsin Statutes, provides:

PROCEDURAL GUARANTEES. Any person having tenure may be dismissed only for just cause and only after due notice and hearing. Any person having a probationary appointment may be dismissed prior to the end of the person's contract term only for just cause and only after due notice and hearing. The action and decision of the board in such matters shall be final, subject to judicial review under ch. 227 [Wisconsin Statutes]. The board and its several faculties shall develop procedures for the notice and hearing which shall be promulgated by rule under ch. 227[Wisconsin Statutes]; and,

Whereas, the UW Milwaukee faculty are fully committed to the rights and responsibilities accorded by Wisconsin Statutes, Chapter 36, including UWS and UW Milwaukee Policies and Procedures, wherein faculty are expected to have primary purview over faculty personnel matters; and,

Whereas, the "several faculties" of UW System, including UW Milwaukee have reviewed the proposed UWS 7 (June 2006) and identified several areas of recurring concern;

Therefore, be it resolved that pursuant to Chap. 36.13(3) and (5), the UW Milwaukee faculty fully supports the "board and its several faculties" working quickly to devise a procedure for jointly promulgating new rules governing "Procedures for Dismissal of Faculty in Special Cases" embodied in the Proposed Chapter UWS 7, Wisconsin Administrative Code; and

Be it further resolved that pursuant to Chap. 36.13(3) and (5), the UW Milwaukee faculty fully supports "the board and its several faculties" meeting during the coming year to establish a mechanism that will permit them to work together, when the occasion arises, to refashion the definition of "just cause" for the dismissal of

tenured faculty members and the procedures to be followed in dismissal cases, and subsequently to circulate the results of these deliberations to all concerned for comment and subsequent approval to deal with future situations that may call for new rules or amendments to existing rules, rules that need to be promulgated jointly by “the board and its several faculties” under Chap. 227. Addendum B; and

Be it finally resolved that the UW Milwaukee University Committee send this resolution and the attached questions/editorial suggestions regarding UWS 7 (June 2006) to the Board of Regents, UWS President Kevin Reilly, and all UWS Faculty Senate leaders.

### Rationale

After considerable review of the proposed UWS 7 document during this past academic year, the University Committee (hereafter, UC) has recognized that the June 2006 version of UWS 7 is still lacking in adequate clarity, most especially with respect to due process protections, just cause definitions and shared governance involvement in matters that may lead to faculty discipline and/or dismissal for cause. Since the Board of Regents crafted this document with a special committee formed by Regent President Walsh in 2005 that lacked faculty involvement from the “selected faculties” (meaning, the UWS institutional governance leadership), the various faculty senates and their governance leadership were in a position of reacting throughout the process. Chapter 36 is quite clear that promulgation of any policy development of this nature requires ratification by both the Regents and the various faculties within UWS. We would further reason that the development of such policies and codes should actively involve faculty during the formative stages, in the spirit of “shared governance” as we have come to understand it. Therefore, this resolution fully supports that this can occur with UWS 7 (June 2006 draft) and any future policy/code development or editing by formalizing in Regent forum the expectations of Chapter 36, especially those sections cited in the resolution, above. As the institutional senates have discussed UWS 7 this past month, the areas of lingering concern have been identified and are available for an appropriate Regent/Faculty joint working group to expeditiously craft a consensus document that will be worthy of ratification by the vast majority of the UWS institutional faculties.

Finally, we recognize the work of Professor Emeritus W Lee Hansen (Madison), from whose comments to the Board of Regents on 2 August 2006 we extracted several of the items in this resolution.

Presented to the UW Milwaukee Faculty Senate by the UWM University Committee on 21 September 2006.

UWM University Committee

### **UW-Platteville**

The UW-Platteville Faculty Senate voted September 12th on the UWS7 proposal, but has taken a more roundabout way of passing judgment on it. As you'll see below, however, our final decision is ultimately very similar to the one arrived at by the UW-Whitewater Senate.

By calling on the suggestions and discussions that took place this last Friday and Saturday among the UFAS and TAUWP representatives in Madison during the state-wide meeting of TAUWP, the Platteville Faculty Senate's resolution reads as follows:

The University of Wisconsin-Platteville Faculty Senate approves the promulgation of rules in ch. UWS7 of the Wisconsin Administrative Code as proposed by the board at its June 9, 2006 meeting with the condition that changes are made in the proposal so that it reads as follows: (changes in italics)

UWS 7.02 Serious criminal misconduct. (1) In this chapter, "Serious Criminal Misconduct" means:

(a) *Pleading guilty or no contest to, or being convicted of a felony*, in state or federal court, that involves:

1. Causing serious physical injury to another person;
2. Creating a serious danger to the personal safety of another person;
3. Sexual assault;
4. Theft, fraud or embezzlement;
5. Criminal damage to property; or
6. Stalking or harassment; and that

(b) Clearly poses a substantial risk to the safety of members of the university community or others; *and that*

(c) Seriously impairs:

1. The public trust in the university;
2. The university's ability, or the ability of the charged faculty member's colleagues, to fulfill teaching, research or public service missions;
3. The charged faculty member's fitness or ability to fulfill the duties of his or her position; or
4. The opportunity of students to learn, do research, or engage in public service.

and changing UWS 7.04 to read:

UWS 7.04 Reporting responsibility. Any faculty member *who pleads guilty or no contest to, or is convicted of a felony*, in state or federal court, shall immediately report that fact to the chancellor.

and changing ch. UWS 7.06(1)(a) to read:

UWS 7.06 Temporary suspension from duties. (1) The chancellor, after consultation with appropriate faculty governance representatives, may suspend a faculty member from duties without pay pending the final decision as to his or her dismissal where:

(a) The faculty member has *pled guilty or no contest to, or been convicted* of a felony and the chancellor finds, in addition, that one or more of the elements of serious criminal misconduct listed in s. UWS 7.02(1) are present, and that there is a substantial likelihood that the faculty member has engaged in the conduct as alleged; or [. . .]

## **UW-Stout**

UW-Stout constructed the following statement on-the-fly in Senate, and will meet again after Sept 30th.

"Although we have seriously considered UWS 7, we rejected this proposal because of our concern with the words "Being charged with..." (7.02.1.a and other places in the document). Although most of the document meets with our approval, these three words may adversely affect the career of an innocent person charged with a crime they did not commit. We suggest that the language from UWS 4 (4.01.2) be included in the UWS 7 document."

## **UW-Superior**

This afternoon, the UW-Superior Faculty Senate rejected the Regent proposal for "UWS-7." In its place that Senate adopted the UW-Whitewater alternative, the essential element of which is to reject the inclusion of "charged with a felony" as a component the definition of those to be charged with "serious criminal conduct" in the Regent's "UWS-7" proposal (See "UWS 7.02(1)").

## **UW-Whitewater**

University of Wisconsin-Whitewater Faculty Senate  
Resolution **FS0607-02**

The University of Wisconsin-Whitewater Faculty Senate affirms the legal requirement and effectiveness of the Board of Regents' and the several faculties' of the University of Wisconsin System working jointly to develop rules relating to faculty dismissal, as such joint effort is required by s. 36.13(3), Wisconsin Statutes, which provides [*italics added*]:

*RULES. The board and its several faculties* after consultation with appropriate students shall promulgate rules for tenure and probationary appointments, for the review of faculty performance and for the nonretention and dismissal of faculty members. Such rules shall be promulgated under ch. 227 [Wisconsin Statutes];

and as required by s. 36.13(5), Wisconsin Statutes, which provides [*italics added*]:

*PROCEDURAL GUARANTEES.* Any person having tenure may be dismissed only for just cause and only after due notice and hearing. Any person having a probationary appointment may be dismissed prior to the end of the person's contract term only for just cause and only after due notice and hearing. The action and decision of the board in such matters shall be final, subject to judicial review under ch. 227 [Wisconsin Statutes]. *The board and its several faculties* shall develop procedures for the notice and hearing which shall be promulgated by rule under ch. 227 [Wisconsin Statutes].

The University of Wisconsin-Whitewater Faculty Senate understands the importance of rules which effectively and justly govern those infrequent instances in which a faculty member is involved in serious criminal activity which substantially impairs the safety, operation, or integrity of the university.

To these ends, the University of Wisconsin-Whitewater Faculty Senate notes that 7.02(1) of ch. UWS 7, Wisconsin Administrative Code that was proposed by the Board of Regents at its June 9, 2006, meeting, defines "serious criminal misconduct" as follows:

(1) In this chapter, "Serious Criminal Misconduct" means:

(a) Being charged with, pleading guilty or no contest to, or being convicted of a felony, in state or federal court, that involves:

1. Causing serious physical injury to another person;
2. Creating a serious danger to the personal safety of another person;
3. Sexual assault;
4. Theft, fraud or embezzlement;
5. Criminal damage to property; or
6. Stalking or harassment; and that

(b) Clearly poses a substantial risk to the safety of members of the university community or others; or

(c) Seriously impairs:

1. The public trust in the university;
2. The university's ability, or the ability of the charged faculty member's colleagues, to fulfill teaching, research or public service missions;
3. The charged faculty member's fitness or ability to fulfill the duties of his or her position; or
4. The opportunity of students to learn, do research, or engage in public service.

The University of Wisconsin-Whitewater Faculty Senate finds that 7.02(1) as proposed defines "Serious Criminal Misconduct" as "Being *charged with*" a crime, thereby ascribing to the charged faculty member the actual commission of an act not yet established by due process in a court of law, and that such definition thereby establishes as grounds for dismissal mere unproven allegation of offense.

The University of Wisconsin-Whitewater Faculty Senate also finds that in its definition of "serious criminal misconduct," the proposed 7.02(1) ambiguously lists the three criteria as *a* and *b* or *c*, thereby not clearly defining whether *a* and (*b* or *c*) or (*a* and *b*) or *c* shall obtain.

If the latter, then the proposed 7.02(1) defines "Serious Criminal Misconduct" as an act which

Seriously impairs:

1. The public trust in the university;
2. The university's ability, or the ability of the charged faculty member's colleagues, to fulfill teaching, research or public service missions;
3. The charged faculty member's fitness or ability to fulfill the duties of his or her position; or
4. The opportunity of students to learn, do research, or engage in public service,

a definition so broad as to include almost any action; and

The University of Wisconsin-Whitewater Faculty Senate further finds that the proposed 7.06(1)(a) reiterates the assumption of guilt upon the mere fact of charge, thereby establishing grounds for suspension without pay upon no bases established by due process:

**UWS 7.06 Temporary suspension from duties.** (1) The chancellor, after consultation with appropriate faculty governance representatives, may suspend a faculty member from duties without pay pending the final decision as to his or her dismissal where:

(a) The faculty member has been charged with a felony and the chancellor finds, in addition, that one or more of the elements of serious criminal misconduct listed in s. UWS 7.02(1) are present, and that there is a substantial likelihood that the faculty member has engaged in the conduct as alleged;

Given these findings, the University of Wisconsin-Whitewater Faculty Senate *cannot* endorse and does not approve the promulgation of rules in ch. UWS 7, Wisconsin Administrative Code, as proposed by the board at its June 9, 2006, meeting.

However, to be able to join the regents in approving a version of UWS 7, the University of Wisconsin-Whitewater Faculty Senate enjoins the Board of Regents of the University of Wisconsin System to amend ch. UWS 7 by revising ch. UWS 7.06(1) to read:

**UWS 7.02 Serious criminal misconduct.** (1) In this chapter, "Serious Criminal Misconduct" means:

(a) *Pleading guilty or no contest to, or being convicted of a felony*, in state or federal court, that involves:

1. Causing serious physical injury to another person;
2. Creating a serious danger to the personal safety of another person;
3. Sexual assault;
4. Theft, fraud or embezzlement;
5. Criminal damage to property; or
6. Stalking or harassment; and that

(b) Clearly poses a substantial risk to the safety of members of the university community or others; *and that*

(c) Seriously impairs:

1. The public trust in the university;
2. The university's ability, or the ability of the charged faculty member's colleagues, to fulfill teaching, research or public service missions;
3. The charged faculty member's fitness or ability to fulfill the duties of his or her position; or
4. The opportunity of students to learn, do research, or engage in public service.

and by revising ch. UWS 7.06(1)(a) to read:

**UWS 7.06 Temporary suspension from duties.** (1) The chancellor, after consultation with appropriate faculty governance representatives, may suspend a faculty member from duties without pay pending the final decision as to his or her dismissal where:

(a) The faculty member *has pled guilty or no contest to, or been convicted of a felony* and the chancellor finds, in addition, that one or more of the elements of serious criminal misconduct listed in s. UWS 7.02(1) are present; or [ . . . ]

The University of Wisconsin-Whitewater Faculty Senate further urge the Board of Regents to make parallel changes to the proposed s. UWS 11.

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SUBJECT: UW SYSTEM FACULTY ACTION ON THE PROPOSED SPECTOR/MATHIEU RESOLUTION

FROM: W. Lee Hansen and Steve Underwood

TO: UW System Campus Faculty Senates

We are sending the following statement to the UW System campuses because we believe that solidifying the concept of shared governance embodied in Wis. Stats. Chap. 36.13(3) and (5) is essential as the "several faculties" respond to the Board of Regent's request for comments on UWS 7 and to Spector/Mathieu Resolution received at the end of August.

The two of us have been closely involved in discussions of UWS since January 2006, and our acting on our own behalf . We made known our views on shared governance to the Board of Regents at its August 2, 2006 public hearing. If you wish to read our statements, they are attached.

\* \* \*

We believe the proposed Spector/Mathieu Resolution (the Resolution) should be adopted by all faculty senates without change. The adverse legal consequences of not adopting the proposed Resolution as it stands are enormous. This is a proposed faculty-regent Resolution prepared jointly by faculty and regent representatives [Robert Mathieu, chair of UW-Madison's University Committee, and Regent Michael Spector, the regent rule committee's chairman. David Walsh, the board president, Kevin Reilly, the system president, and Patricia Brady, the system legal counsel have all seen it and OK'd its consideration.]

Approval of the Resolution by the several faculties and the board will set a precedent for future joint action on dismissal rules and procedures and likely will put the issue of the statutory requirement for faculty approval of rules and procedures for dismissal of faculty to bed for as long as the statutes themselves remain unchanged. Faculty approval will almost certainly be followed by board approval, given the authority of those who have reviewed it. Failure to adopt the proposed Resolution opens the door for the regents to place this issue back on the table. A court fight could ensue. What could be won without such a fight could be lost forever, that being legally mandated shared governance on the issue of rules and procedures for dismissal of faculty. A confrontation may arise only if a majority of the faculty senates do not approve the proposed joint Resolution in its present form. However, a tremendous victory, dependent on regent adoption, could be achieved by the faculty senates approving this proposed Resolution in its present form with no changes. The several faculties should approve the Resolution, unless they truly believe that UWS 7 as proposed is so unacceptable that it is worth the possibility of a court fight in which shared governance itself may be on the line. We believe it is not worth this potential fight. Our rationale for this position is based on three factors set forth in detail below.

1. Neither the form nor the substance of this Resolution has been pre-approved by the regents. Disapproval of its substance by a majority of the several faculties will give the regents the incentive not to adopt any of the principles contained in it, including, most importantly, the acknowledgment of the principle of statutory shared governance. The faculties are then back to square one. Of course the regents have the option of not adopting the Resolution regardless of what the several faculties do. If the several faculties approve the proposed Resolution as is, we believe the regents will not reject the form or the substance of the Resolution. They will have no

political or substantive reason to do so [and hopefully they will adopt important recommended changes] However, if a the majority of the several faculties do not approve the Resolution, this clearly puts the regent acknowledgment of statutory shared governance at risk.

2. The virtual certainty of the establishment of the principle of statutory shared governance overrides the importance of pressing for the suggested changes by modifying the Resolution and attaching conditions to it. While at least one of the changes suggested by Richard Schauer is valid and important, another of his proposed changes renders the suspension without pay provisions of UWS 7 valueless. The reason is clear: It does not allow the campus to secure any needed protections for the university community that may be justified by the issuance of a felony charge itself. The suspension without pay provision as worded in UWS 7 is a central component to the Board's effort to protect the University community and if challenged by the several faculties will inevitably provoke a major confrontation.

3. Establishing the certainty of statutory shared governance regarding rules and procedures for dismissal of faculty without a court fight has substantial future benefits. The several faculties can be better prepared on how to deal procedurally with future proposals on these issues. This means they will not be forced to be confronted with unresolved issues regarding the manner and methods of proceeding. They can even be in a position to act as a unit in developing, defining and proposing other good law in this area. Because UWS 7 is unlikely ever to affect faculty members as individuals, the risk of losing the statutory protections of shared governance is too great

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We urge the "several faculties" to respond to the request from the Spector/Mathieu Committee and the Board for comments on the June draft. These responses should be presented in the form of comments only and not as conditions to approval of the Spector/Mathieu Resolution. Consideration of the Spector/Mathieu Resolution and UWS 7 is not a matter of "us" (the "several faculties) and "them" (the regents). Here is an excellent opportunity to give shared governance a chance to work. The reality is that since this rule was initially drafted last February there has been substantial input by people who are concerned with faculty interests. As a result of that input important fundamental changes have been made to the original draft. Even more changes may well result from the comments coming from the several faculties. But for the faculties to demand changes as a condition of approval of a resolution that values statutory shared governance as laid out in ch. 36 is not in the best interests of anyone.