I am inclined to support continuation of the grievance procedure based on the information I have received so far.

For me, the goal is to promote the most appropriate decisions given the facts and the rules regardless of whether the decision favors the grievant or the respondent. I don't think that it is necessarily in the interest of the faculty as a whole for grievance decisions to favor faculty grievants. Some faculty have unreasonable expectations that, if forced upon administrators, would undermine the interests of their units, including other faculty in their units. As a representative of faculty interests, I am concerned about all faculty, including but not limited to faculty grievants.

I understand that under the prior system, the hearing panels (or whatever they were called) apparently frequently found for the grievants, only to have the recommendations ignored by the Chancellor. If that is a frequent occurrence, it can increase polarization and impede constructive relationships. Part of the rationale for having the current system with an administrator on the GRP is to increase the likelihood that the Chancellor would follow its recommendations.

I am concerned that all the decisions in the current system have gone against the grievants, though it is not clear that the decisions were incorrect or that this reflects fundamental flaws in the system. There are several reasons why the record to date may not reflect problems with the procedure. First, this is a very small set of cases on which to base an evaluation. Second, all the decisions were unanimous. Unless the faculty on the panel are weak, unassertive, and of questionable integrity, the results would presumably have been the same without the administrator. Indeed, given the 2-1 composition of the GRP, the faculty could regularly outvote the administrator. In an article in the Trib, Victoria Johnson was quoted as saying that the administrator did attempt to give a legal opinion but "the other panel members didn't agree with his interpretation." It appears that the faculty members on the committee were self-confident and assertive enough at least in that case! and, I would assume, in other cases as well. If the faculty on the panel do not have sufficient self-confidence and assertiveness, the solution would be to appoint senior faculty who do. I don't know who are the faculty members of the GRP, but they were presumably appointed by the Faculty Council and I assume that they have tried to fulfill their duties conscientiously.

In analyzing dispute systems like this, it is important to consider how case screening and selection may affect the distribution of hearing results. Classic theory suggests that "repeat players" tend to do better than "one-shotters" for a number of reasons, including case selection. In the legal system, repeat-players are generally better able to evaluate disputes and they often settle cases where they have weak cases and hold out for trial when they have stronger cases. One-shotters generally are less capable of
evaluating cases and may have reasons for taking cases to trial despite the weakness of their cases. Although our situation isn't a perfect analogy to the legal system, administrators are probably more like repeat-players and faculty grievants are probably more like one-shotters in the legal system.

Some of the criticisms suggested that the GRP may be too legalistic. Although it is possible to ignore the intent of the rules and use legal rules unfairly to reach a desired result, in general, I think the GRP should be legalistic when making decisions applying the rules. There is a requirement that grievants try to resolve matters informally and the procedure provides an option for the GRP to mediate. In those situations, the parties can be more creative and would not be strictly limited to the outcomes set out in the rules. If the parties do not resolve the matter themselves, I think that it is important that the GRP follow the rules as best it can. There is no perfect procedure and ultimately people must rely on decision-makers to use good judgment and integrity.

For some background about my perspective, let me tell you that I have been involved in the field of "alternative dispute resolution" for about 30 years. The underlying concern in this field is that the legal system often is too rigid and legalistic and that many problems would be better solved through processes other than litigation. So I generally encourage less formal processes whenever they are appropriate. Some cases can't and shouldn't be resolved informally, however, and in those cases, it is important that we have a formal system that operates with integrity and legitimacy. I believe that having a GRP with both an administrator and faculty contributes to that legitimacy, especially when there isn't a consistent pattern where faculty vote for grievants and administrators vote for respondents.

I think I understand the concerns of the critics of the grievance procedure and I sympathize with them. Based on what I have read and heard, however, the grievance procedure is not fatally flawed and, at most, in need of some refinement. I just re-read the procedure, which I think is unusually well conceived and written. In particular, it has a built-in system of close monitoring and oversight that promotes self-correction. It makes sense to me to permit the system to continue operating and if, after a longer period of review, there is a pattern of problems that can't be resolved within the system, the Council should recommend revisions at that point.

So I would vote to retain the current grievance procedure unless I hear more persuasive arguments to the contrary.

I hope that this is useful.

John

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