

Fairmont State University Faculty Senate

Special Meeting Minutes

December 3, 2019

Members in Attendance: Todd Clark (Ex. Comm., Social Sciences), Jason Noland (Secretary, SoE), Matt Hokom (President, L &L), Donna Long (VP, L&L), Jim Davis (Ex. Comm, Business), Tom Cuchta (Webmaster, Math +CS), Harry Baxter (Ex. Comm., ACF), Elizabeth Savage (L&L), Denice Kirchoff (Nursing), Janet Floyd (Business), Dan Eichenbaum (Fine Arts), Molly Barra (Library), Steven Roof (Academic Affairs), Tim Oxley (Academic Affairs), Paul Reneau (HHP), Tyler Keller (SGA), Annalisa Hall (SGA), Musat Crihalmeanu (Science +Technology), Diana Noone (Social Sciences), Stephen Rice (Natural Sciences), Ann Shaver (Proxy for Nina Slota, Beh. Sciences), G.H. Budd Sapp (BoG, by phone)

Guests in Attendance: Jon Dodds (IT), Robin Payne (Soc. Sci), Raymond Alvarez (Business), Phil Mallow, Kandi Nuzum (Alumni), Brad Merrifield, Dillon Bradley, Jacqui Sikora (General Counsel), Richard Harvey (Provost), John Mark Shaver, Charles Shields, Evan Fossen (Student Affairs), Alexis Keller (Housing), Zac Fancher, Rachel Cook (Sci Tech), Joe Kremer (Business), Mac Cassell (Business), Colton Griffin (IT).

Meeting Called to order at 3:00pm in ED 303

I. New Business

President Hokom: I would like to request that all senators are seated around the table, and only senators. That is part of the Constitution, I need to know who is who. I also need to know if any proxies are present.

A few things to start:

- 1) I'm going to try to take a page out of Mark Flood's book in his final meeting in the spring. Generally, the Senate has been run loosely, which is good. That will not be the case today; you will not speak unless I recognize you. If you do not follow that rule, I will ask you to leave. If there are multiple people [who want to speak], I will likely move around the table clockwise. Every senator who wants to speak will be able to, but I want it to be orderly. Any meeting is open and anyone can attend, but only people from FSU will be speaking. We are here for a very specific reason. 1) for me, the Exec Committee, and anyone else involved in the process to tell you what has happened with the presidential evaluation as information. If the senate wishes to do anything, they may. Of course, we don't have power to do anything significant, but if anyone wants to resolve anything we can, or we can just talk and leave. I want to focus on that issue, not have a general bitch session. I'll end there. That's pretty clear: no general bitching.

Is that clear? I hate to sound stern and cranky, but that's how I 'm feeling and that's what you get.

I'm going to give you a chronology of what happened. Anyone (mainly Exec Committee and administration) can chime in when they are recognized. I hope I don't forget anything, overlook anything, or misspeak, so I am grateful for anyone who offers correction.

I think the best place to start is with the last Senate meeting, which I was not in attendance at, where the Senate resolved, made decisions on what to do with the presidential evaluations. Following their charge, I sent the complete eval to the BoG with comments and the Likert results; as I was charged I attempted to send just the quantitative data to faculty in the following manner as the Exec Committee decided on: Webmaster would put it on website, and email to faculty with a link to the site. I sent that out, but after a few minutes it did not come up in my inbox, which was odd. I asked others, and they also did not receive it. I tried again and again, in many ways, as a document, cut and paste, to individuals, and over 24-48 hours it was attempted again and again.

Question: Am I correct in thinking that the Friday after the senate, you sent the link out, but on Saturday morning found it was not posted?

Hokom Response: The Webmaster posted it to the webpage. Later, the Webmaster e-mailed the Exec Committee and said it was not there.

Webmaster: You e-mailed me asking where the link was, I didn't know it happened until Monday

Hokom: We thought it might be a routine system maintenance, so we put it up again, it disappeared again, and the webpage disappeared and we no longer had access to it.

Hokom: On that Friday, Rick emailed me from his anniversary dinner with his phone number asking me to call him. I did not check my email until Sunday, and I did not touch base with him until Monday. I called him and we met that afternoon. He explained to me that the Administration, I'm not sure that's the right term but I'll use it, felt that having the scores on the website was too public a venue that would violate confidentiality, but I'm not sure violate is the right word, but would be a breach in some way. He advised I send the scores as an attachment via email, and that's when the whole business of me sending the e-mail 7- times started, but it didn't happen.

I got in touch with Joy Hatch, who worked on it for a day or so, and eventually came to a conclusion that nothing had been sent for 2 days because a "spam" filter and something in each of those versions of the email triggered the spam filter. We do not know what the filter was because when they found it they deleted it. We don't know what was in it or who wrote it or when.

Todd Clark: Did Joy get back to you pursuant to my request from last week? Because the language must have been captured in a log. Did she ever get back to you about what the language was in the filter?

Hokom Response: No, last I heard was what you heard when we met with Joy, and Dr. Harvey and Jacqui Sikora. We were told the language was deleted so the email could be sent out. I don't know if that is re-capturable about who wrote it, when. But once that filter was removed, everything went out, I think. So, I think that is the basic chronology. I apologize for the drama and that it took so long to get to you.

As we were trying to figure out why the emails were not working, we were asked by Rick to meet with him as Exec Committee, [the meeting] was with Rick and Joy, Jacqui and the President, as well as an IT person to explain what happened with the website. It was at that point that Joy explained that it was the language in the email, not the attachment [that the spam filter stopped].

Comment: That is what Todd alluded to, asking for what was it? What triggered it?

Hokom Response: Right, it must have been something in common, I wrote something different each time with a different layer of apology.

Question: Can you describe what happened to the FS website from a public facing perspective, especially when it comes to minutes?

Response: What I understand is that there was nothing there to view. The hyperlink was gone, but the data was still there. If you had a direct url you could still access it, but not directly from the site.

Dr. Harvey: What I understand from Colton is that they didn't take it down, they hid it so the results could not be reposted.

Hokom Comment: When Rick emailed me, I had no idea what was going on. That was cleared up on Monday when Rick and I could talk face to face. It's not a serious thing, but open meetings law requires us to have minutes accessible.

Dr. Harvey Comment: Matt, that has all been restored?

Hokom Response: Yes, that was within 24 hours.

Comment: The only part we objected to was the survey being online. That was because anyone with internet access would have access to it. Those were your words.

Hokom Comment: I appreciate your advice on how to do my job, but, that's up to the Senate. And the Senate, and Exec Committee decided that is how I was going to do it.

Question: Did the Senate vote to put them on the website?

Response: The minutes in discussion, the PPS we were in discussion the transcript is highly accurate, I have no reason to doubt it [reading from minutes] “If we haven’t seen this report how can we vote on it? The reason the report has not been sent to the full senate or faculty is because everything distributed prior to and during this meeting is public information. If it had been distributed it would have to be posted on the webpage in public view at that time”.

So, looking at further comments, no one questioned that, no one posted an objection. I don’t know whether it is the consensus of the Senate whether that is how we were going forward.

Dr. Harvey Comment: Can you go back and read the action item from the senate?

Response: If we go up to, more toward the beginning of the discussion.

Dr. Harvey: No, I want the motion the senate voted on.

Response: [reading from the minutes] “I would like to make a motion along those lines, that the BoG would get only the survey results, but that the President would get the results and the comments”. Looking further down, that was defeated. A motion was proposed to forward comments and Likert to president and BoG and [Likert only to the] faculty, but there is nothing about it being by email only. The only reference to that in the transcript is website. I don’t know if it was the understanding of the body that it would be to the website

Comment: It was clear that it needed to be disseminated to the faculty in Exec Committee, we decided to do it by the website.

Dr. Harvey Comment: Has anyone looked in the bylaws? It says official communication is e-mail.

Hokom Comment: A lot of communication has not been emailed.

Dr. Harvey Comment: The bylaws say that communication should be by email.

Hokom Comment: it was, I sent the link by email.

Hokom Comment: I think we are starting to drift.

Dr. Harvey Comment: I think we are right on topic.

Comment: I would like to clarify, when Rick asked Matt, and Matt came to the Exec Committee saying, “They don’t want the info on the website,” we said “Fine, we won’t put it there.” We didn’t have a problem with that. Immediately after, when Matt was trying to send it by email, the thought was maybe they are blocking the email as well. Jacqui assured us that it was not being blocked.

Jacqui Comment: I did not assure you of that, IT did. I told you I told the BoG the link would be taken down, the BOG directed me to take the Pdf down, who is my boss. We were not directed to take the website down.

Comment:The issue of website/not website. Once we were asked to take it down, it was already down, we said fine.

Comment from IT: I want to add something: 1) I want to clarify, no one from admin or anyone instructed anyone from IT to interfere with email communications. You notified IT when you attempted to send the email, we determined a spam filter rule that had been in place in the past for some malicious activity had caught your email. We then modified that rule.

Jon Dodds: I would add, we have multiple levels of cloud-based security. We invest millions of dollars, we have stopped multiple attacks worldwide to our systems from Russia, China, etc.. We have to balance security. There was no intent to prevent this, it just came up.

Question: Did you figure out who, what, when?

Response: It was in place for some rule in the past for malicious activity that predated this

Question: Do you know how long?

Response: No, I don't.

Question: When was the rule was written that excluded this language? It would be helpful if you could define- 6 mo, 2 years.

Response: Just sometime in the past this rule was created.

Comment: Okay, sometime in the past the rule was created, but we don't know when

Question: Then the rule was modified?

Response: Yes.

Diana Noone: I don't know anything about IT, when you were saying malicious activity from China, when it's an internal email?

Response: We have tools to monitor external and internal connections

Comment: So there you go.

Elizabeth Savage: I'd like to return to Ms. Sikora's comment about consulting with BoG. When did you consult with BoG -- was it after the posting? before the meeting?

Jacqui Response: I consulted with the Chair after an email with the link was forwarded to me. We discussed concerns about this and we agreed it needed taken down. Specifics will not be given due to attorney-client privilege. I then discussed it with Rick to discuss it with you.

Elizabeth Savage: Were you present at the last Senate meeting?

Response: Yes

Elizabeth: I am confused why you didn't discuss it then.

Jacqui Response: I didn't have a concern about it being sent to faculty, but, I did have a concern about it being on the website.

Todd: The minutes reflect [reading from the minutes] "If we haven't seen this report..."

Jacqui Comment: Are these draft minutes?

Todd: Yes

Jacqui Comment: Okay as long as they are draft

Hokom Comment: Todd has the floor, I mean it, I will ask you to leave. I can't make you, but I will ask you to.

Todd Continues: "If we haven't seen this report, then how can we vote on it? The reason the report has not been sent to the full senate or faculty is because everything distributed prior to and during this meeting is public information".

Jacqui Comment: It was a very long meeting, I don't remember this being stated, the bylaws say email is the official communication, the Senate did not vote to put it to the world, I had a concern about potential liability to the institution. I reached out to the board chair and we agreed it would be taken down.

Jan Kiger: The [PPS] committee was concerned constantly through the process about the integrity about how we were going about our business. There were different sides at the table throughout the process. One concern was that the survey went to people it shouldn't have, we worked hard to maintain the integrity of the data, and it ended up going through a hard vote to do it paper/pencil. We worked hard for that. The web, I agree with Jacqui that I don't remember the agreement of the web, but the intention was to distribute it to faculty and not the world. The web is the world unless you put a password on it. We have to think about those things, and in the future it is something we need to think about.

Hokom Comment: I think one of things we need to try to take away from this is to come to an agreement that everyone can live with. I have no problem emailing it to faculty. We used the general faculty list, and it is not perfect, I'm sure some people got it that shouldn't have. But we need something we can all agree on. We can't be working on cross purposes all the time, it's not effective.

PPS Committee Chair: Thank you, Jan, for your comments. I agree that we worked incredibly hard to make sure that no one but full-time faculty as defined as it is by FS description of our duties, and we fulfilled it to the best of our ability. It was not our decision to decide who saw them. I am curious about what liability we are talking about, given that emails can be forward to anyone in the world, when you really have to know what you are looking for to find what you are looking for on the Faculty Senate Webpage. E-mail being the official communication is a BoG policy.

Comment: It is also Senate policy.

Comment: At another time, we can look at considering that. At the time, our duty was to make sure who took the survey were the right people

Comment: We know through the process, there needs to be significant work on defining how it goes.

Hokom Comment: What I don't want this meeting to turn into is who heard what, that sort of minutia is not productive. We all make mistakes, that's honest, we can mishear things, we can not hear things. We need to worry about bigger procedural things.

VP Long Comment: I would like to say a couple things. At the time that Exec Committee decided to call the special meeting, we had not yet been invited or asked to meet with Rick, Jacqui, and Joy. So all we had was a lot of "what the hell is going on?" Our website was gone, the posting had been pulled twice, emails are not going through, so it seemed very suspicious because we didn't have the information. That could have been easily taken care of if instead of an email to one person on Executive Committee on Friday night, if no response, the next person on the committee was contacted. I'm going to be generous and say the communications problem are on both sides.

Hokom Comment: The point is how does this not happen again. Not who should have sent an email to whom when, but as best we can have a procedure in place so the miscommunication does not happen again. Because as far as I can tell, a lot of this drama could have been easily avoided just by a little better communication. I have no interest in assigning responsibility or blame for that. I think one of the things to consider, but this meeting is not the time, but maybe our regular meeting so we can think about it, how can we work together to make sure these break downs in communication don't happen

Todd Clark: So, when we met last Thursday, the Exec Committee met, President Martin did ask how do we move forward from this. I think we agreed, it's baby steps, but the President's Executive Leadership Team has a list of the Senate Executive Committee members, even some phone numbers thrown in for fun. It may seem small, but in continuity of operations there may be a need for Rick to bust off a phone call to one of the Executive Committee members.

Rick Comment: I agree. I was disadvantaged, as Matt indicated. I was at an anniversary dinner. I was directed to talk to Senate President. I only had email on my phone. In my office I may have done other things.

Hokom Question: Is there any reason, Jacqui, you didn't email me? Why did you go through Rick?

Jacqui Response: Because he is the Provost.

Hokom Response: So it wasn't a legal thing? Would it have changed the result?

Jacqui Response: No.

Paul Comment: This may be too forward thinking, I was not at the last meeting as my proctor so eloquently told everyone. This is no way shape or form in reference to the committee. Moving forward, what on the results of the survey, not the comments, but the results, violated confidentiality and how do we move forward so we don't do that? And there is no answer here, only I'm curious. They are survey results: what violated confidentiality? They are opinions? My students get to evaluate me, they didn't get to go on Blackboard until they did? What violated confidentiality?

Jacqui Response: I'm not going to respond to that, that was a conversation with the BoG.

Joe Comment: Why don't we publish the student evals on the web? I know they go to Rate My Professor, but it's a public institution? It's the same thing.

VP Long Comment: I would like a better understanding of what constituted confidentiality. I know there are Presidential Perception results that are published. Univ of Illinois has them on their website, it's not like no one has. I'm not saying I want to publish them, I just don't have a clear understanding of what confidentiality means in this context.

Jacqui Comment: I'm not going to comment on that because it was a conversation with the BoG. It is nothing I can discuss in an open meeting.

Question: So there is no actual law?

Jacqui Response: There is nothing I will comment on in this meeting. There are attorneys in this room, perhaps they can give you advice. I will not answer your question.

Comment: Dr. Long asked the question I was interested in hearing, to clarify if there is not a statute, or law, is it fair to say that it was a conversation with BoG where preferences were involved?

Jacqui Response: I did not say there was or was not a statute or law. What I said was my comment is no comment.

Steve Comment: Thank you. If our concern is the BoG's perception of what this information meant, we should ask the board, not the administration. We should ask the BoG what was the process?

VP Long: And, I don't have wonderful memory, my recollection just as clarification in the meeting that Executive Committee had with Jacqui, Rick, Joy, and the President. My recollection is that you said "this was my decision, I made this decision."

Jacqui Response: In consultation with the BoG.

VP Long Comment: I don't remember you saying that.

Jacqui Comment: I did say that, because it is fact, I consulted with BoG about this decision.

Comment: Steve were you making a motion?

Steve Response: No, what I was saying is that we should ask the BoG.

Hokom Comment: If someone wants me to do that, someone can direct me.

Hokom Question: Budd are you still here? Can you hear what is being said?

Budd Response: Most of it, people that are far away from the phone are hard

Hokom Question: Steve Roof suggested since this was a decision made in consultation with the BoG that we should ask the board for their rationale. We could go through you, or invite the BoG, do you have suggestions for how to do this?

Budd Response: I don't understand your question for the rationale.

Hokom Response: So, the decision to take down the website was made in consult with the Board Chair, so Steve's suggestion was that we should just talk to the chair. My question to you is, as our BoG rep how do you think we should do that? Should we invite Dixie to a meeting? Should I meet with Dixie? Should you meet with Dixie?

Budd Response: I think the Faculty Senate should decide that where she is invited to a meeting like this one where a larger group is involved, or if you want to invite her to an Executive Committee meeting, and Dr. Martin along with some Executive Leadership Team and Executive Committee of the BoG there would be another option. Or, if Faculty Senate would like the Executive Committee of Faculty Senate to meet with the chair. The group would need to decide that so there is some type of consensus related to that.

I would like to interject something else. So, I want to explain my role. I was asked by a member of the Executive Committee of the Faculty Senate to share the quantitative results and comments with BoG and I received the quantitative results and comments from Executive Committee chair. Following the posting to the website, that is when we received an email from the General Counsel stressing that that information should be kept between the BoG and that the website, I am paraphrasing from the email, was probably not permissible and they were in the process of resolving that situation. In addition to that, I sent a response copying the BoG because what I think is a different perception of me as Faculty Representative, I wanted to clarify why I sent that out. When I read that, I thought I might have breeched confidentiality as well. I was asked by an Executive Committee member to send it out, I thought it was proper protocol and precedent, and there was a motion in Faculty Senate that that was going to happen. I also commented that I had never been in this process before as a BOG member due to a failed search and Dr. Rose retiring, I wanted to clarify all that. I did send a clarifying statement out.

Paul: I want to make a motion, in fairness to all, Rick feel free to chime in, Matt feel free to chime in with who you think. I move that Faculty Senate Executive Committee meet with BoG Executive Committee and Dr. Martin and administrative Counsel, or her reps, meet together to ask the BoG what is or is not confidential related to the Presidential Perception survey.

Seconded.

Matt: Discussion? I'll give a moment for everyone to think about it.

Comment: My expectation is that they will be advised by Counsel not to comment.

Hokom Response: If they are they are. That is their right to do, but we have to ask to find out.

Comment: I want to make a comment. If I am correct, Counsel said there could be liability, not that there is liability. There is a difference between them.

Jacqui Comment: Agreed.

Hokom Comment: I think this is important moving forward as we do a Presidential Perception Survey again. What we do not want to do is to be here again. For the love of God, let's not be here again.

Comment: Even if there is no comment in the legal sense, there is merit to this proposal. We need to know what the lefts and rights, what's to stop a faculty member from sending the results to the paper in Charleston? Where is the line drawn?

Comment: I agree, I think having a clearer sense of what is a legal matter, what is a matter of courtesy, what is a matter of institution and Faculty Senate directives and ethics. All of those matters should be addressed.

Comment: As a state Institution, could anyone through FOIA request the results and publish them in a newspaper in Charleston? What are the dimensions to this? What is courtesy, what is a legal matter? What is the line between responsibility and public right?

Hokom Comment: Do we need to restate the motion? Does everyone know what it is?

Vote: Ayes have it.

Hokom Question: Is there anything else we want to do or discuss? I think we have a pretty good idea of the chronology, we have one action item, a specific thing to do. I have nothing else necessarily on my agenda.

Move to adjourn, seconded.

Adjourned 3:52PM