MEMORANDUM

TO: IUN Faculty
FROM: Donald A. Coffin
DATE: April 10, 1998
RE: Executive Committee Deliberations

The report below was presented to the Executive Committee in October, when it discussed faculty participation in formation of ad hoc committees to provide advice to the Chancellor, when requested, in cases involving allegations of faculty misconduct.

Faculty Involvement in Disciplinary Decisions at Indiana University Northwest

Three times in the past four years, allegations of "serious personal or professional misconduct" have led to the formation of ad hoc committees to provide advice to Chancellor Hilda Richards. This report provides some background on the process by which disciplinary actions against faculty occur, on the process by which these ad hoc committees were appointed, and on the responsibility these ad hoc committees were asked to fulfil. No details of the three cases will be included.

I. Process and due process.

The concept of due process requires that procedures that have been agreed to in advance be followed in situations that may result in disciplinary actions being taken against an individual. In the case of disciplinary actions being taken against faculty members, the only agreed-upon procedures involving faculty participation included in the Academic Handbook involve review after-the-fact by the Faculty Board of Review of administrative actions. Any disciplinary actions may be taken solely by administrators, following what procedures they may devise for investigating complaints.

In the three cases discussed below, Chancellor Richards requested and received faculty advice that was not required before taking disciplinary action. In effect, she provided more faculty input into, and influence over, disciplinary actions involving faculty members than she was obligated to. In none of these cases were any established or agreed-upon procedures circumvented or prevented from being used as a result of the advice provided to the Chancellor.* Specifically, in all three cases, the faculty members involved retained their right to appeal to the Faculty Board of Review in the event that any disciplinary action was taken.

II. The disciplinary process

The Academic Handbook does not provide any detailed procedures to be followed in reaching decisions about discipline in cases of allegations of faculty misconduct. The authority to make such decisions, and the nature and extent of such disciplinary actions, are implicitly administrative decisions. The Handbook does state that revocation of tenure shall occur only in cases involving "serious personal or professional misconduct," which is not further defined.

There is a faculty role, however, in disciplinary proceedings, and that role involves the Faculty Board of Review. The Board of Review receives appeals from faculty members about actions taken by administrative officers of the University that affect them. These may include appeals of annual reviews and associated salary adjustments, tenure or promotion decisions, or disciplinary actions. The Board of Review conducts an investigation into the actions and makes a recommendation to the appropriate administrative officer, most often either the Vice-Chancellor for Academic Affairs or the Chancellor. The administrative officer is not obligated to adopt or accept the Board of Review's recommendation.

In the three cases that have occurred in the past four years, Chancellor Richards has sought faculty advice before making decisions about disciplinary action. Lacking any formal mechanism by which such advice was to be provided, she sought the formation of a special committee to review the available information and provide her with advice. In forming these ad hoc committees, she approached the Chair of the Faculty Organization for advice and recommendations for membership on and the charge to such a committee. She was not obligated to do so and remained responsible for any disciplinary action taken, whether she adopted the advice she received.

III. The cases.

1. In June, 1994, Chancellor Richards called then-Chair of the Faculty Organization Donald Coffin, to ask for assistance in a case potentially involving discipline of a faculty member. Given the nature of the incident, it was apparent that a decision needed to be made before the beginning of the Fall semester. Uncertain about how to
proceed, Prof. Coffin discussed the Chancellor's request with a number of senior members of the faculty, including several members of the Executive Committee. (Given the timing of the request, and the absence of many members of the Executive Committee from campus, it did not seem possible to have the Executive Committee meet as a whole.) The consensus of the advice Prof. Coffin received was that the interests of the faculty member involved, and of the faculty as a whole, would be best served with an opportunity to provide advice before any disciplinary might be taken, as well as preserving the role of the Faculty Board of Review after any disciplinary decision was made. Prof. Coffin recommended, and the Chancellor accepted, three faculty members to serve on an ad hoc committee. The committee's charge was to examine the facts of the incident and to make a recommendation to the Chancellor about what disciplinary action might be appropriate; the committee had the option of recommending that no disciplinary action be taken. The committee met and did make a recommendation to the Chancellor.

2. In August, 1996, Chancellor Richards again requested of then-Chair of the Faculty Organization Donald Coffin that she be provided with advice about how to proceed in a case that involved potential disciplinary action against a tenured faculty member, with the options including moving to revoke tenure and discharge the faculty member. In this case, a preliminary disciplinary action had been taken. Prof. Coffin consulted with the Executive Committee about the formation of a second ad hoc committee. After extensive discussions, including some disagreement about the advisability of providing the Chancellor with advice, the Executive Committee agreed to the formation of an advisory committee and agreed on a list of faculty, in order of preference, who would be asked to serve on the committee. The Chair was to contact these members, to determine their willingness to serve, and then to provide a recommendation of three names to the Chancellor. The Chancellor agreed to the recommendations for membership, and the committee began its work. Its charge was to advise the Chancellor whether further disciplinary proceedings should be instituted in this case. Note that the committee was not asked to recommend or approve disciplinary actions, but simply to recommend whether further proceedings should be instituted. The committee completed its work and made a recommendation to the Chancellor.

3. In August, 1997, Chancellor Richards approached Chair of the Faculty Organization Linda Rooda, again asking for the formation of an advisory committee. In this case, as in 1994, the nature of the case suggested that the Chancellor wanted to take disciplinary action before the fall semester began. However, in this case the time frame was even more compressed than it had been in 1994. Prof. Rooda discussed this request with several senior faculty members, including members of the Executive Committee; again, the timing made a full meeting of the Executive Committee very difficult. Again, the recommendations for the committee membership were accepted by the Chancellor. The committee's charge was to advise the Chancellor on disciplinary options from which she might select; the committee had the option of recommending that no disciplinary action be taken. The committee met and provided a recommendation to the Chancellor.

IV. Conclusions

The issue of disciplinary action to be taken against faculty members is a serious one, and one on which members of the faculty can reasonably hold divergent positions about the best course of action for the faculty as a whole. However, it does appear that the issue will not go away. With three incidents in the past four years serious enough for Chancellor Richards to seek faculty advice, we must recognize that additional cases are likely to arise in the future. Absent some change in the policies of the Faculty Organization, it is likely that we will continue to respond as we have in the cases discussed above.

It has been suggested, however, that these committees have been appointed without due consultation within the faculty governance process. In all three cases, the Chair of the Faculty Organization consulted as widely as time pressures allowed; the alternative, allowing disciplinary decisions to be made without any faculty advice, seemed a less-desirable option. In all three cases, it is true, the composition of the committee was not publicly announced. However, considering the nature of the cases, allowing these committees to work outside excessive publicity probably worked to the benefit of the faculty members against whom allegations had been made and in the best interests of the faculty as a whole.

What is problematic is that no permanent, agreed-upon procedure exists for providing before-the-fact advice in cases of possible disciplinary action against faculty. Last year, the Executive Committee, after a long discussion, agreed to the creation of an ad hoc committee (chaired by Charles Hobson, with the other members being Marlene Ledbetter, Ruth Needelman, Joseph Pelliccicti, and Anna Rominger) to consider recommending such procedures. It is worth noting that the Executive Committee was by no means unanimously agreed that such a committee should be appointed or that such a procedure would be a good idea. The committee recognized a number of difficulties to be resolved and questions to be answered, and finished the year without making a recommendation.

Given that there have been three cases in the past four years, however, it also seems that it would be advantageous for us as a faculty to agree how to proceed in such cases in the future. One option for the future is to agree as a faculty that the processes used in the past (a request by the Chancellor to the Chair of the Faculty Organization, consultation by the Chair, appointment of an advisory committee on an ad hoc basis) could be continued. A second option is to provide a more formal method of providing advice, in which case a new special committee will probably have to be appointed to recommend such a procedure. A third option would be to adopt, as a policy of the Faculty Organization, that advice not be given before-the-fact, and that we rely on the Faculty Board of Review to examine disciplinary actions, on appeal, after-the-fact.

This report was prepared by Donald A. Coffin, October 6, 1997

Comments: This document is slightly modified from the original document presented to the Executive Committee in October. First, the footnote on p. 1 has been added. Second, the phrase "involving faculty participation" has been added in the second paragraph (for clarification).

During its discussion at its October meeting, the Executive Committee decided not to participate in the formation of any further such ad hoc committees as those described in this report, unless or until the Faculty Organization adopts a policy on faculty participation in such committees.
* Subsequent discussions with the Chancellor confirmed that the path specified in the Academic Handbook was in fact followed in all three cases.