

Minutes of the Faculty Council

May 29, 1969

Ballantine Hall 008

7:30 p.m.

Members Present: Deans Harvey, Yamaguchi, Bain; Professors Buehrig, Farmer, Ryder, Shiner, Solt, Wolff, Auer, Gray, Murray, Remak, R.L. Turner, R.C. Turner.

Alternates Present: Dean B.E. Carter for President Sutton; Dean Richard B. Curtis for Vice-President Merritt; Dean Robert W. Hattery for Vice-President Ryan; Dean Richard W. Young for Dean B.E. Carter; Dean Philip Peak for Dean Clark; Dean John Porter for Dean Pinnell; Dean James Belisle for Dean Endwright; Professor John V. Lombardi for Professor Neu; Professor Frank J. Zeller for Professor Breneman; Professor C.K. Lohmann for Professor Zeitlin.

Absent, No Alternate: Vice-Presidents Hartley, Snyder; Chancellor Hine; Provost Penrod; Deans Irwin, Holmquist; Professors J.E. Carter, Davidson, Hackney, Lorentzen, Manlove, Martin, Ballinger, Frye, Mahler, Taylor, White, Ferdows (Southeast), Sachs (South Bend), Sunderman (Fort Wayne)

Official Visitors: Dean Virginia Rogers; Professors E.D. Alyea, Albrecht Holschuh, William C. Perkins, Elmus R. Wicker; Messrs. David Cahill, Dean Hartley, W. Paul Helmke, Ed Moss (News Bureau)

AGENDA

1. Report of the Student Affairs Committee--"Student Conduct Code" (Professor Elmus R. Wicker) (Faculty Council Circular #92)

The meeting of the Faculty Council was called to order at 7:45 p.m. by Dean Byrum Carter, who said there would be no other business except to discuss the Student Conduct Code (Faculty Council Circular #92) as presented by the Student Affairs Committee. Dean Harvey moved that the Council dissolve into the Committee of the Whole for this discussion. Dean Young seconded the motion. The question was called for and the motion passed unanimously. Dean Carter called upon Professor Elmus Wicker, Acting Chairman of the Student Affairs Committee, to start the discussion.

Professor Wicker asked if the Council was prepared to act decisively on the Committee's recommendations even though only a bare quorum was present. Dean Carter replied that he thought the members present might be reluctant to consider themselves representative enough to vote final approval or disapproval of the proposed code, but that a discussion of the Committee's recommendations would be useful to the Council and the entire Faculty. Professor Shiner agreed, adding that he hoped the Minutes of this meeting would be distributed to those Council members who would act finally on a student conduct code later on.

Professor Wolff said that two-thirds of the Bloomington membership of the Council was present, that it would be difficult to put this matter on the Agenda of the only remaining Council meeting of the year, and that therefore he thought the Council ought to begin at least as if it were going to vote decisively on the Committee's report. Mr. Paul Helmke, President of the Student Body, agreed, saying that he hoped that this meeting of the Council would at least recommend to a later meeting certain sections of, or amendments to, the Committee's report.

Dean Young asked if the proposed code was meant to govern students on regional campuses, and if these students had participated in the discussions of the Committee. Professor Wicker said that students on regional campuses had not participated in the Committee's meetings because the Committee was appointed by the Faculty Council to prepare a code of student conduct for the Bloomington campus. It was up to the Council, he said, to decide if the code should be used on other campuses of the University.

Professor Wicker then presented the Report of the Student Affairs Committee, in the absence of its Chairman, Professor Zacharias, who had resigned to take an appointment at another University. Professor Wicker reminded the Council that the faculty members of the Student Affairs were appointed by the Faculty Council. Two years ago the Committee began to consider the formulation of the Student Bill of Rights, but that was temporarily put aside to deal with the policy of open visitation and women's hours. For the past year, the Committee had been engaged solely in the preparation of this written Student Code of Conduct. Students had been patient in this long passage through what people called the proper channels, and they had every reason to expect some kind of action from the Council this evening.

Professor Wicker defined the Student Code of Conduct as a written body of rules and regulations pertaining to the behavior of students at Indiana University, especially rules governing disciplinary procedures. Most of these regulations already existed in written form somewhere, but they had not been collected, organized, or set out in a form that could be made available easily and readily to every student. The members of the Committee believed that every student in the University was entitled to know and to have easily available all rules and regulations and procedures pertaining to his conduct while he was in the University. This availability was the fundamental reason for preparing a written body of regulations. Not only students but the American Council of Education, in a recent widely distributed report on freedom and order on the campus, had specifically called for a published code of rules and regulations. A general

order issued by a panel of four judges on the U. S. District Court of Western Missouri, while maintaining that an institution might establish appropriate standards of conduct, had observed that the notice of the standard might be written or oral, but it should preferably be written. Further, such a notice ought to contain general affirmative statements of what was expected of a student rather than purely negative statements setting out what it prohibited. Professor Wicker believed that the Code that the Committee had presented to the Council satisfied these standards. The Committee had repeatedly attempted to write a code with positive, affirmative statements rather than purely prohibitory regulations. It was fully aware of the difficulties of drafting regulations that would cover all cases to which they would presumably be applied. It did not believe the code was either unduly narrow or rigid, nor that it was legalistic. The student members had convinced the Committee that they distrusted the present mechanism for dispensing justice more than they feared an unduly narrow construction of a particular regulation. He himself interpreted student opinion to prefer rules to authorities, because rules were more just than discretionary authority. Whatever differences members of the faculty or administration had with that point of view, it was strongly felt and articulately expressed by students, and the members of the Committee thought it ought to be respected.

The Committee had consulted with members of the faculty of the School of Law and with representatives of the Dean of Students' Office. Professor Shaffer had attended all of the Committee's meetings before he stepped down as Dean of Students, and Mr. Larry Miltenberger, a representative of the Dean of Students' Office, had attended since that time. Mr. Miltenberger had prepared a short list of objections to some of the provisions of the Code, which Professor Wicker would make available to anyone interested in them. He concluded by saying that he thought the Committee had made every reasonable effort to subject the proposed Code to criticism. He then suggested that the Council begin by taking up Part VI of the Code, the sections numbered 600 which dealt with disciplinary procedures and defined what the nature of those procedures were.

Professor Richard Turner asked how the disciplinary procedures set out in the 600 sections depart significantly, if at all, from current regulations. Mr. Helmke answered that the Committee had tried to put down systematically many of the procedures which were already being used, to specify for students their choice of whether to be heard before a Judicial Board or someone from the Dean of Students' Office, and also to specify such matters as how students learned they had violated a regulation, the period in which the case ought to be heard, etc. It was difficult to define right now what had been changed from the present form because so much of the present form was ambiguous. This ambiguity had been one of the main student complaints, and had lead to suspicions that the rules had changed to meet certain situations and violations.

Professor Wicker added that one difference between the proposed Code and present procedures was perhaps suggested by Mr. Miltenberger's remarks that Sections 602 to 605 needed to be more flexible in order to speed the process and prevent those who wish to delay proceedings from doing so. Mr. Miltenberger, who Professor Wicker emphasized had been speaking only for himself and not for the Dean of Students' Office, had also objected to Section 611 because his experience was that open hearings often took on the atmosphere of a circus, because of the number of spectators.

Professor Wicker, after remarking that the proposed Code did not require open hearings but only offered students the right to choose to be so heard, went on to describe other remarkable features of the 600 Section of the Report. One

was the statement that students charged with violations ought to be provided with copies of the documents presented in judicial proceedings. One of the most controversial parts of this section was that it offered the right of appeal only to students. The Dean of Students' Office had requested that both the accused and the accuser be allowed to write an appeal, but the Committee had found no reason why the Dean of Students should be allowed to appeal a judgment if it was contrary to the original view of the Dean of Students.

Dean Yamaguchi observed that Section 625 provided for appeal first to the Faculty Council and subsequently to the Board of Trustees. He asked whether the Committee intended that the appeal be taken to the whole Council, or to a standing committee on student discipline. Professor Wicker said that in his opinion the Council could deal with an appeal in any way it wished, and that he did not think that the Committee specifically intended that the entire Council hear appeals.

Professor Holschuh added that the avenue of appeal to the Council already existed, and it was the intention of the Committee simply to call it to the attention of all students.

Dean Harvey raised the fundamental issue of whether it was wise to move toward legalization and judicialization of University discipline to the extent requested in this proposed Code. He recognized that a good many students were quite concerned about the justice that was being dispensed within the mechanism of the University disciplinary arrangement at this time, and that reasonable people could disagree about whether a code as specific as this one was likely to make the system of discipline more equitable and worthy of trust. But if the Council agreed that such a Code was desirable, then it seemed very clear indeed that the job must be very well done and must result in a system which was workable. His general criticism of the proposed Code was that it guaranteed that the system would break down in a very short time, and thus further erode the confidence of more students in the University's disciplinary procedures, and generate very large amounts of ill-will. To illustrate his predictions of the problems the proposed Code would create, he referred to Section 602, which provided that within ten days after receipt of the complaint, the hearing body should announce the date of the hearing which was to be held within twenty days of this announcement. The exact juridical status of this time requirement was not by any means entirely clear. However, the provision, ambiguous though it was, was that if the case was not heard within that time, the student might appeal. Now whether this meant that the time requirement operated much as a statute of limitations would work, so that unless the hearing was held within twenty days, the offence was no longer justiciable, was not clear. But if that was what it meant, then it seemed to him that the provision invited a backlog of cases which would clog the system. The Student Conduct Committee at the moment found itself able to dispose of two or three cases a week. It would not be uncommon for cases to be held over more than twenty days simply waiting to be heard. And if the twenty day period operated somewhat in the nature of a statute of limitations, then the University, by the Code, was barred from the imposition of whatever discipline might be appropriate under the circumstances.

Dean Harvey then remarked on Section 606, which declared that "the burden of proving the material allegations of the complaint shall be with the person bringing the charge." Earlier the Code stated that the charge might be brought by a student, an administrator, and perhaps others. Did this mean that the student complainant held the burden of serving as prosecuting attorney? Whoever brought the complaint, the prosecuting authority was, in his opinion, the University, and he was not sure what the Committee had in mind here. He found Section 608 also ambiguous in a way common in the Code. It stated that "no

student shall be punished if a University employee or agent follows procedures contrary to this code if those violations are significant to the determination of the student's guilt or innocence." Who was to determine this significance? Was this to be a major litigated issue? Again, Section 611 provided for the preparation of periodic summaries. How detailed were these to be? If they were going to be anything more than a simple summary with perhaps the student's name and a "John Doe" kind of description indicating the charge and the punishment, then this preparation would be a very substantial burden. Who would do it? What staff was the University prepared to commit to this? Section 614 provided for the preparation of a verbatim record. Did that mean that only a tape recording should be kept as he understood was done at the present time, or did it mean that a transcript should be prepared which might cost \$200 to \$300 per transcript. Section 615 required that the findings should be signed by "a majority of the members of the board which hears the case." Findings themselves were very time-consuming. In actual law practice, full-time judges found the preparation of the findings of facts so onerous that the task of preparing them was committed to private counsel, with the Court performing only the function of review to see whether or not the judge was prepared to sign. Now if findings of fact were to be prepared in a significant form, this again was going to take a very substantial expenditure of time by someone. Finally, Section 614 provided that "the University may destroy the record upon termination of the appeal process." If a case had been so serious that it had been litigated through the full adjudicatory process of the University, then there was a very good chance that this case might be taken on to civil courts for review. Was it therefore wise to authorize the University to destroy the record upon termination of intra-University appeal procedures?

Dean Harvey concluded by stating again that he shared the desire of the members of the Committee for an adjudicatory process which was understood, which had all the guarantees of due process, which was public if the student wanted it, which provided him all of the assurances that he was going to be tried and convicted on evidence which was as available to him as it was to the institution. He suggested that there were other models by which due process could be achieved. But if the Council and the University preferred this kind of detailed code, then he urged the Council to give serious thought to the devising of procedures which would work, and so persuade more students that their interests and rights could be served in the University. In that connection, Dean Harvey pointed out that to call attention to the possibility of appeal to the Council also risked engendering frustration and disappointment. Not only was the Council ill-organized to serve as a judicial body, but the appellate jurisdiction of the Board of Trustees and the Faculty Council was discretionary. If the student invoked that discretion perhaps thinking on the basis of a superficial reading of the proposed Code that he had assured rights of review, and, as was quite likely, the Council refused to review, students might very well lose confidence both in the faculty and in the Code because it appeared to promise an appeal that in substance it could not assure.

Professor Wicker replied that the Committee was fully aware of what its recommendations required with respect to time consumed, staff, resources of the University, and all the rest. The Committee had tried to organize a system that would provide a just dispensation of discipline, and it left it to the University and to the Council to decide whether or not the system was too expensive. In his opinion, Dean Harvey had exaggerated the unworkable quality of the Code. People in the Dean of Students' Office had said that they could live with the Code. It was doubtful that many students would use all the procedures--at no time would all students demand open hearings, or copies of transcripts of all the proceedings. He could agree with Dean Harvey that there were alternatives. The Committee had presented one alternative and it was up to the Council to decide whether it

wanted to accept, amend, or refuse this proposed Code. In his judgment, the procedures would work if members of the faculty were as willing to participate in them as the administrators in the Dean of Students' Office were to administer them.

Dean Harvey said that one way to solve the problems of a backlog was to create multiple tribunals. As he read the proposal, it provided only for a single committee, the student-faculty Conduct Committee, a group of twelve people who must operate with a quorum of seven. He suggested that hearing officers be appointed to provide several tribunals in which cases could be heard. Professor Wicker said that the Code could be amended to provide for such officers.

Professor Robert Turner said that he thought it a mistake to ask faculty members to perform tasks in which professionally trained officers of the administration were supposed to specialize. Mr. Helmke brought the discussion back to the proposed Code by emphasizing that the Student Conduct Committee is the end of the appeal route, excluding the Council and the Trustees, and that there were other tribunals which would be used before cases came to it. The Student Conduct Committee was not used as often as everyone seemed to imagine. When there was a mass violation or when there were mass charges brought against students, say, involved in a demonstration, they did not go directly to the Student Conduct Committee but appeared first before other committees. Violations in the Residence Halls were handled first by the Residence Hall Judicial Board and then by the All-Residence Halls Judicial Board. Other violations were handled by the All-University Judicial Board. The Student Conduct Committee was the end and not the start of the appeal route. The Student Conduct Committee had met only once or twice in the entire first semester of this year. It had met more often as cases worked their way up to it. There was a slight but not unbearable backlog of cases.

Most of Dean Harvey's objections, Mr. Helmke continued, raised a central question of how much discretion the Code allowed. Some of the statements Dean Harvey found ambiguous--for example, the statement about destroying the record of a hearing, or the suggestion that judicial decisions include findings--were worded loosely so that the Dean of Students' Office or the student judicial boards would choose whether or not to keep the record or include findings in the decision.

Professor Gray asked Mr. Helmke how many students now chose to appear before the Student Judicial Board rather than before someone in the Division of Student Personnel. Mr. Helmke replied that most students chose to go to the Division of Student Personnel. Very few students went all the way through the judicial procedures now available. But the Committee which prepared the proposed Code was concerned with the feeling of those students who did take their cases to the Division of Student Personnel or the Student Judicial Board, that the procedures were not clear and fair, even in lower judicial bodies. The Code proposed suggested procedures which would reassure students that their cases would not be handled or decided arbitrarily or carelessly.

Professor Gray then asked whether the proposed Code could be amended to permit the Student Conduct Committee to divide itself into sub-committees of three or four people in order to hear appeals and so prevent the chance of the system clogging up, as Dean Harvey predicted. Mr. Helmke and Professor Wicker agreed that Section 616 could be so amended, and Mr. Helmke added that this provision was not included in the present draft of the Code because at the present time the number of appeals to the Student Conduct Committee did not justify such a provision.

Professor Robert Turner said that Professor Hewitt, the present Chairman of the Student Conduct Committee, had told him that there now was a heavy schedule of appeals to the Committee, and the process already had been so judicialized that even a clear case required several hours to hear. And now the proposed Code offered to make the process yet more judicial. Professor Wicker replied that some of the appeals now before the Student Conduct Committee were there because students thought that the procedure in lower bodies had been faulty. That was why the proposed Code was so specific about procedures. He himself would prefer to trust to discretion rather than to codified rules. The fact that more students chose to be heard by someone in the Dean of Students Office rather than the Student Judicial Board indicated that some students did choose to trust the discretion of the Dean. But others did not, and, while he himself had not been able to persuade them to his opinion, they had persuaded him. It was easy to construct a code if one did not pay any attention to the views of the people who would live under it. There were six students on the Committee which had prepared the Code, and the present version reflected both their opinions and the judgment of other members of the Committee that those opinions had weight and ought to be accommodated.

Dean Rogers said that it was true that the present procedures were a conglomerate of old regulations and later actions of the Council. On December 19, 1967, the Council quite specifically relieved the Dean of Students Office of great discretion by giving it the option of notifying every student in writing of the charges against him and of his choice of being heard either by representatives of the Division of Student Personnel or directly by the Student Conduct Committee, which heard not only appeals but sometimes the case in the first instance. There had been this year some 350 cases of disciplinary action. Fewer than fifty of these had been handled by Residence Halls judicial boards, and only eleven had been handled by the Student Conduct Committee. Waiting patiently in line for this latter committee were some fifteen cases. Now it was true that most of these cases had come up in the latter part of this semester and some even during exam week. It was also true that it was the students on the Committee who were unavailable for hearings at this time, not the faculty. The system would, as Dean Harvey had pointed out, break down periodically. Dean Rogers also pointed out that there was no provision in the proposed Code for an All-University Judicial Board, which could now hear appeals and cases. She concluded by saying that if the University moved towards adversary proceedings in which more and more cases were handled as in a court of law, her office would then have to employ someone properly equipped to handle such proceedings. Her office this year had been confronted by students who did employ counsel, which was their privilege in a hearing, and she thought that without any question her office would have to have counsel too. One other result of the loss of discretion was that more and more charges were being made through civil and criminal courts, when formerly the Dean and the student charged would sit down and work out a solution. The Division of Student Personnel had been asked if it could live with the proposed Code. It could, with a counsel at its elbow.

Professor Wolff asked Dean Harvey if his objections to specific parts of the proposed Code were made with a view toward their amendment, or as a way to show that no code which tried to be so specific would be satisfactory. Dean Harvey replied that he thought a very careful reworking could remove a number of the defects he had pointed out. The broad policy matter of whether this kind of student conduct code was desirable ought not to be debated if the Council had charged the Student Affairs Committee with writing the kind of code now before the Council. If the Council did not so charge the Committee, he would argue against this degree of legalization. Further, he thought it unwise to design an arrangement the workability of which was predicated upon a statistical idea of how many cases there were going to be. He also noted that according to Section 801 should its procedures

break down, the Code could not be amended by the Faculty Council or the Board of Trustees, because amendments could be initiated only by the students. Now whether the Council and the Trustees could abrogate their legislative competence to that extent was also debatable.

Professor Shiner agreed that it was very debatable and in his estimation unsafe to adopt a code so closely judicial. The Code seemed to put all the burdens of a public court on the Student Conduct Committee and give it none of the authority or power, for example, the authority to subpoena witnesses. He thought the Student Conduct Committee would have a poor time behaving like a court, when all the people with whom it was dealing had all of the recourses available to people charged in public courts while it had none of the powers of a public court.

Professor Wicker said that, having worked two years to prepare a Student Conduct Code and having brought it in, he found it dismaying to hear Council members debate whether or not it would be wise to have a Student Conduct Code. He was indeed willing to debate that issue, but, in presenting the Code to the Council, he had thought that debate might dwell on its relative merits as such, taking for granted that the Council might be of the same mind today as it was a year ago and that the preparation of a code had been a meaningful activity for the Committee to perform. The Committee had diligently considered all the issues which were now being rehearsed. Whenever a committee reported to the Council, it seemed to him, the Council insisted on acting out all the arguments it had been the function of the committee to prevent the Council's wasting time on. His earlier reference to the statement of the judges of a district Federal court that regulations and procedures governing student conduct ought to be written down had been an argument for this Code. The fact that many of its provisions were now being exercised in the University was another. The Committee thought that procedures and rules which already existed ought to be put down in one place, and amended and amplified where necessary. To argue against this kind of specificity was to call into question the existing judicial procedures of the University and this method of publicizing them.

Professor Holschuh also emphasized that the purpose of writing the Code was not so much to establish a judiciary procedure as to inform the students of existing procedures. Now, obviously, there would be some provisions in this Code that would have to be amended. But the question ought to be how to amend them, and not whether this kind of code ought to be written at all. Professor Alyea added that the Code ought to be written so that students could understand it. The Code was not written so that legalistically minded students could exploit it--they already could protect themselves--but so that any student who got in trouble would know what would happen to him and how he might in turn proceed.

Dean Young said that the proposed Code did not describe the current existing system. The 600 Section in particular did not describe the presently operating judicial procedures of the University.

Professor Murray asked what the charge to the Committee had been. Dean Young, who was one of the original members of the Committee that had been established three years ago, answered that it was not charged with the establishment of a Student Code of Conduct.

Professor Wolff said that whatever the charge given to the Committee, its members clearly thought that procedures ought to be codified, and he thought the Council ought to acknowledge the force of this judgment, put aside the question of whether a code was a good idea, and go ahead with the practical question of how to deal with this particular document.

Professor Shiner said that he thought it a mistake to assume that because a committee had been asked to prepare a code, that it must necessarily prepare a legalistic one. After the Committee on Picketing and Demonstrating had brought its report to the Council two years ago, it had recommended that some committee should draw up a student code. The Chairman of the Student Affairs Committee had accepted the task. Professor Shiner agreed with the Committee that there ought to be a code, but he disagreed with some of the excessively legalistic aspects of the one which had been drawn up. He did not think that the Council was obligated to accept the judgment of the members of the Committee that such a carefully particularized code was necessary.

Professor Wicker said that he did not know what Professor Shiner and others meant by "legalistic." The Code stated that this was the procedure that should be followed in the event the student performed a certain act. Any code of conduct was going to have that kind of moral imperative attached to it. The only difference of opinion was about how widely or how narrowly each of these regulations should be drawn. Should there be a regulation for every conceivable source of misconduct? The Committee clearly disagreed with that, and he did not think it was proper to characterize the document as one that tended to prescribe rules against all possible kinds of misconduct.

Professor Ryder said that he had misgivings of his own about a highly specific and codified system as opposed to a discretionary system. But one way to settle the questions would be try the kind of code before the Council, perhaps amending it in certain places. One provision which to his mind was disabling was Section 801, because it offered no opportunity except through one avenue, namely, the Student Senate, to profit from experience with the Code.

Professor Remak said that he too had misgivings about a specific code, but that he thought the Council ought to attend to the reasons why the students particularly wanted such a code. Was it not because certain events in the last year or two had created a kind of suspicion, and the students were simply not ready to trust the discretionary power of goodwill. They now apparently felt more comfortable when procedures were spelled out, and he thought that the Council ought to accept this wish and try to make the proposed Code more practicable, instead of rejecting it and asking for another kind of document.

Mr. Helmke said that the central question of the discussion so far was the matter of discretion versus rules. The proposed Code did provide that a student could choose to place himself within the discretion of the Dean of Students, or to work through the explicitly stated procedures of the Student Judicial Board. One of the reasons the Student Conduct Committee had to spend so much time on deciding about the equity of judicial procedures was that procedures were not set down, and did differ from one hearing body to another. It was very important now for the University to establish a system which could handle student discipline, and which students knew about, understood, and trusted. That was why Section 801 was written as it was. Students wanted something done, and Section 801 seemed to provide the quickest and surest way for change in the Code to be instituted.

Dean Carter said that two different items had been running through the discussion, the general question as to whether a particularized code was desirable, and the more specific issue of how to amend the proposed Code to meet objections raised to certain of its sections. He suggested that the Council discuss the first issue for thirty minutes, and then decide how it wished to proceed with the recommendations of the Student Affairs Committee.

Professor Wicker called attention to some of the other sections of the proposed Code, especially Part II, which he said in effect was a Student Bill of Rights and as such positive, affirmative, and less legalistic than the sections so far discussed.

Dean Harvey asked whether the provisions of Part II were conceived by the Committee to be juridical or merely hortatory platitudes. Could these provisions be used in litigation for purposes of establishing claims and defenses, or was this merely language to provide a kind of general philosophical framework for later sections? Professor Wicker replied that Section II was based on the statement of student rights prepared by the AAUP, and that the Committee did regard its provisions as juridical in the sense that Dean Harvey used the word. Did this mean, Dean Harvey asked, that, for example, someone could litigate a defense on the ground that the regulation did not effectuate the best possible reconciliation of the principles of freedom and necessary order? Further, could the University in fact guarantee freedom to publish and distribute any material at any time and place, so long as University activities were not disrupted?

Professor Wicker replied that the Committee did not intend this statement to protect students who violated the laws of the land concerning the publication and distribution of, say, pornographic material. Mr. Helmke noted that in Section 208 these rights were restricted to "within the limits of applicable laws and regulations." Dean Carter returned to the question raised by Dean Harvey: if these provisions--for example, that specifying the use of Dunn Meadow--were intended to be used in litigation, then they had to be specific, but if they were not, then they could be, as some of them were, general statements of rights and responsibilities. Mr. Helmke said that he thought Section II was intended to set out basis rights and responsibilities of students, and not rules that could be cited, say, when the Division of Student Personnel disciplined a student. If someone wanted to cite one of these provisions in a hearing, it would be the decision of the hearing body as to whether it was applicable. Suppose someone were charged with a violation of one of the rules set out in the 300 section. He might argue to the Regulations Review Board, established in Part VII of the proposed Code, that this regulation compromised the rights assured in Section II. The statements in Section II were statements of rights and responsibilities, and not statements of rules.

Professor Farmer said that the Council had only two options: to accept or reject the entire Code. If the proposed Code was rejected, then the University was stuck with the current jumble of rules and regulations that had been piled up at different times. If the Code was accepted, then certainly Section VIII ought to be changed so that the faculty and the Board could suggest amendments. But unless the Council decided now to amend and accept the Code before it, the present system of regulations would necessarily carry over until September, for there was no time left in this semester to devise a new code or massively to amend this one.

Professor Wicker said that many students thought the present procedures did deprive them of what they regarded as their rights. The questions of what were their rights and whether they had been disregarded were legitimate questions. But he was trying to impress on the Council that many students were deeply dissatisfied with existing regulations. To debate the question of whether their rights had really been infringed by the present system would not go to meet that dissatisfaction.

Professor Holschuh said that the proposed Code could be amended to meet the objections which had been made this evening. For example, to meet Dean Harvey's

objection to Section 206, the phrase "provided that they do not disrupt any University activity or violate any public law" could be added. To meet Professor Ryder's objection to Part VIII, the provision for amendments could be changed to permit the Student Senate, Faculty Council, or the Board of Trustees to initiate them. Dean Carter added that perhaps the Council could deal with the proposed Code by inviting members of the Council to provide in writing to the Student Affairs Committee statements recommending modifications of each of the particular sections.

Dean Peak pointed out a difficulty which might arise in Section 204, which provided that records be kept separately. This provision might mean that the fact that Mr. Helmke served as President of the Student Body would not appear on one of the records which is used by one of the University's placement services. Dean Peak suggested that this provision be amended by making sure that student records were available only to authorized persons and then by collecting all relevant information in a single record.

Professor Ryder also proposed two amendments, the first to Section 800: "Amendments to this code may be initiated by the Student Senate or the Faculty Council;" and the second to Section 801: "Amendments to this Code must be submitted for approval by the Student Senate, the Faculty Council, and the Board of Trustees. The majority vote in each of the three bodies suffices for approval of the amendment; if any two approve and the other one does not, then the amendment may be re-introduced and will be carried by a two-thirds majority in two of the bodies, one of which however must be the Board of Trustees." The latter amendment, Professor Ryder argued, preserved the necessary final authority of the Board of Trustees, and the first amendment allowed each of the elements of the University concerned with student conduct to profit from experience with this Code and to initiate amendments. Professor Farmer seconded both amendments.

Professor Wicker said that he found it interesting that the Faculty Council could not conceive of the students being solely responsible for their own behavior and code of conduct in this University. He himself did not find that idea easy to accept, but the proposed Student Code of Conduct put the question very plainly: What right did a faculty member have to dictate a code of conduct to a student? Students thought that they should be solely responsible for their behavior, and that was why Sections 800 and 801 had been written as they had.

Dean Carter said that he was not disturbed or surprised that students wanted to establish a code for themselves. But some of the provisions of the Code established obligations on the faculty about its own way of life, for example, if there was a substantial increase in the number of cases which went to the Student Conduct Committee, there must also be a substantial increase in the amount of faculty time given to this Committee. Dean Young added that the provisions in Sections 303 and 304 on cheating and plagiarism also affected faculty as well as students. Professor Ryder said that, whatever one might think of the complicated scheme he proposed as an amendment to Section 801, it seemed clear to him that the simple amendment to Section 800 was necessary so that the faculty, through the Faculty Council, could change provisions which might very well affect it.

Professor Wolff said that he thought Professor Wicker's point was well-taken: we were in a sort of transitional phase in which faculty and administrators did gradually find themselves with less and less responsibility and involvement, and students with more and more responsibility and involvement in these matters. In this transitional moment, he thought it perfectly proper that the Council should consider an amendment which would enable the faculty to initiate changes in a

student conduct code. But the point ought not to be lost sight of that the proposed Code did make one point of view about student responsibility very clear, and even if the Council was not now ready to go that far, it ought to recognize that it was amending a clearly thought through point of view, and not a careless accident. If, he said, the Council indeed did wish to amend this Code, it would keep it alive. The other possibility was to vote to reject it. He thought that the Council ought either to reject the proposed Code, or begin talking about how to improve it.

Dean Harvey said that he was ready to acknowledge enormous ranges of student responsibility for the regulation of student life, if by that was meant that the University abrogated its traditional in loco parentis responsibility. But it seemed to him anomalous for the Student Body to claim the only significant legislative authority with respect to conduct which went essentially to the educational process, such as cheating and plagiarism, or the management of physical facilities and traffic. If the faculty now had a responsibility in these matters, he did not see how it could exhaust that responsibility in one legislative act. Dean Harvey then went on to clarify what he meant by legalism. One kind of regulation was simply to lay down standards, as in the discussion of hearing procedures in the AAUP statement on Student Rights and Freedoms. Another kind of regulation was the setting out of quite detailed rules. The useful distinction here was between a standard and a rule. His objection was the second kind of legalism in that it unduly rigidified the system. For example, rather than the specific requirement of a hearing within twenty days, he would prefer a standard which said that a hearing would be held with reasonable dispatch, or something of that kind. But, even putting aside his objection to the degree of specificity in the proposed Code, his objection to that kind of legalism, he was troubled by legalism badly done. To reply to Professor Wolff's point, even if he were persuaded that a particularized code was proper, he would vote to reject this Code because its defects were so pervasive that it could not be satisfactorily amended in the time available to this year's Council.

Professor Farmer asked Mr. Helmke what he thought of Professor Ryder's amendment permitting the Faculty Council and the Board of Trustees to amend the Code. Mr. Helmke said that he preferred Section 800 as it was now written, but that he also thought that students would accept Professor Ryder's amendment.

Professor Ryder then revised his amendment to Section 800 to read "AMENDMENTS TO THIS CODE MAY BE INITIATED BY THE STUDENT SENATE OR THE FACULTY COUNCIL." Professor Farmer, who had seconded Professor Ryder's original amendment, agreed to the revision. Professor Shiner asked whether it was not true that legally the faculty was responsible for student conduct. Mr. Helmke replied that legal opinion sought by Student Government stated that in State law the faculty was given the power over student conduct, and that this delegated power could not again be sub-delegated.

Professor Shiner said that in view of that opinion it would be illegal for the faculty, through the Council, to divest itself of further responsibility for student conduct by approving Section 800 as it was proposed. Professor Auer cited the Faculty Handbook in Article IV, Section 16, which stated that the Faculty had legislative authority with regard to student conduct and discipline, and he also cited Article V, which stated that the Faculty Council could act in all matters appropriate for faculty action. On page 9 of the Handbook, Professor Auer continued, the faculty was ascribed the statutory power to enforce regulations adopted by the Trustees. That power might be delegated to University officers, and to the Faculty Council.

Professor Murray raised again the general question of whether committees which reported to the Council were expected to present conclusions and recommendations for the Council to accept or reject, or whether they were to try to summarize the information and arguments which lead to their recommendations. Professor Richard Turner agreed with the implications of Professor Murray's remarks. He too would like to have evidence and hear arguments that, for example, the approval of the proposed Student Bill of Rights furthered the education of students.

Professor Wicker replied that he thought the question was both serious and difficult. What was the evidence, for example, to support the recommendation that disciplinary hearings should be held within twenty days, as opposed to a provision which said only that hearings should be held within a reasonable period of time. The question was ethical rather than empirical. The reason for the recommendation was that students mistrusted the discretionary authority given by the second formulation to the Dean of Students. The question did not concern evidence. It concerned only whether the Council was going to pay any attention to what students regarded as just. The members of the Council might think that they knew what was just more clearly than the students did, but such a decision seemed to him to be imposing views on the students in a realm where they were more consistently and deeply affected than the faculty would ever be.

The question on Professor Ryder's proposed amendment to Section 800 of the proposed Code was called for, and passed unanimously.

Professor Murray returned to his desire to be better informed before he approved or disapproved the Committee's recommendations. How did the Committee know that students had been treated unjustly in the current disciplinary procedures, and how many had been unjustly treated? Mr. Helmke said that the Committee had not conducted a full investigation. Students on and off the Committee thought that the discretion given in the present system had been and could be used against students. So they chose to draw up a Code that enabled students to submit themselves to discretion if they wished, or to trust to clearly specified procedures. If the Council wished the Committee to collect evidence that on a certain day a certain procedure or student had been badly used, the Committee could do that. Its premise was rather that there were problems, that at least allegations had been made that the present system was inadequate, and from there the Committee had tried to devise a better system.

Professor Gray said that one reason for a code like the one before the Council was that apparently the procedures and rules of student discipline were not now set out in one document. This proposed Code was a place to start to prepare such a document. It could perhaps be made more general, but he took very seriously the argument that students mistrusted general statements that others had discretion to interpret. He thought that, given the need for some document with all the rules set out, and given the mistrust by students of a set of general statements, the Council ought to work on the proposal before it and try to make it more consistent and perhaps less uncomfortable in its particularity.

Professor Shiner recalled that, since the regulations regarding student demonstrations had been made less specific, demonstrations had been more orderly. He would advance that fact as an argument that specific regulations were not as good as general ones.

Professor Buehrig moved: first, that the Faculty Council adopt in principle the proposed Student Code; second, that over the summer, a committee of three consisting of a student, a faculty member of the existing Student Affairs Committee,

and a member of the Council, go over the Code suggesting possible changes; and third, that members of the Council submit in writing proposed changes in the Code for the consideration of this committee of three. Professor Farmer seconded the motion.

In response to a question from Dean Carter, Professor Buehrig added that the committee of three was to be appointed by the Chairman of the Faculty Council, except that the student member was to be appointed by the President of the Student Body. In response to a question by Professor Murray, Professor Buehrig said that the charge to the committee would be to go over the proposed Code and make such alterations as it saw fit on the basis of written alterations submitted to it by members of the Council and by the initiating committee itself. Professor Murray asked what was meant by "accept in principle?" Professor Buehrig replied that he meant that the Council accepted the idea that there should be a Student Conduct Code, and it should have a fairly high degree of specificity.

Professor Wolff asked if Professor Buehrig would accept a change in his motion so that it would read that the Council received the report without commitment, but with a clear view to amending it so that it could be endorsed and put into effect. Professor Buehrig accepted this change.

Dean Harvey asked how this amended version differed from simply referring the report back to the Committee, or to another committee. Professor Peak said, and Professor Wolff agreed, that the change tried to avoid dividing the Council on the question of what "accept in principle" meant, while it did preserve the report for further amendment.

Professor Farmer, who seconded Professor Buehrig's first motion, refused to accept the change proposed by Professor Wolff, and asked for a vote on the original motion.

Dean Harvey said that if "accept in principle" meant that there ought to be a comprehensive statement about the rules and procedures of student discipline available to students, then he agreed that the Council ought to commit itself to the preparation of such a statement. But if "accept in principle" meant that the Code before the Council ought to be the frame on which such a document was strung, then he found himself sufficiently unsure about its adequacy to vote against Professor Buehrig's motion.

Professor Holschuh asked whether endorsing certain sections in Part II which set out the principles on which later provisions are based would specify what the motion meant by "accept in principle." Professor Buehrig said that his motion meant more than such a partial endorsement. He meant that the Council would approve the idea of a code quite specific in its provisions.

Professor Wicker said that in his view, a vote for the motion would reject Dean Harvey's view that a specific code was not the way to proceed. Such a vote would decide one of the central questions of the discussion, whether a general statement of principles or a more specific set of provisions was preferable. The vote, in short, was to accept or reject the Committee's notion of how a student conduct code ought to be written. Dean Harvey said that he could not accept that his remarks could be translated into an objection to a Code of Student Conduct which would notify students easily and conveniently as to what the scheme of University discipline was. He thought that this end could be achieved by the use of more standards and fewer specific rules. But if the vote on Professor Buehrig's motion was taken to be a vote on the question of whether or not this particular Code with minor drafting changes could meet the objections he had expressed, then he would vote against the motion.

Professor Richard Turner said that some of the proposed Code seemed to be very general, and other parts quite specific. He thought that the Council ought to make it clear to anybody who attempted to revise the Code whether he should go in one direction or the other. Professor Alyea said that one reason the proposed Code was often specific was that the Committee wanted to make available to students some specific information about matters like the check list. Professor Ryder said that he would vote for Professor Buehrig's motion because he thought most of the changes would go to make the Code more general and discretionary, such as adding the phrase "or violating any public law" to Section 206. Professor Buehrig asked Dean Harvey whether it really was possible to speak of standards in relation to disciplinary procedures. One could speak of standards in connection with the Student Bill of Rights, but when it came to disciplinary procedures, one really could not speak of standards, one had to specify a procedure. Dean Harvey said that he would offer the statement on disciplinary procedures in the AAUP Joint Statement on Rights and Freedoms of Students as a model of a statement formulated in terms of standards.

Dean Carter asked Professor Buehrig to read the first part of his motion again: That the Faculty Council accept in principle the Student Code of Conduct which had been proposed by the Student Affairs Committee.

The question was called for on the first part of the motion. The vote was tied, and the motion failed for want of a majority.

<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>
Zeller for Breneman	Auer	Curtis for Merritt
Buehrig	Bain	Hattery for Ryan
Farmer	Young for Carter	
Gray	Peak for Clark	
Lombardi for Neu	Belisle for Endwright	
Remak	Harvey	
Ryder	Murray	
Solt	Porter for Pinnell	
Wolff	Shiner	
Yamaguchi	R.L. Turner	
Lohmann for Zeitlin	R.C. Turner	

Professor Buehrig then read the second part of his motion: That a committee of three be named, to consist of a student designated by the President of the Student Body; a faculty member of the existing Student Affairs Committee to be designated by the Chairman of the Faculty Council; and a member of the Faculty Council to be designated by the Chairman of the Council, to consider possible revisions of the proposed Code.

Professor Richard Turner said that he thought the motion improperly committed next year's Council to a certain kind of Code. Professor Gray said that he thought the motion rather protected next year's Council from this kind of debate, because it would receive a Code which would probably be less specific than this one if the revising committee attended to the Minutes of this meeting, and which would therefore tend to meet objections which had been raised here. Professor Zeller said that he did not think the evening's discussion sufficiently clear to instruct the committee in how to revise the Code. The question was called, and the second part of Professor Buehrig's motion failed, thirteen votes to eleven.

Aye

Bain
 Buehrig
 Belisle for Endwright
 Farmer
 Gray
 Curtis for Merritt
 Hattery for Ryan
 Ryder
 R.C. Turner
 Wolff
 Lohmann for Zeitlin

Nay

Auer
 Zeller for Breneman
 Young for B.E. Carter
 Peak for Clark
 Harvey
 Murray
 Lombardi for Neu
 Porter for Pinnell
 Remak
 Shiner
 Solt
 R.L. Turner
 Yamaguchi

Dean Harvey asked about the status next fall of the Student Affairs Committee. Professor Wicker said that the Council had been confused about this Committee, mostly because it was a Council committee but numbered students, appointed by the Student Body President, among its membership. Professor Shiner said that the Council did not set up a Standing Committee on Student Affairs because of the existence of the Student Affairs Committee. Such a standing committee was now provided for, but no members had been named to it. Professor Wicker read from the Minutes of January 7, 1969, page 17: "Professor Ryder, as Chairman of the Nominating Committee, asked for a ruling on the composition of the Standing Committee on Student Affairs. It was agreed that the present Student Affairs Committee would continue until the fall, by which time a determination on composition would be made." Dean Carter interpreted this statement to mean that this Committee was a viable committee through the summer.

Professor Ryder said that he hoped someone could work on a Student Conduct Code during the summer, trying to revise the five or six pages of the proposed Code which had been disputed so that they become less particular. Professor Wicker said that students were going to be very disappointed in any event that the Council did not act on a proposal which had been worked on for two years. Dean Carter remarked that consideration of the Code had been postponed because of the events of the spring, and that it was not really reasonable to expect that the Council could act on such an important matter in one special session called at the very end of the year. Dean Harvey agreed, saying that the adoption of a student code of conduct required full deliberation by the Council and the Board of Trustees, and one could not be completed by the start of the fall semester. He was still troubled by the fact that students were essentially in the dark as to what the currently operative rules and regulations and procedures might be. One interim step the Council might take would be to request the Division of Student Personnel, perhaps with some cooperation from the University counsel or members of the School of Law who were going to be here in the summer, to prepare a simple and coherent statement of the currently operative rules. He moved that the Council request the Dean of Students to prepare such a document. He also moved that the Council approve the preparation of a Code of Student Conduct with sufficient specificity--formulated by standards rather than rules--to apprise all students of the substantive and procedural aspects of the University's disciplinary system. Dean Young seconded the motion.

Mr. Dean Hartley, a student member of the Student Affairs Committee, objected that the rules now governing student conduct were in such a mess that codifying them would not help and would only make apparent the enormous contradictions that

now exist in enforcing rules. He did not ask that the proposed Code be accepted wholesale. But if it was to be revised, whoever revised it ought to listen to the tapes of the Committee's discussions (all of which were recorded) to learn the errors and contradictions each provision of the Code was framed to try to redress. If all that happened as a result of this evening's discussion was that the old rules were collected and printed, students would be disappointed simply to be given rules they might have accepted in 1949 but would not accept now.

Dean Harvey said that if the rules were to be reformed, the most useful first step would be for the Council to have the present rules coherently stated so that their inadequacies and the benefits of their revision were both apparent.

Dean Rogers said that until this year each student had been given a published document of rules and regulations and disciplinary procedures. Her office had been as unhappy as the students had been during this year of waiting for a new code to be spelled out. The Council did in fact adopt the existing regulations on December 19, 1967, and gave the Division of Student Personnel the authority to proceed with those regulations. Of course, they had been changed by the Council or the Board of Trustees, and such revised regulations had superseded earlier ones. Unless students and faculty soon proposed a new code to the Board, it would surely propose one of its own, and do for the faculty and students what they apparently were not doing for themselves.

Dean Curtis said that if the Council had been given a description of present regulations, it could have discussed this report more efficiently. Further, he thought that any revision ought to distinguish those parts which were purely student affairs from those which it was clear that the faculty or administration had a stake in, such as plagiarism or parking facilities. Finally, the revised Code ought to provide that other elements in the University had a voice in formulating and changing parts of the Student Code.

Professor Ryder asked if it were possible to separate Part II--the section on student rights and responsibilities--from Part III, and move that the latter section be revised over the summer. The codification of procedures seemed to him to be less at issue than the question of whether the statements of Part II were hortatory or juridical.

Professor Murray asked whether the Student Senate had acted on the proposed Code. Mr. Hartley said that the Senate had not received this draft of the Code yet, but that it would be endorsed by the Summer Senate and passed next year. He did not question that students wanted certain guarantees of personal rights and responsibilities, a clarification of cheating and plagiarism, and a clarification of procedures, especially the judicial power of appeal. They also wanted, and he could not stress this enough, an end to unofficial or official censorship in any form by any University agency or organization upon activities like films and programs. There were other wishes and needs, but those he had named were among those that students in many different forums had expressed most frequently. Students wanted clarification of the rules under which they were to live, and a statement of their rights and responsibilities in the University.

Professor Lohmann returned to the point Professor Ryder had made, and had advanced some time earlier, that perhaps there were more objections to Part II of the Code, because of the difficulty in sorting out whether these statements were standards or rules to be used in litigation. He suggested that perhaps the Council could charge a revising committee with the task of rewriting Part II, with a view toward making it less specific. Then the Council could tonight perhaps approve Part III.

Dean Carter said that he understood the present motion as requesting only a codification of existing rules and procedures. Professor Buehrig asked Dean Rogers whether such a request was practicable. Dean Rogers said that it was, but that the codification of present rules and procedures would not include the kind of philosophical statement of rights and responsibilities that the students wanted. Professor Gray said that, in addition to the codification of present regulations, Dean Harvey's motion provided for the preparation of a more general statement of standards by which the rules and procedures of student discipline would be governed. He thought that it would also be well to prepare a revision of the Code now proposed, so that next fall the Council would have before it a description of the present system, and two alternatives to it, one a Code formulated by standards and the other a more particularized Code. Dean Carter said that he preferred to put only the first part of Dean Harvey's motion to a vote: THAT A STATEMENT OF EXISTING RULES AND PROCEDURES GOVERNING STUDENT CONDUCT BE PREPARED AND MADE AVAILABLE TO STUDENTS. The question was called for, and the motion passed, nineteen votes in favor to four opposed.

Professor Gray then moved that THE COUNCIL REQUEST THE AGENDA COMMITTEE TO NAME A SMALL COMMITTEE WHICH WOULD PREPARE BOTH A REVISION OF THE PROPOSED CODE AND A MORE GENERAL KIND OF CODE SO THAT THE COUNCIL NEXT FALL COULD CONSIDER THE KIND OF STUDENT CODE IT WANTED. Professor Buehrig said that he had been about to suggest the same thing, that two documents be prepared, and he seconded Professor Gray's motion.

Professor Wicker said that he wanted to make it clear that the Student Affairs Committee had presented its report. Its members had already considered and rejected the kind of code that Dean Harvey had been advocating, and he at least would not be willing to help prepare such a document. The Council had rejected the Report of the Student Affairs Committee, and he thought that no motions now or work over the summer ought to be allowed to disguise that uncomfortable fact.

Professor Shiner remarked that the Student Affairs Committee had accepted the cogency of at least a few objections, and therefore it seemed reasonable that the code which they had prepared could be improved even by their own comments. Dean Carter said that he was not sure that the Council's action was as clear as Professor Wicker claimed. Some members wanted a more general statement; others approved the kind of code the Committee had prepared, but were uncertain about the substance or language of certain provisions in it. The question was called for on Professor Gray's motion, and it was passed unanimously.

The Council then rose from the Committee of the Whole, and Professor Shiner moved that THE MOTIONS APPROVED DURING THE MEETING OF THE COMMITTEE OF THE WHOLE BE APPROVED BY THE FACULTY COUNCIL. His motion was seconded and passed unanimously.

The meeting was adjourned at 11:30 p.m.

Respectfully submitted
Donald Gray, Acting Secretary