TUESDAY, FEBRUARY 16, 1993
10:30 - NOON

CONCURRENT SESSION TWO

New Developments in Faculty Tenure, Academic Freedom and Shared Governance: How has the Abatement of Mandatory Retirement and the Impact of Connick v. Myers affected Faculty Tenure?

Faculty:

Gregory K. McCann
William A. Kaplin
Patricia A. Hollander
ACADEMIC FREEDOM AND SHARED GOVERNANCE IN THE WAKE OF CONNICK V. MYERS: WHERE ARE WE NOW AND WHAT SHOULD WE DO?

PRESENTED BY:

William A. Kaplin
Professor of Law
Catholic University of America

Presented at the Stetson University
College of Law Conference:

14th ANNUAL NATIONAL CONFERENCE ON LAW AND HIGHER EDUCATION: ISSUES IN 1993
Sheraton Sand Key Resort Hotel
Clearwater Beach, Florida
February 14-17, 1993
I. Framing the Issues

A. Question: Is the higher education community, in the 1990's, continuing to progress toward realization of its highest aspirations for academic freedom and shared governance — or have we become stuck and distracted in our pursuit of these most important ideals?

*B. Answer (in the form of a thesis for consideration):
Under the combined pressures of several developments, the higher education community is beginning to be stuck and distracted in its pursuit of academic freedom and shared governance; thus there is a subtle but real danger that we are becoming separated from some of the most honored traditions that support higher education's mission and mark its uniqueness as a societal institution.

II. Recent Negative Pressures on Academic Freedom and Shared Governance

A. Trends toward increasing commercialism and entrepreneurship on campus, and increasing visibility of managerial styles borrowed from business and industry, may foster a climate that de-emphasizes the value of academic freedom and shared governance. See e.g., Howard Buchbinder and Janice Newson, "The Service University and Market Forces," Academe, July-August 1992, at 13 et seq.; Robert Bing and Linda Dye, "The Danger of Hierarchical Decision-Making," Academe, July-
August 1992, at 16 et seq.

B. The slow pace of improvement in the intellectual and cultural diversity of faculties may encourage conformity and orthodoxy by limiting the "community" that shares governing power and the new ideas that gain a foothold in academic life. See, e.g., Judith J. Thomson, "Ideology and Faculty Selection," 53 Law and Contemporary Problems 155 (1990); Phoebe Haddon, Academic Freedom and Governance: A Call for Increased Dialogue and Diversity," 66 Texas L. Rev. 1561 (1988).

C. The "political correctness" phenomenon, real or perceived, may also encourage conformity and orthodoxy from a different direction by chilling (or creating the perception of a chill on) dialogue regarding "non-PC" viewpoints. See Levin v. Harleston, 770 F.Supp. 895 (S.D.N.Y. 1991), aff'd., 966 F.2d 85 (2nd Cir. 1992).

D. The developing constitutional law on freedom of expression for public employees is creating a "one-size-fits-all" model of free expression that extends faculty members the same rights as any other public employee, thus de-emphasizing the unique structure and mission of higher education and the unique interests of its faculties, and providing little protection for academic freedom. See, e.g., Dorsett v. Board of Trustees, 940 F.2d 121 (5th Cir. 1991).
III. Background: Conceptual Distinctions Undergirding Academic Freedom

A. There are three types of academic freedom, each protecting a different class of persons or entities:

*1. faculty academic freedom (see, e.g., Walter P. Metzger, "Profession and Constitution: Two Definitions of Academic Freedom in America," 66 Texas L. Rev. 1265 (1988);

2. student academic freedom (see, e.g., "Developments in the Law -- Academic Freedom," 81 Harv. L. Rev. 1045, 1128-1157 (1968); and


B. There are four functional settings in which academic freedom issues may arise:

1. in classroom activities;

2. in research and publication;

*3. in institutional (intramural) affairs; and

4. in private personal life.

C. There are three basic sources of protection for faculty academic freedom:

1. faculty contracts, faculty handbooks, and institutional regulations;

2. AAUP statements and guidelines; and

3. federal and state constitutional provisions, especially the freedoms of expression and association under the federal first amendment.

See, e.g., Kaplin, supra, sec. 3.6.1.

IV. Academic Freedom and Shared Governance in the Courts
(Constitutional Cases)

A. There are two distinct stages of judicial developments, each occupying a distinct time period and including distinct types of cases: the "earlier" academic freedom stage, covering primarily the 1950's and 1960's, and the "later" academic freedom stage, covering the 1970's to the present. See generally Metzger, supra, at 1285-1319, and Kaplin, supra, sec. 3.6.1.

B. The "earlier" academic freedom cases focus on faculty and institutional freedom from external (political) intrusion; they contain eloquent rhetoric more than concrete protections. See, e.g., Keyishian v. Board of Regents, 385 U.S. 589 (1967).

*C. The "later" academic freedom cases focus on faculty freedom from institutional intrusion; they adopt a

V. The Post-Connick Caselaw and Shared Governance

*A. The post-Connick first amendment caselaw utilizes a "one-size-fits-all" approach to faculty free expression rights, according the faculty member no greater or different rights than those accorded public employees in general and providing little recognition or protection for academic interests in shared governance and dialogue on internal institutional affairs. See Matthew Finkin, "Intramural Speech, Academic Freedom, and the First Amendment," 66 Texas L. Rev. 1323 (1988), and compare Mark Yudof, "Intramural Musings on Academic Freedom: A Reply to Professor Finkin," 66 Texas L. Rev. 1351 (1988); and see, e.g., Dorsett v. Board of Trustees, 940 F.2d 121 (5th Cir. 1991); Maples v. Martin, 858 F.2d 1546 (11th Cir. 1988).

*B. Under the post-Connick cases, a faculty member's speech on institutional (intramural) matters may not receive any first amendment protection unless the speech fits
within the U.S. Supreme Court's vague category of speech "on matters of public concern." See, e.g., Dorsett v. Board of Trustees, 940 F.2d 121 (5th Cir. 1991).

*C.* Under the post-Connick cases, a faculty member's speech on institutional matters will sometimes receive no first amendment protection even when the speech is on "a matter of public concern"; in such circumstances courts may nevertheless balance away the faculty member's interests by according more weight to institutional interests in efficiency and harmony. See, e.g., Maples v. Martin, 858 F.2d 1546 (11th Cir. 1988).

D. Under the post-Connick cases, a faculty member's speech on institutional matters will sometimes receive no first amendment protection even when the speech is on "a matter of public concern" and even if the speech is not outweighed by institutional interests in efficiency and harmony; in such circumstances courts may nevertheless decline to protect the speech because the institution could and would have taken action against the faculty member anyway for reasons apart from the faculty member's speech activities. See, e.g., Hamer v. Brown, 831 F.2d 1398 (8th Cir. 1987).

VI. What Could We Do to Refocus Attention on Faculty Academic
Freedom and Shared Governance?

A. Institutional administrators and legal counsel could:

*1. give renewed attention to faculty handbooks and institutional regulations to assure that they include provisions suitably recognizing and protecting faculty academic freedom, and that these provisions are well-known and honored among institutional administrators (see generally AAUP, Policy Documents and Reports (1990 ed.));

*2. support sensitive interpretation and application of the Connick line of cases, in litigation planning and otherwise, so that this caselaw may be adapted to the special circumstances and concerns of higher education (see, e.g., Finkin, supra, at 1332-1348, and for an example of a sensitive interpretation and application, see Johnson v. Lincoln University, 776 F.2d 443 (3rd Cir. 1985));

3. consciously and consistently balance institutional managerial prerogatives against the academic freedom of faculty and students, seeking ways to strike a healthy balance that preserves the values of the latter.

B. Faculty members could:

*1. emphasize the development and enforcement of institutional policies that implement a
professional rather than a judicial
(constitutional) understanding of faculty academic
freedom (see III.C.(1)&(2) & VI.A.(1) above, and
see Walter Metzger, "Profession and Constitution:
Two Definitions of Academic Freedom in America,"
66 Texas L. Rev. 1265 (1988);
2. take care not to trivialize or debase academic
freedom by using the concept loosely or making
overblown claims for protection;
3. be sensitive to faculty responsibilities for
safeguarding student academic freedom, so that
both student and faculty freedoms may grow
together and strengthen one another; and
4. encourage academic study, by various disciplines,
of modern developments (see, e.g., II. above) that
may have substantial impact on the vitality of
academic freedom.

C. Staff members who support and work with students could:
1. seek to safeguard student academic freedom and
encourage academic freedom in the relationship
between faculty member and student, as means to
enhance the campus community's overall commitment
to academic freedom;
2. be wary of, and prepared to deal sensitively with,
situations where compelling student interests may
clash with and take precedence over faculty claims
of academic freedom (e.g., sexual harassment claims involving grading or classroom abuse).

*D. All of us -- everyone involved in any capacity with campus academic life -- could recognize that faculty academic freedom and shared governance are not merely legal matters, or matters of institutional policy, but are most of all matters of individual honor and commitment; they must live in the hearts and minds of each of us, if they are to flourish.
NEW DEVELOPMENTS IN FACULTY TENURE, ACADEMIC FREEDOM AND SHARED GOVERNANCE: HOW HAS THE ABATEMENT OF MANDATORY RETIREMENT AND THE IMPACT OF CONNICK V. MEYERS AFFECTED FACULTY TENURE?

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Presented at
The Fourteenth Stetson Law and Higher Education Conference
February 16, 1993

I. OVERVIEW

This presentation focuses on how the abatement of
mandatory retirement has affected faculty tenure, academic
freedom and shared governance. It proposes that there is
an urgent need that the concept of faculty tenure be rejuvenated
to reinforce concern for academic quality and accountability
across the total time of an academic career, that academic
freedom continue to be protected fiercely as the essence of
the academic enterprise, and that shared governance is the
principal means to do both.

Colleges and universities must review and make congruent
their:
  mission statements;
  job descriptions and job qualifications; and
evaluation criteria used to assess performance.

Note: Even if there were no abatement of mandatory retirement
affecting tenured faculty members, this task should be done
relative to all positions in order to meet the requirements
of the Americans with Disabilities Act.

II. THE ABATEMENT OF MANDATORY RETIREMENT

The Age Discrimination in Employment Act (ADEA), which
prohibits discrimination in employment of persons over 40
years of age, presently contains an exception permitting the
mandatory retirement of tenured faculty members until
December 31, 1993. Thereafter, that is as of January 1,
1994, tenured faculty, like other employees covered by the
ADEA, can be terminated only for cause not related to age.
III. TERMINATION FOR CAUSE NOT RELATED TO AGE

Termination for cause not related to age is dismissal resulting from poor performance by individual tenured faculty members, documented by evidence of incompetence, neglect of duty, insubordination, unprofessional conduct, and sexual misconduct, for instance. It is termination not for teaching or doing research on unpopular topics but for not meeting employment standards generally accepted in academia.

In addition, dismissals for cause not related to age may include those terminations stemming from problems of the institution, such as bona fide financial exigency or discontinuance of a program or school.

IV. TENURE AS A CONTINUING CONTRACT RATHER THAN JOB SECURITY

Tenure is not a guarantee of life-long employment. It is a continuing contract meant to protect professors from assaults on their academic freedom to do unpopular research or make unpopular statements while teaching in their areas of academic interest. However, tenure is not protection against charges of breach of contract for unsatisfactory performance. As one court put it:

It does not follow that because academic freedom is inextricably related to the educational process, it is implicated in every employment decision of an educational institution.


V. THE IMPORTANCE OF ACADEMIC FREEDOM AND SHARED GOVERNANCE IN SETTING UP POST-TENURE EVALUATIONS

Over the years courts have supported the concept of academic freedom. For example, a Supreme Court justice said:

It is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation. It is an atmosphere in which there prevail "the four essential freedoms" of a university -- to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.

Regents of the U. of Calif. v Bakke, 438 U.S. 265 at 312 (1978)

However, where decisions are alleged to be made on other than academic grounds, that is, for reasons of
discrimination or poor performance, courts generally acknowledge that academic freedom cannot be used as a screen or subterfuge. In a discrimination case where a court ordered a professor to reveal his vote on a tenure decision, the court said:

Though we recognize the importance of academic freedom, we must also recognize its limits. The public policy of the United States prohibits discrimination; Professor Dinnan and the University of Georgia are not above that policy. To rule otherwise would mean that the concept of academic freedom would give any institution of higher learning a carte blanche to practice discrimination of all types.

In re Dinnan, 661 F.2d 426 at 431, (5th Cir. 1981)

Similarly, no college or university would be likely to want to be accused of using academic freedom to give it a carte blanche to continue on its payroll tenured professors who are poor performers for reasons quite unconnected to academic freedom. Nor would administrators who permitted this expect to keep their own jobs for long. See Lee, B. (1988, January). "The parameters of academic freedom: Tenured Faculty." Presented at the 10th Annual Stetson Conference on Law and Higher Education, Clearwater Beach, FL.

The key to proper vigilance in such situations is shared governance. Faculty peers surely are as interested as administrators, trustees, students, parents, and the public in maintaining quality among the tenured faculty.

VI. RESISTANCE OF FACULTY MEMBERS TO POST-TENURE REVIEW

VII. CRITERIA TO BE INCLUDED IN POST-TENURE EVALUATION

The mission of the college or university generally will determine: first, what should be included in job descriptions including job qualifications; and second, what the criteria are for post-tenure evaluation of performance.

For example, where an institution's mission is focussed principally on teaching, it follows that tenured faculty would be judged largely on teaching performance. Or, where the institutional mission emphasizes research, performance relative to research would be given heavy weight in judging the individual. See attachment # 1 for sample mission statement. See attachments # 2 and # 3 for sample job descriptions including job qualifications.

Where an institution is a four-year liberal arts institution, the evaluation criteria might consist of teaching, advising students, research, and service. Greater weight may be given to teaching, advising, and service rather than to research. Different programs or schools within the institution may weight the criteria differently. See attachment # 4 for sample of evaluation criteria.

Whatever the criteria, each individual faculty member should be informed fully as to what the criteria are.

VIII. FREQUENCY OF EVALUATION OF TENURED FACULTY MEMBERS

Tenured faculty members should be evaluated periodically on a regular basis just as are non-tenured faculty members. At many institutions this means annually. See attachment # 5 for sample annual review clause.

The point is that there should be no difference in treatment between older tenured and younger non-tenured faculty members. To do otherwise may make an institution vulnerable to a charge of age discrimination under the ADEA.

IX. PERSONS WHO SHOULD CONDUCT POST-TENURE EVALUATIONS

At many institutions tenured and non-tenured faculty members fill out annually a set of evaluation forms covering his or her activity for the year in the various areas of research, teaching and service or whatever other areas of performance are relevant. Faculty members then meet with the department chair or the dean or other administrative supervisor to discuss the annual report. A procedure should be set out in the faculty handbook and followed.
X. ENCOURAGING FACULTY MEMBERS TO SERVE AS EVALUATORS IN POST-TENURE REVIEWS AND TO BE WILLING TO DISCLOSE THEIR EVALUATIONS

Formerly it was the custom that confidentiality shrouded evaluation of faculty members. Some saw this in a positive light as a matter of privacy; others saw it negatively as a kind of star chamber process. These days it appears that the emphasis is on accountability.

Tenure decisions, for instance, often are open to challenge on grounds of possible discrimination based on race, sex, or similar bases. Courts have begun to build a rationale that says that employment decisions in academia are not protected by an a special "academic freedom privilege" which can be used to hide discriminatory decisions.

For example, a court ordered a professor to disclose his vote in a tenure decision. When he refused, he was sent to jail briefly for contempt of court. In re Dinnan, 661 F.2d 426 (5th Cir. 1981), cert.denied, 457 U.S. 1106 (1982).

Here is what the Dinnan court, referred to above, had to say about the reluctance of professors to be willing to disclose tenure votes:

No one compelled Professor Dinnan to take part in the tenure decision process. Persons occupying positions of responsibility, like Dinnan, often must make difficult decisions. The consequence of such responsibility is that occasionally the decision-maker will be called upon to explain his actions. In such a case, he must have the courage to stand up and publicly account for his decision. If that means that a few weak-willed individuals will be deterred from serving in positions of public trust, so be it; society is better off without their services. If the decision-maker has acted for legitimate reasons, he has nothing to fear. We find nothing heroic or noble about the appellant's position; we see only an attempt to avoid responsibility for his actions. If the appellant was unwilling to accept responsibility for his actions, he should never have taken part in the tenure decision-making process. However, once he accepted such a role of public trust, he subjected himself to explaining to the public and any affected individual his decisions and the reasons behind them.

In re Dinnan, 661 F.2d 426 at 433, (5th Cir. 1981)
Courts also have ordered disclosure of peer review documents, including reference letters. In some cases, names of individuals were blacked out, or summaries of the materials were permitted. EEOC v. Franklin & Marshall College, 755 F.2d 110 (3rd Cir. 1985), cert. denied, 476 U.S. 1163 (1986).

One of the most recent decisions by the Supreme Court said in effect that faculty members are both scholars and professionals, not wimps, and are quite capable of making sound tenure decisions based on "specific examples and illustrations" which can be opened to public scrutiny. The Supreme Court said the following:

"Finally, we are not so ready as petitioner seems to be to assume the worst about those in the academic community. Although it is possible that some evaluators may become less candid as the possibility of disclosure increases, other may simply ground their evaluations in specific examples and illustrations in order to deflect potential claims of bias or unfairness. Not all academics will hesitate to stand up and be counted when they evaluate their peers."


The above quotation comes from the U.S. Supreme Court in the case in which it held that confidential letters from evaluators and a department chair, as well as other peer review materials, must be provided to the Equal Employment Opportunity Commission. The case involved a female faculty member who was denied tenure at the Wharton School of Business and sued under Title VII of the Civil Right Act claiming sex discrimination.

At the time the Supreme Court issued its decision, a hue and cry of despair went up among those academicians who said that if evaluation information formerly held confidential was now to be subject to possible disclosure, no one would be willing to write candid evaluations. The Supreme Court clearly believes otherwise, that is, that professionals who know their business can be relied on to continue to submit evaluations that are based on "specific examples and illustrations."

While this decision affects only EEOC cases, it probably portends more disclosure in general in the future. Indeed, a number of states already have laws that permit disclosures of actual letters of reference or summaries of them.

Fears of lawsuits for defamation in making negative statements are countered by pointing out that in situations
like this there is a qualified privilege from liability. Also, a faculty member who permits his or her credentials to be evaluated, consents to having others comment on those credentials.


XI. DOCUMENTATION OF POOR PERFORMANCE OF TENURED FACULTY

Courts have agreed that evidence of the following behavior supports an allegation of poor performance by tenured faculty members and sustains a decision to terminate. Note that these examples illustrate behavior not related to academic freedom.

Incompetence

University hearing committee found that professor was incompetent in that: he failed to cover basic course material as described in catalogue and course syllabi; was not adequately prepared for lectures; spent an inordinate amount of time on nonpertinent matters; frequently failed to meet classes as scheduled; did not observe regular office hours, and failed almost totally to participate in departmental, collegiate and university affairs, or to engage in research or scholarly activities. This professor was warned of his deficiencies formally and informally over a four-year period. He was given a letter of censure, was refused salary increases, and his pay was reduced. Though there was no lack of notice of his deficiencies, his performance did not improve. Riggin v. Board of Trustees of Ball State University, 489 N.E.2d 616 (Ind.App. 1986).

Insubordination

Over a nine year period a professor in a department of 3.5 full-time faculty members had numerous approved and
unapproved absences in order to travel and give lectures and seminars. Then in Spring 1979 he missed more classes, and in Summer and Winter the university had to cancel his classes due to his absences. His pay was docked and he was censured by vote of his colleagues. Later he requested still another absence to give a lecture abroad. When his request was denied he appealed and his request was denied again. He was absent anyway. The university terminated him and he sued. The court found that the university and his colleagues had been very understanding and forbearing, and his refusal to abide by the decision not to approve his latest travel request was unreasonable. The court upheld the termination. Stastny v. Board of Trustees of Central Washington University, 647 P.2d 496 (Wash.App. 1982).

Sexual Misconduct

Current and former male students testified that a male professor made unwelcome sexual advances toward them and offered good grades contingent upon sexual involvement. The university dismissed the professor citing a violation of AAUP professional standards for faculty regarding respect of students. The court upheld the dismissal. Korf v. Ball State University, 726 F.2d 1222 (7th Cir. 1984).

A female student alleged that her male professor made offensive sexual advances toward her in class on several occasions, and three other female students came forward with similar allegations. The university offered the professor an opportunity to resign, and when he refused he was terminated. The court upheld the termination. Levitt v. Monroe, 590 F.Supp. 902 (W.D. Tex. 1984).
XII. DUE PROCESS REQUIRED IN TENURE DISMISSAL CASES

Due process -- that is, notice and a hearing -- is required in dismissals of tenured professors. Basically this is because a tenured professor has a continuing contract which can be breached by the employer only for cause.

The concept of due process is a flexible one. What constitutes due process in one situation may not be adequate in another. As to what constitutes due process in a typical tenure termination case, one court summed it up as follows.

Due process would include:
1. notice of the cause for dismissal, i.e. usually a set of charges of failure to meet certain standards;
2. names of witnesses and what each will testify to;
3. meaningful opportunity to be heard;
4. within a reasonable time; and
5. impartial hearing panel with appropriate expertise.

Levitt v. University of Texas, 759 F.2d 1224 (5th Cir.1985)

Several questions may be raised in these situations.

Did the faculty member receive adequate notice that his or her behavior may lead to termination? Some colleges and universities have a list of specific grounds for termination, but most do not. Instead, their faculty handbooks or other relevant documents use general terms such as incompetence, neglect of duty, insubordination, immorality, or violation of the institution's rules. Courts usually have no trouble finding that it is not necessary for an institution to have a list of specific forbidden behavior.

For example, where there was detailed documentation of incompetence, as in the Riggin case mentioned earlier, the court found there was a material failure to perform the duties for which he was employed. The court went on to say:

The fundamental question...is whether it is possible, or even desirable, to formulate specific standards against which a college professor's fitness or competency, or adequacy to teach his classes is measured. There is strong evidence in the record that such is not feasible.

Riggin v. Ball State University, 489 N.E. 2d at 628

However, when termination of a tenured faculty member is sought, there must be a list of specific charges along with a statement of what the documentation is for the charges; e.g. incompetence based on not holding classes on such and such dates, refusing to hold office hours, refusing to serve on faculty committees, refusing to engage in scholarly activities, etc.
There also must be notice to the faculty member of the names and addresses of witnesses and to what they will testify. There must be a reasonable time for the faculty member to prepare for the hearing. The members of the hearing panel must be impartial and must have academic expertise.

While many courts do not require that the faculty member be permitted to have legal counsel or an advisor present, it is a good idea to permit it since a substantial property interest is involved. Crocker v. Fluvanna County Board of Public Welfare, 859 F.2d 14 (4th Cir. 1988)

For further information on what constitutes just cause and due process, see the following:


Shur, G. (1992, February). "Procedural and practical implications of the dismissal of tenured faculty (or others) for incompetence, neglect of duty, or unprofessional conduct." Presented at the 13th Annual Stetson College of Law Conference on Law and Higher Education, Clearwater Beach, FL.

NOTE

The American Association of University Professors (AAUP) resolutely has fostered the rights and responsibilities of faculty members for over seventy-five years. For a compilation of its standards, see the 1990 edition of AAUP's Policy Documents and Reports.

(See attachment # 7 for some helpful names and addresses.)
Western New England College is a private, nonprofit, coeducational college, without religious affiliation. It offers undergraduate, graduate, and continuing education programs for a varied spectrum of students.

Central to all programs is a commitment to effective instruction in an atmosphere of personal concern for the developing student. The College provides cocurricular programs to enhance the quality of life and the personal development of all students.

The College is committed to promoting tolerance, understanding, and integration along racial, ethnic, religious, and gender lines, both in its educational programs and in the conduct of all members of the College Community.

The undergraduate academic programs provide a significant blend of liberal and professional education. The programs encourage each student to develop the ability to think clearly, discipline in self-expression, sensitivity to moral concerns, and a sense of historical perspective.

All programs seek to offer the student the theoretical and applied knowledge requisite to entry-level competence in a professional position and for continued growth and development in a profession.

The academic programs also seek to cultivate the capacities to enjoy a lifetime of learning, to contribute significantly in community affairs, and to adapt with grace and versatility to the changing conditions of society.

The graduate program, as a logical extension of the undergraduate offerings, provides an expanding variety of advanced studies to meet the changing educational needs of the surrounding community and the growing complexity of professional fields. Particular emphasis is placed upon the professional development of those students interested in careers in business, engineering, and law.

The continuing education programs serve the local communities and the surrounding regions by providing the student of any age opportunities, on a full-time or part-time basis, for the fulfillment of personal and professional interests. Degree and non-degree options, short courses, seminars, and institutes offer a variety of opportunities for personal enrichment, professional advancement, and preparation for alternative careers.

To provide academic enrichment and to avoid unwarranted duplication of offerings, further educational opportunities are available to students through affiliations with other institutions of higher education. Similarly, the community's industries and agencies serve as valued, practical laboratories for many students. The College has, from the time it was chartered, encouraged community service as a desirable volunteer activity on the part of faculty, staff, students, and alumni.
Position Description

Professor of Computer Science
Status: Tenure Position
Immediate Supervisor: ____________, Chair, Department of
Mathematics and Computer Science

INCUMBENT, 19 :

PURPOSE

The teaching of undergraduate and graduate courses in Computer Science or tangential fields as required by the College and specified by the Department Chair. The faculty member should carry out professional activities, research, and writing projects within the discipline, advise students on their academic programs, and perform service duties as needed within the department, school, and college.

DISTINGUISHING CHARACTERISTICS

Western New England College is dedicated to excellence in undergraduate instruction with an emphasis on personal contact between students and faculty. The School of Arts and Sciences fully participates in the overall mission of the institution which is to provide a professional education to the students. It is also committed to the education of the person so that he or she develops a rich inner life and the world is rendered intelligible and rewarding.

The Department of Mathematics and Computer Science offers majors in Computer Science and the Mathematical Sciences. Minor programs are offered in Computer Science and Mathematics. The Department is concerned to educate students in each of these fields and to offer service courses to the College as a whole. In the area of service the Department is responsible for all courses that satisfy the core requirement in mathematics for all undergraduate students, and for courses that satisfy the core requirement in computers for the Arts and Sciences students.

ESSENTIAL JOB FUNCTIONS

1. Classroom teaching.
2. Advising of students on an individual and sometimes confidential basis. This includes course selection, academic problems, projects, assignments, and career counseling as well as co-curricular activities.
3. Supervision of laboratory work if appropriate.
4. Staying current in the discipline through scholarly activity and professional development.

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5. Performing college service duties, especially involving membership on committees.

Participation in college governance, together with effective teaching, advising, and scholarship and professional development, is required for promotion and tenure in the College.

MARGINAL FUNCTIONS

1. Developing courses, programs, and the overall curriculum in the field.

2. Interfacing with local companies to arrange for senior projects, internships, and other mutually beneficial activities.

REQUIRED KNOWLEDGE, SKILLS, AND ABILITIES

1. Ability to speak to a group of up to 35 students in a classroom setting with an understandable accent and in a clear and audible manner, either directly or through a third party.

2. Ability to interact verbally with students in a classroom environment or with individual students in private meetings. Other means may be employed for student-faculty interaction.

3. Ability to use chalk and blackboard, transparencies and projection devices, or otherwise communicate graphically in a manner that allows students adequate access to the academic material. Alternate methods may be used for graphic communication.

4. Ability to use computer software as a research and instructional tool, both inside and outside the classroom.

5. Ability to travel to professional meetings and conferences as necessary. A substitute faculty member may be employed for this purpose.

6. Knowledge of the field of study that is sufficiently broad to teach all of the basic courses in the discipline. Sufficient depth of knowledge to teach almost all upper division courses.

7. Ability to use the telephone and E-mail for communication or to use alternate methods for effective communication.

8. Ability to grade student exams, term papers, reports, computer work and other in-class and outside assignments.

9. Skill in sophisticated computer use and an ability to assist students in computer literacy in the field.
10. Ability to meet classes on schedule for the entire time period and to carry out assignments in a prompt and timely fashion.

11. Skill in interpersonal communications sufficient to interact effectively with students, colleagues, and administrators.

12. Skill in reading, analyzing, summarizing and in other ways comprehending and utilizing written academic material.

13. Ability to write effectively in internal college communications, in interaction with outside constituencies, and in preparing scholarly and professional material.

HOURS

Classes are generally held during the day, but all faculty occasionally teach an evening course or laboratory. Faculty are required to meet all classes as scheduled and to keep regular office hours at times that are mutually convenient for the student and instructor.

QUALIFICATION STANDARDS

1. EDUCATION: Ph.D. degree in an appropriate area of Computer Science or a related field.

2. TEACHING ABILITY: Must have the ability to communicate course material lucidly and interestingly to undergraduate and graduate students, and to generate an atmosphere conducive to learning.

3. EXPERIENCE: Prior teaching and/or applicable professional experience is desirable.

4. LANGUAGE SKILLS: The ability to read, write, and speak standard English.

5. AREA OF EXPERTISE: Computer Science (as per the position advertisement).

6. COLLEGE MISSION: Must be willing to support the College Mission and the goals of the Mathematics and Computer Science Department and the School of Arts and Sciences.
JOB DESCRIPTION

SECRETARY TO THE PRESIDENT

Primary Purpose

This job exists to provide service and coordination of activities and functions for the President, the Trustees of the College, and all internal and external individuals depending upon the President's office to carry out their responsibilities.

Distinguishing Characteristics

This is an executive secretarial position entrusted with confidential records, correspondence, minutes of meetings, personnel files, contracts, budgets, federal and state reports, and evaluation documents, as well as all official College documentation.

Description of Duties and Tasks

Essential Job Functions

Make contact by phone, fax, and letter and pursue to completion the complicated details involved in the various protocols to obtain government officials and other prominent individuals as speakers.

Monitor, modify, and update various internal documents, publications, and professional contracts.

Prepare, issue, and maintain all confidential faculty and administrative staff records, personnel files, contracts, and compliance forms.

Collect, record, and file all confidential trustee, past trustee, and potential trustee information, including profiles, records, resumes, assignments, attendance, and terms.

Take in person or transcribe from tape and distribute after approval minutes of Board of Trustees or Board committee meetings, both open and confidential.

Assemble confidential materials for Board or Board committee meetings, prepare, type, and review agendas and necessary enclosed materials with President and other staff personnel when necessary and subsequently mail in a timely manner.

Prepare for printing the annual trustee brochure listing members, their affiliations, Committee assignments, and meeting dates for all formal events involving trustees for the year. Distribute with cover letter by mid-July to all new and continuing trustees.

Take confidential dictation in person or by phone from the President, Chairman of the Board, or other trustees, transcribe, and record as appropriate.
Attend and take Advisory minutes, transcribe, and disseminate.

Type, using computer and word processing equipment, a wide variety of correspondence, much of which is confidential. Compose or modify previously existing letters from brief notes, verbal instructions, or independently from knowledge of circumstances and policy.

Arrange meetings and confidential appointments, notify those internal or external personnel involved; prepare agenda items and materials as needed for such.

Pursue to completion administrative projects or assignments delegated by President to various internal personnel.

Contact by letter, fax, or phone a wide array of external personnel for the purposes of coordinating activities, providing details or instructions, and responding to requests pertaining to business matters affecting or involving the President or the College.

Receive confidential calls, exercise judgment as to messages, referring calls, interrupting the President, supplying information from personal knowledge of situation or applicable policy.

Open and screen all confidential mail; secure materials of related matter and forward to President those requiring personal attention. Divert to others for response or answer from personal knowledge, as appropriate, matters not requiring President's personal attention.

Maintain the President's professional calendar so as to avoid conflicts while accommodating requests and needs and incorporating all regularly scheduled, annual events.

Maintain and act upon an annual office calendar that describes and requires planning, mailings, and scheduling of events at precise times according to tradition, legal or governmental requirements, or civic schedules.

Maintain confidential files and records of the President, including, but not limited to, pending or completed legal actions, contracts, federal and state government compliance forms, trustee negotiations, land acquisitions, President's Annual Objectives and Report to the Board.

Record budget expenditures and adjustments for the Board of Trustees and the President's office and monitor line item amounts in accordance with the needs of the office and time of year.

Order necessary office supplies to provide service for the Trustees, President, and various committees.

Ensure that office equipment is serviced and repaired as necessary. Distribute, assign, and coordinate major project assignments with other administrative secretaries and work-study
students to conform to schedules and meet deadlines.

Perform other similar duties as directed by the President.

**Marginal Job Functions**

Typing routine materials, such as labels, lists, form letters.

Address annual holiday cards and commencement invitations by hand.

Deliver urgent materials to other offices, the mail room, or duplicating services.

Set up conference room for trustee committee meetings.

Schedule use of both guest houses, disseminating information to appropriate offices; schedule use of President's Conference Room.

Collate materials for distribution to necessary sources on campus.

File routine, non-confidential materials.

**Required Knowledge, Skills, and Abilities**

1. Ability to type 65 words/minute.

2. Ability to take shorthand at 100 words/minute.

3. Ability to read, analyze, and adjust contracts.

4. Ability to use word processing equipment with 5.1 Word Perfect.

5. Ability to send and receive E-mail messages.

6. Ability to transcribe minutes of meetings from tapes.

7. Ability to proofread documents, contracts, reports, handbooks.

8. Ability to use a calculator.

9. Excellent knowledge and use of grammar, spelling, punctuation.

10. Must exert extreme patience and tact.

11. Must have a sense of humor.
12. Must have mental ability to problem solve.

**Ergonomic Requirements**

None special except ability to speak, read, listen, and concentrate.

7/92
The annual review process described in the Faculty Handbook provides for an annual evaluation of all full-time members of the faculty regardless of rank or tenure status. The evaluation of a faculty member for reappointment, tenure, and promotion is the joint responsibility of the Peer Review Committee, Department Chair, Dean, Academic Vice President, and President. The Faculty Handbook stipulates four criteria for the evaluation of faculty. The Faculty Senate, with the concurrence of the President, has established weighting ranges for these criteria within which the Peer Review Committees of the schools may operate. The criteria and the approved ranges are:

- Teaching - 50-65% *
- Advising - 10-20% *
- Governance - 10-20% *
- Prof. Dev. and Schol. - 10-30% *

The faculty member and Dean together will define the weighting to be applied in each faculty member's evaluation. In the interest of uniformity and equity it is important that the interpretation of the criteria be applied consistently at each level of evaluation. To facilitate this process, the attached evaluation form has been prepared to serve as a framework for faculty self-evaluations and to be used by all evaluators. The following guidelines and definitions have been developed for use with the form.

Many of the elements of this form are self-explanatory, but some may benefit from further clarification.

**Teaching**

In light of the stated mission of Western New England College, teaching is the most important single factor in faculty evaluation. The evaluation of teaching is also the most difficult of accomplishments, and should involve a variety of elements including: student evaluations as only one part of the total process. Teaching is important in terms of what the student learns as well as the structure within which the learning takes place. This form seeks to elicit information in both areas as defined below.

*These percentages are intended as guidelines for full-time teaching faculty. They may be adjusted for faculty with released time for funded research or other non-teaching activities.

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1986
Course content is an important element in effective teaching. That course content is both adequate and current is best judged by peers through a review of syllabi, various course materials, examinations, and papers prepared by the students. An appraisal of course organization, procedures, and teaching methodology can be based on information secured from these same materials. In addition, evaluators should be concerned with the following:

1) Is the faculty member regularly well prepared for class?

2) Does the faculty member demonstrate a comprehensive knowledge of the subject?

3) Does the faculty member encourage independent thought by students?

The ability to communicate course materials effectively is another important element in successful teaching. Effective communication also requires that the student be encouraged and treated with respect. Student evaluations can be valuable in judging this aspect of teaching and can also give useful insight into the level of the intellectual demands made in courses.

Accessibility refers to the availability of the faculty member keeping office hours and supportively responding to student requests. Fairness involves impartiality of grading, promptness in the return of graded work, and a non-discriminatory classroom environment. Student comments or evaluations and peer interaction may provide a basis for judgements in these areas.

Course and curriculum development deals with the faculty member's contributions in updating present courses, creating new courses, and assisting with departmental, school, or institutional curriculum studies. Materials from the self-evaluation should provide information on these issues.

Advising

All faculty members are expected to serve as academic advisors to students. In addition to evaluating this service, it is appropriate to take into account each faculty member's involvement with students outside the classroom and with student groups in co-curricular activities.

Professional Development and Scholarship

Both professional development and scholarship must be demonstrated. It will be the responsibility of the faculty member to make the case for the quality of those activities to be considered for either professional development or scholarship.
Guidelines

Evaluative Scale

The following evaluative scale should be used for all criteria:

Meritorious - good to great.
Acceptable
Unacceptable

In the area of scholarship, the earned doctorate in the discipline, or a reasonable equivalent, including non-doctoral terminal qualifications, will be considered an acceptable minimum. (In keeping with College policy, the Ph.D. or terminal degree in one's specialty shall not be considered sufficient qualification for candidacy and promotion to full professor nor shall the absence of the Ph.D. or terminal degree in one's specialty be considered the sole impediment to promotion to full professor.) Faculty members in disciplines whose professional accrediting associations require some research will be encouraged to exceed the minimum college expectations.

To qualify for tenure and promotion other than full professor, the faculty member must be judged to be meritorious in teaching and at least acceptable in each of the other three categories. To qualify for full professor, the faculty member must be judged to be meritorious in teaching and professional development/scholarship and at least acceptable in each of the other two categories. The assessment for promotion should be based on the faculty member's achievements to the time of the evaluation, with particular attention being paid to accomplishments since the last promotion.

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APPENDIX 1
WESTERN NEW ENGLAND COLLEGE

FACULTY EVALUATION - CRITERIA AND EVIDENCE

Evaluation for ______________________ Date ______________________
Person or group reporting ________________________________________

Teaching  Weight assigned _______
Course content, organization, procedures, and teaching methodology

Communication

Accessibility and Fairness

Course and curriculum development

Summary rating
Advising  
Weight assigned______% 

Number of advisees 
Availability 

Effectiveness 

Involvement with student groups 

Summary rating 

Governance/College Service  
Weight assigned______% 

Activities may include departmental, school, and college-wide service; recruiting and admissions activities; interaction with parents, alumni, and various campus constituencies; participation in and attendance at campus events and programs; and liaison with the larger community on behalf of the College. 

Summary Rating
Professional Development

Activities may include participation in professional societies and in seminars and short courses; consulting; sabbatical leave; grant proposal preparation; reading programs.

Summary rating

Scholarship

May include earned doctorate; publications related to the teaching discipline; presentation at professional meetings; research; other.

Summary rating
FACULTY EVALUATION - CRITERIA AND EVIDENCE

Though not part of the weighted criteria, the following three questions impact tenure decisions and should be addressed by all evaluators in such cases:

1) Can the candidate be expected to continue to make significant contributions to the College in the future?

2) Does the candidate fill a position which is viable for the next five years?

3) Does the candidate represent an appropriate fit for a long term appointment at the College?

Recommendation

AWB:dgc

Revised 5/21/86
Section 10 Annual Review

Every full-time faculty member will receive an annual review based upon a draft statement prepared by the faculty member of his or her achievements, accomplishments, performances, and goals, as well as both the faculty member's and the College's expectations for the next year. The statement should address those factors set forth in the form, "Faculty Evaluation - Criteria and Evidence." See Appendix 1. The review will take the form of a conference with the applicable department chair and academic dean. All three will then agree to draft a memorandum of understanding summarizing the major agreements and/or diverse viewpoints of the review. The memorandum, signed by all three parties meeting together, will be filed in the personnel files of the faculty member, maintained by the appropriate school, with a copy presented to the Chair, the President, and the faculty member. This review will take place prior to the normal date of issuance of ensuing year contracts or statements of salary conditions.
DECEMBER 31, 1993, will mark the end of mandatory retirement of tenured faculty members. Under the Age Discrimination in Employment Act, after that date colleges and universities will be permitted to terminate tenured faculty members only for just cause. It will no longer be possible to rely on mandatory-retirement rules as a convenient solution to the problem of unsatisfactory performance by tenured professors.

Beginning January 1, 1994, colleges will be able to terminate tenured faculty members only if they can show that the individuals no longer meet appropriate standards, such as competence in teaching, research, and service. In addition to incompetence, examples of just cause for termination of tenured faculty members, as determined by a number of court cases, include the following:

- Neglect of duty, such as refusing to follow the curriculum, refusing to teach scheduled classes, or refusing to develop assigned courses.
- Insubordination, including refusing to serve on faculty committees or absenting oneself from work even if a leave of absence has been denied.
- Unprofessional conduct, such as evading a colleague from a class that the colleague was assigned to teach or misrepresenting one’s academic credentials.
- Sexual misconduct, including making sexual advances in a classroom, laboratory, or similar setting.

Some people mistakenly believe that a tenure contract is an employment contract for life—everlasting job security. It is not. Rather, a tenure contract is a conditional continuing contract. That is, it continues without having to be formally renewed year after year but only so long as the individual meets the conditions of the contract, including satisfactory performance of duties. Tenure does not protect faculty members from being terminated for “cause,” such as incompetence: it protects them from being terminated for reasons related to academic freedom, such as teaching or doing research on unpopular topics.

We all know particular tenured faculty members who even after age 80 will gleefully run younger colleagues around the academic track, hardly pausing for breath and leaving limp and gasping bodies in their wake. We also know faculty members who will not be that vigorous. The task is to separate one group from the other. Before the end of mandatory retirement, colleges should set up periodic performance reviews to provide routine, consistent, honest evaluations of all faculty members’ teaching and research.

Honesty is of central importance in these evaluations. Although some institutions may already have pro forma evaluation systems, they do not help if a troublesome faculty member eventually becomes the subject of a termination proceeding and can pull out past evaluations that have rated him or her highly—or at least have never indicated any significant problems. An honest evaluation might note that a professor was not prepared for class, had not updated his or her material, spent class time on irrelevant matters, or had not adequately prepared students for more advanced work. It might say that the faculty member was uncooperative, had failed to participate adequately in departmental affairs, or had not engaged in research or scholarly activities. Such honest reviews might spur many inadequate faculty members to improve their performance; even if they did not, they would provide a clear record upon which colleagues and administrators could act.

Evaluation should not affect adversely most tenured professors. In fact, once they become accustomed to it and less annoyed by the routine of it, many faculty members may come to enjoy the opportunity to display...
their continuing prowess in their chosen fields.

Moreover, as part of the business of running educational institutions, colleges and universities already have developed evaluation processes for administrators, staff members, and non-tenured faculty members. Are administrators and professors ready for the additional work of honestly and objectively evaluating tenured faculty members to determine whether their performance meets appropriate standards? Some say this is an impossible task. In fact, it is and always has been an entirely possible task, although, rightly, a difficult one.

Evaluating teaching usually is said to be particularly difficult. Most people agree that research can be evaluated, since committees do it for tenure and promotion decisions, but many universities have avoided evaluating teaching, sometimes on the grounds that such evaluations would be more subjective. The criteria and methodology used to evaluate teaching should be agreed upon in advance, of course, but appropriate methods do exist. Some departments employ criteria such as updated course descriptions and syllabi, use of current textbooks and assigned readings, and active signs of advising, including encouraging students to participate in national professional meetings. Methods for evaluating faculty members often involve classroom visits by colleagues, reviews of written handouts, and screening of student evaluations.

Some people say that faculty members are not willing to participate in evaluations of peers that may result in terminations, but this is largely a canard. For if the faculty refuses to join in, who will do the evaluations? Administrators alone? Surely not. I have no doubt that many faculty members are as interested in assuring that their colleagues perform up to standard as are administrators, students, and parents.

After all, evaluation of professors is nothing new: non-tenured faculty members have always had their overall performance scrutinized when they are up for tenure. Institutions already use performance reviews to decide merit salary increases and promotions from associate to full professor. What is new is that an evaluation system that routinely focuses on non-tenured faculty members now must be adjusted and enlarged to include serious attention to the continuing performance of tenured professors.

Many institutions already have used faculty panels to conduct proceedings that led to the dismissal of tenured professors. During a session at a recent conference at Stetson University on law and higher education, about half of the audience of 50 to 60 people raised their hands when asked if their institution had terminated a tenured professor for cause. In the past, however, such proceedings probably have been used only in extreme cases, such as when an individual clearly was unfit to continue because of lingering illness or explicitly unacceptable conduct.

In the future, colleges and universities must establish procedures that lead to evaluations that are honest and careful enough to persuade faculty members whose performance is flagging to retire without the need for a full-blown faculty hearing. Undoubtedly, some colleges and universities already have reviewed and modified their evaluation procedures. For those that have not yet done so, the task should assume some urgency. Less than two years remain until mandatory retirement for tenured professors ends.

W hat must be done? Basic documents, including faculty contracts, faculty handbooks, and governing-board policies, must be gathered and reviewed. Basic questions must be answered: What is the job description for each faculty position? What are the qualifications for that position? What are the criteria for promotions, salary increases, and terminations? What evidence is acceptable to demonstrate that the standards have been met? Who shall participate in setting evaluation standards and procedures? Who shall participate in doing evaluations? What due-process procedures shall apply?

In setting standards and procedures for tenured faculty members, care must be taken not to end up with two sets, one for non-tenured faculty members and the other for tenured professors; having two different standards might open an institution to challenge on the grounds of age discrimination.

Colleges also must consider whether they need to provide new monetary or other inducements to encourage faculty members to retire. Numerous institutions provide for buyouts of faculty contracts, using various formulas based on actuarial projections of longevity. Some also provide benefits such as office space or secretarial support, access to libraries, medical benefits, and counseling about post-retirement employment opportunities. Colleges could also encourage aging professors to share a faculty slot with a colleague or to work part time.

If ever a situation cries out for legal advice, this is it. Administrators and faculty senates should enlist legal counsel in all aspects of the process of setting standards and procedures, including drawing up job descriptions and designing mechanisms that provide appropriate due process when terminations are contemplated. Obtaining sound legal advice and consulting with faculty leaders may help colleges avoid or limit litigation.

Should litigation occur in spite of the care taken, a careful process for designing and carrying out faculty evaluations will help a college or university demonstrate to a court that its procedures give adequate notice of shortcomings in performance and guarantee fair treatment before any decision to terminate a faculty member is made. When they are hired, all faculty members should be given full explanations of the standards and procedures that an institution will use to evaluate them throughout their careers. This should help to reassure professors that their rights, as well as their responsibilities, have been given due attention.

The entire academic community has an interest in urging faculty members to summon the courage to act against colleagues who are not performing adequately. Although better evaluation procedures may help colleges avoid a lot of messy cases, inevitably some will arise, and faculty members must live up to their obligations to students and the rest of academia to remove faculty members who are not doing their jobs.

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