

School of Law  
Faculty Meeting  
March 8, 1982  
Conference Room  
4:00 p.m.

MINUTES

Present: Bowler, Browde, Desiderio, DuMars, J. Ellis, W. Ellis, Fink, Flickinger, Goldberg, Gonzales, Hart, Hermann, Johnson, Kovnat, Martinez, Minzner, Muir, Nathanson, Norwood, Occhialino, Parnall, Romero, Scales, Schwartz, Simson, Stelzner, Teitelbaum, Utton, Weddington, Winograd; Student Representatives Duarte, Garcia; Camp

The meeting was called to order by Dean Desiderio; minutes of the meeting of February 22, 1982, were approved.

Dean's announcements:

1. Professor Dabney of the History Department has accepted our offer and will teach here during next fall semester. Professor Roll of the Psychology Department has been offered a position for the spring semester. He will let us know soon whether he will accept.
2. Please complete and submit to Kay Nauyok the faculty bibliographical form recently distributed.
3. A new grading system for Clinical Program which was tabled has been referred to the Student Affairs Committee.
4. The 1st year curriculum proposal should be in mail boxes by Tuesday. This proposal will be discussed at the next faculty meeting on Monday, March 22.
5. The Alumni Association writing competition needs submissions by faculty members. Please see that Peter Winograd receives any paper you deem worthy of a prize.

The petition of Sam Archuleta to return to law school received the recommendation of the Readmission Committee that he be allowed to return provided that he does not work at all while he is below 2.0 g.p.a. Motion carried.

The report of the ad hoc committee on student retention (TAHCOAHDMOIRSR) was discussed. A copy of that report is included in these minutes. Straw vote indicated the faculty's favoring a committee system for decision-making functions. Time did not permit further discussion regarding appeals of the committee's decisions, and that matter was tabled.

Meeting adjourned.

Respectfully submitted,

*Louise R. Camp*

Louise R. Camp  
Sec'y

**THE UNIVERSITY OF NEW MEXICO**

DATE: February 26, 1982

The Faculty

FROM: Robert J. Desiderio

SUBJECT:

Attached is a copy of the initial report of ~~The~~ Ad Hoc Committee on Ad Hoc Decision-Making of Issues Regarding Student Retention (TAHCOAHDMOIRSR).

I would like to consider the report at our next regular faculty meeting (March 8). Please review the report so that we may discuss and act upon it then.

RJD/gmf

Report of the Ad Hoc Committee on Ad Hoc Decision-making on Issues

Regarding Student Retention (TAHCOAHDMOIRSR)

Decisions regarding the probation and suspension of students in academic difficulty are among the most important made by the faculty. They are important because they affect the lives and careers of the students involved, because they affect the ultimate ability of these students to become members of the bar (with attendant implications for affirmative action), and because these decisions affect the academic climate of the law school itself.

Dissatisfaction with our current system for making these decisions has become widespread (but not unanimous) within the faculty. This committee was formed in the fall semester to consider the possibility of changing the current system, and to propose substantive standards which could be brought to bear when these cases are decided (by whatever body). The committee has chosen a bifurcated approach to this task. This report makes recommendations regarding the procedures by which the cases of students in academic difficulty are resolved. Once these issues are resolved by the faculty, your committee will turn to the task of exploring the matter of substantive standards.

The members of your committee are in agreement that the current system can profitably be changed. We are divided on the change we think most appropriate. The reasons for this disagreement revolve around differing perceptions of the nature of the flaws in the current system.

Diagnoses of the Problem

All members of the committee agree that the present system of adjudication by the faculty-in-reluctant-meeting-assembled is flawed by inadequate fact-finding regarding the cases of individual students. Data come mainly from the student petitions (available only after a student is initially suspended) and from the somewhat haphazard observations and recollections of faculty members who are present at the meeting. We believe that a Committee of the faculty (hereinafter upper cased so as to reduce confusion with TAHCOAHDMOIRSR) could perform the fact-finding function more effectively. All members of the faculty would have an opportunity to report any data of interest to the Committee in aid of its work. The Committee would also have an opportunity to meet with the student in question and discuss his or her problems. (The opportunity to meet with the full faculty is limited as a practical matter for students because of the size of the body.)

Members of your ad hoc committee disagree on the importance of other perceived problems with the current system--problems which lead some of us to propose a Committee with adjudicatory rather than merely fact-finding responsibilities. These problems include perceived inconsistency of decisions, problems of student confidentiality when matters are discussed in a meeting of thirty persons, the substantial amount of faculty time which must be devoted to plenary adjudications, and the effect these discussions may be having on our consideration of other

academic matters and our collegial relationships as a faculty. This second group of problems may be characterized by some as a general conclusion that as a faculty we do not perform the adjudicatory function very well.

The diagnostic disagreement about the nature of the problem has led your ad hoc committee to formulate (at least) two proposals for change. Each would involve the creation of a regular Committee of the faculty to investigate the status of students in academic difficulty (below 2.0 GPA). The proposals diverge on the issue of the standing of the Committee's work product ("recommendation" to the faculty or "decision"). Before discussing the area of disagreement, this report will consider the areas of agreement.

#### Committee Procedures: Areas of Agreement

The Committee would be composed of seven members--five faculty and two students. All seven members would be chosen by the Dean. The current faculty committee on readmissions would be merged into this Committee. The Committee would consider the cases of all students whose cumulative GPA fell below 2.0. It would, upon the identification of such a student by Lou Camp, inform the student that his or her case is before the Committee. The student could then present any information *spokesperson* he or she deemed relevant to the Committee's work. (The Committee or the faculty could devise a procedure for dispensing with this aspect when the student's deficit was minimal--e.g. one hour down.) The student could also ask that his or her case not be heard by students; in that event the case would be considered only by the faculty members on the Committee. (This provision goes to the concern about confidentiality of personal matters before people with whom the student will be practicing throughout his or her career.)

It should be noted that the Committee could do its work with less time delay than is now encountered by the full faculty. It could begin work on some students when their grades were available, rather than having to wait until all the law school's grades are in (as is now the case). It might also be able to meet at times between semesters at which it is impractical to gather the entire faculty.

#### Committee Procedures: Alternative Plans

As noted above, the ad hoc committee offers you various formulations of the task of the Committee. The first of these, "The Recommending Committee," represents the smallest departure from current practice. It is described in the attached memo from Ruth Kovnat. It would have the Committee review the facts on all cases, summarily dispose of some cases about which no controversy could be expected (the minimal deficit cases), and refer all others to the full faculty with recommendations. The perceived advantage and disadvantage of this proposal are the same: It keeps the ultimate resolution of these cases in the full faculty. It would allow the faculty to perform its function with arguably better information at hand, but its advocates believe that the faculty cannot responsibly delegate the ultimate decision on the probation or suspension of individual students.

The competing proposals would give the Committee broader responsibility. An apology for one such approach, "Dean/Faculty Appeal," is found in the attached memo from Chuck DuMars. It would have the Committee make a decision about the probation or suspension of each student in academic difficulty. A student dissatisfied with the Committee's decision could appeal to the Dean. Cases would reach the full faculty only if the student were dissatisfied with the Dean's decision, or if the Dean felt that individual circumstances required that he or she refer appeal from the Committee directly to the faculty. A variation on this proposal, "Dean Appeal," would make it even more difficult to take cases to the full faculty. Appeal to the Dean would be resolved in the student's favor only upon a showing of abuse of discretion. No appeal from an adverse decision by the Dean would be available. Dick Gonzales is an advocate of this view and his memo is attached. Either of these approaches would have the Committee make decisions which it would be relatively difficult to overturn (a presumption of correctness would attach to the Committee's decision), and would significantly reduce the number of cases which come to the faculty.

### Conclusion

It is beyond the scope of this report and the patience of its readers to detail the various arguments involved in these policy choices. They will surely be explored in the faculty discussion. But since there are several proposals on the menu, perhaps we could suggest a procedural order for the faculty's consideration. Following general discussion, it might be appropriate to take a straw vote to determine how many faculty members favor changing the current system to some kind of Committee operation. If a majority favors no change, we can end the discussion there. If a majority favors some kind of change, it might be appropriate to consider the proposal for a "Recommending Committee" next. If a majority favors this approach, we can all get home in time for the news (note the ambiguity with regard to which broadcast, 6 or 10). If this proposal fails to attract a majority, we can consider the possibility of a "decision-making subject to appeal" Committee. If this attracts a majority, the faculty can then work out the intricacies of the forum and procedures for appeal, such as the choice between the "Dean/Faculty Appeal" and "Dean Appeal" proposals. A DM STAC

Once we know the pleasure of the faculty regarding decision-making mechanics, TAHC OAHD MOIRSR will return to its work and consider the kinds of substantive standards which should be employed by the decision-makers whom you identify.

dcg

DATE: November 5, 1981

TO: Members of the Ad Hoc Committee on Ad Hoc Decision Making  
FROM: C. DuMars  
SUBJECT: Appeal to Dean and Then to Faculty from Adverse Suspension Decisions

The subject matter of this memorandum is the merit, if any, of having suspension decisions appealed on the record from the Committee to the Dean, with a presumption of correctness weighing in favor of the Committee decision. The student would have the right to speak with the Dean about his appeal, but no new hearing would be held. If the Dean rejected the appeal, the student could appeal to the faculty but would have to overcome a double presumption of validity. In difficult cases, the Dean may, of course, elect not to hear the appeal and refer such a case to the entire faculty.

The reasons this process appeals to me, given in no particular order, are as follows:

- 1) If the Committee is representative of faculty views and is competent to make decisions on suspensions, then there is no reason to have a direct appeal to the faculty. To do so would likely evolve into a de novo review as our past history has indicated.
- 2) Even if the review was "on the record," the process of direct appeal would put the dissenter on the Committee in the position of being an advocate for the student on appeal and reduce the role of the Committee to one of mere record preparation rather than as a decision-making body.

- 3) The appeal to the Dean reflects a combination of interests that give the student two separate kinds of review. While the Committee ideally would serve in some sort of quasi-judicial role, the Dean adds another dimension. In the same way that his value judgments and expectation for particular entering classes reflect a view of the school as an institution, his effective judgment should likewise be tapped in particular cases. The student should be given the opportunity to convince the Dean, that notwithstanding the student's record, this is an exceptional case. The dynamics of this type of decision-making process, the counselling and the positive effect the Dean might have on particular students would be lost if the appeal went directly to the faculty.
- 4) If the concern is that both the Committee and the Dean might commit factual error or their decision might not reflect the full faculty judgment in a given case, the appellate process from Dean to the full faculty seems to satisfy it.
- 5) A possible drawback is that the Committee's decisions may become too distant from the entire faculty and not ultimately reflect the faculty will.\* If this should occur, the Dean can correct this by referring cases to the entire faculty for review. If he likewise becomes so distant, the Committee can be eliminated, and the Dean spanked.

\*For a discussion of faculty "will," see E. Kant, Religion within the Limits of Reason Alone (1968).

To: Ad Hoc Committee

From: Ruth Kovnat

Draft Proposal for procedure for retention and suspension of students.

This draft starts from the premise that the faculty is collegially responsible for the academic program of the law school and that fundamental to the discharge of that responsibility is the establishment and enforcement of academic standards. This faculty responsibility may, in appropriate circumstances, be delegated to a faculty committee or to the Dean or Associate Dean. A procedure which involves the full faculty at every stage of a case respecting the enforcement of academic standards may be too cumbersome to effectively carry out faculty policy; nonetheless, full faculty involvement at some stage in the proceeding seems to me to be necessary simply because the decision about the enforcement of academic standards, even in an individual case, is an expression of faculty policy. The Dean and Associate Dean ought not to set academic policy; they ought to carry out academic policy established by the faculty. I don't mean to suggest that the "separation of powers" doctrine that I seem to be articulating prevents the Dean and Associate Dean from participating in academic policy - and they are themselves members of the faculty and beyond that, their perspective and leadership places them in the forefront of decisions about the academic program at the law school. Nevertheless, the academic program is the responsibility of the faculty acting as a collegial body.

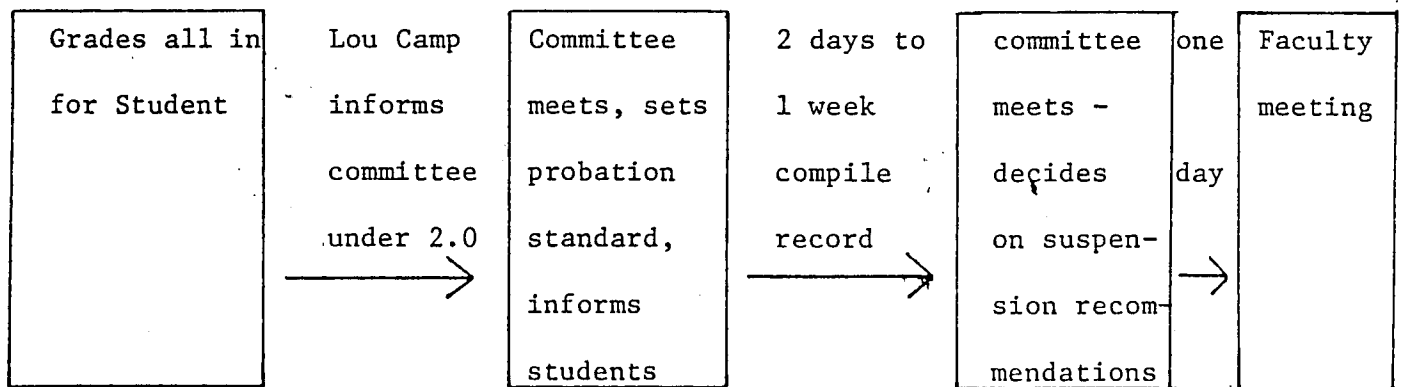
The procedure that I suggest and believe to be consistent with the stated premise is:

1. Committee determines standard below 2.0 above which students are retained<sup>ed</sup> on probation. This standard may be different depending on whether student



is in 2nd, 3rd, 4th, or 5th semester. The standard ought to be reported to the full faculty, but only after the committee has disposed of cases pursuant to its standard. Full faculty response to the standard ought to be elicited for guidance to the committee in setting the next standard. The committee determinations of individual cases ought to be final.

2. Committee informs all students whose academic performance falls below the probation standard that their performance merits suspension, and that they have an opportunity to present information to the Committee bearing on the reasons that they ought not be suspended despite their unsatisfactory performance. The Committee should solicit additional information about the student from the student's advisor, if any, and other faculty members. After compiling and considering the record, the Committee should determine whether or not the student is suspended and report the recommendation to the full faculty along with reasons. I would expect that in the usual case, the faculty will adopt the recommendation of the committee. The time frame is critical - and this procedure does put a premium on grading exams relatively early.



*Deadline (with drafts) at which time Committee must consider student.*

DATE: January 22, 1982

TO: The Faculty  
FROM: Dick Gonzales  
SUBJECT: Proposal for student retention and suspension

After TAHCOAHDMOIRSR's last meeting I spoke to several members of the faculty about their sentiments regarding retention/suspension procedures. Although I cannot represent to you that my informal poll was representative of the faculty, or that it was either systematic or comprehensive, I was able to discern substantial sentiment favoring the delegation of retention/suspension decisions to a committee with very limited participation by the full faculty. Accordingly, I offer the following alternative to the proposals submitted by Ruth and Chuck.

Step 1: A student whose cumulative grade average falls below a 2.0 immediately receives notice of that fact from an appropriate law school official. Such notice advises the student of the law school's standards regarding suspension and further advises the student that he or she may show cause before the Committee on Student Retention and Suspension why he or she should not be suspended.\*

Step 2: The student submits to the Committee a written request to be granted probation. The student may set forth the grounds upon which he or she believes probation to be appropriate, or the student may appear in person before the Committee to advocate his or her position. The student may submit any additional documentary or testimonial evidence which he or she feels is relevant to the case.

Step 3: The Committee deliberates, applying standards promulgated by the faculty, and renders a final decision. Such decision shall be either: 1) to place the student on probation unconditionally; 2) to place the student on probation subject to certain specified conditions; 3) to suspend the student without specific limitations; or 4) to suspend the student for a specific period of time.

Step 4: A student aggrieved by the Committee's action may appeal in writing to the Dean. Such appeal shall allege that the

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\*It may be desirable to provide for summary probation in de minimis cases, but I intimate no view of that subject. Rather, the subject should be addressed in connection with our deliberations regarding substantive standards.

Committee abused its discretion under the applicable law school standards and specify the nature of such abuse of discretion. If the Dean finds that the Committee abused its discretion, he or she may reverse or modify the decision of the Committee.\*\* If the Dean finds no abuse of discretion, he or she shall affirm the decision. In the event the Dean wishes to know the "sense of the faculty" in an exceptional case prior to ruling on the appeal, he or she may present the matter at a regular faculty meeting and solicit such views or opinions as might be appropriate. The Dean shall then affirm, reverse or modify the decision of the Committee.

I submit that the foregoing proposal comports with generally-held notions of procedural fairness and guarantees to the affected student full consideration of any mitigating factors affecting his or her status. Moreover, such a procedure <sup>e</sup>insures that these important decisions will be made at the earliest practicable time consistent with the need to gather full and accurate data.

For those who fear faculty "abdication" of its role in these matters, I submit that the Committee appointed by the Dean constitutes an appropriate *defe* *Wiz* aggregation of authority, and that the wisdom of faculty decisions is not necessarily enhanced by the protracted, agonizing debate that has heretofore characterized our deliberations. As a safety-valve, however, it would seem proper to give the Dean discretion to seek the collective advice of the faculty in difficult cases. In this way the faculty retains an appropriate role in matters of suspension/retention, but the temptation to resolve these issues through the cumbersome mechanism of a hearing de novo is greatly reduced.

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\*\*Alternative: If the Dean finds that the Committee abused its discretion, he or she shall so specify in writing and remand the matter to the Committee or further deliberations.