

Minutes
Indiana University
UNIVERSITY FACULTY COUNCIL
University Place Conference Center 134
October 14, 1997
1:30 - 4:30 P.M.

Members Present: Gerald Bepko; F.C. Richardson; George Walker; Ellen Brantlinger; Ann Bristow; William Burgan; Lewis Ciminillo; Kevin Cobb; Michael Cochran; Donald Cunningham; Luis Davila; Michael Downs; Paul Eisenberg; John Findling; Edwin Fineberg; B. Fisher; Michael Foos; Richard French; Paul Falanti; Stuart Hart; Richard Heinz; Steven Hollander; Sara Hook; Dolores Hoyt; Paul Joray; Jan Keffer; Gearald Marker; Thomas Mawhinney; Theodore Miller; Julieann Nilson; Richard Peterson; Rebecca Porter; Victor Riemenschneider; Linda Rooda; Carl Rothe; Richard Vanden; Walter Wagor; David Zaret..

Alternates Present: Stuart Green for Emita Hill.

Members Absent without Alternates: Myles Brand; David Fulton; Kenneth Gros Louis; Kenneth Perrin; Hilda Richards; Michael Wartell; Thomas Broadie; William Schneider; Dennis Senchuk; Margo Sorgman; Marion Wagner.

Vistors Present: Peter Alfonzo; Jennifer Hehman; Dorothy Fraswell; Mike Wright; Donald Gray; Kathleen Warfel; Julia Lamber.

Agenda

1. Presiding Officer=s Business
(President Myles Brand)
2. Agenda Committee Business
(Professors Theodore Miller and William Schneider)
3. Question / Comment Period
(President Brand and Professors Miller and Schneider)
4. Proposal for Faculty Governance in the School of Continuing Studies
(Dean Jeremy Dunning)
5. Proposal on Fair Use of Copyrighted Works for Education and Research
(Professors Fred Cate and Kenneth Crews) (Circular U6-98)

6. Discussion of Report on the Affirmative Action Office in Bloomington and its University-Wide Responsibilities

(President Myles Brand)

7. Preliminary Discussion of Post-Tenure Review

(Prior to review of this question by campus faculty councils)

(Professor Patrick Brantlinger and Librarian Sara Hook, Faculty Affairs Committee)

8. Executive Session:

(To be presented by a member of the Review Committee)

AGENDA ITEM #1: PRESIDING OFFICER'S BUSINESS

BRAND: I want to give you a heads up on several key issues that are going to be discussed at the upcoming Trustees meeting later this month. That Trustees meeting will be held at IU Southeast. During the business meeting the issue of Division 1 athletic status for IUPUI will be taken up, and there will be reports from several persons, including Bill Schneider, on that situation. The campus will make a case for that Division 1 AAA status.

Secondly, I will be making recommendations to the Trustees on issues concerning compensation and salary, in terms of both equity and studies currently on our larger campuses, but also on our smaller campuses, specifically concerning women faculty members and minority faculty members, and we will talk about that at the meeting and I will have some specific recommendations. Mainly, I will talk about a process and there will be no monetary recommendations, just a process of how we will deal with these issues. I am also concerned to begin a process by which we examine the competitiveness of our salaries, especially with respect to the Big Ten at Bloomington and to ask all our other campuses to have a reliable reference set by which they can compare the competitiveness of their salaries and compensation. We will also discuss, at least again only in terms of process, how to provide funding for the 18/20 program. I want to be very clear about this, because every time I say the words 18/20, people can misunderstand. This is not a question of making any change in the 18/20 program, that is off the table. I will repeat it, that is off the table, got it. [Laughter]. The question I am dealing with, and I will try to set up a process so that we can as a university as a whole deal with it, is how can we provide funding for it in a way that does not rob the university in the future, any flexible it has for other kinds of investments. So how do we fund the program, is the question, not whether we should have the program or what the program should be like, because the IRS has made it clear in its rule that there can be no change in the program. So we are not even talking about changing that program, but a question rather how can we fund it. The program requires funding through the year of 2031. So it is not something that we have to solve in the next three to six months, but it is something that we need to be able to get a handle on because it is a growing expense for the University. That is all of my business for now. Let me ask if there is any Agenda Committee business.

AGENDA ITEM #2: AGENDA COMMITTEE BUSINESS:

SCHNEIDER: The only official business relevant to this meeting was the request from one faculty member, not on the UFC, to speak and Martin Speckler has been granted that permission if and when he shows up. Other than that, let me take the opportunity to welcome UFC to the Indianapolis campus for the first time this year and my apologies for the meeting space C we'll try to do better next month.

AGENDA ITEM #3: QUESTION/COMMENT PERIOD:

DÁVILA: I am from the Bloomington campus. First, I don't want to be repetitive or redundant, but I would like to thank President Brand for his clear statement again as of October 3 in a radio program in Bloomington where he unequivocally again reported to the public that he stands firmly behind tenure and support for academic freedom and faculty compensation. So I think that, again, we as faculty are appreciative of this and your other forthright statements.

Secondly, I would like to inquire of the President and of our two Co-Secretaries, what might be done on another matter that is of interest to us all, the Blaise Cronin Report, that you also touched on in that radio program with Margaret Joseph, where you say we all anxiously await the 21st century. At any rate, the whole question of distributed education which started off as distance education and has now become distributed education and the implications that that sort of budget might have for the future, in terms of how compensate faculty tend to that old type of university that still has to be preserved, that idea of the university. It seems to me that we need something out of the Faculty Council that will be in dialogue with the vice president for this type of technology and I refer to as McRobbie, I believe is the name, and what might be an examination of such a report to the respected Faculty Councils and certain University Faculty Councils. So I wonder what initiatives are being taken so that the information technology is discussed openly and that we avoid a brand new world in that sense of the word.

BRAND: Just a couple of comments before I ask, Ted Miller and Bill Schneider to comment. First of all, thank you very much for your first remark, I appreciate it.

DÁVILA: And thank you, Mr. President.

BRAND: Let's distinguish between two things, one is information technology, which the university is deeply engaged and has been for a number of years and will continue to be engaged. Vice President McRobbie is in the process of reorganizing our university-wide activity in that regard and, in fact, is currently engaged in setting up faculty and staff advisory committees. And maybe Ted can comment on that in a second. There's a different effort, not unrelated, but still different and that is in distance or distributed education. Let's be careful not to lump them together, even though distributed education depends upon the use of technology, it is not pulling within the scope of the Vice President's area. So the Blaise Cronin has been chairing a committee or task force for the last six months or so. He has had some external consultants involved, presentations have been made to various groups and several working papers have already been internally published. In fact, working paper #1, which is descriptive as opposed to

prescriptive, I would suggest to you, the best thing that I know about in terms of indicating the current state of affairs in distance or distributed education. It is very comprehensive. That committee, that task force is in the process of writing a report. They are consulting with various bodies about the final version of their report. That report then will (about Christmas time I understand) be provided for us. We will seek comments from that before any action is taken. It is clear that some action will be taken, though I have no way of knowing right now where we will wind up in terms of the approach we will take in distributive education, but that committee is hard work on this issue of the report, and I think that we need to wait to see what that report says, rather than try to guess it in advance before we comment on it. The report, obviously, will not be the final word, it will be our point of departure for further discussions and eventually action. Ted do you want to comment on the technology committees?

T. MILLER: Bill Schneider and I, just this morning, had a meeting with Vice President McRobbie in which he outlined his plans for advisory in an advisory committee structure. This plan includes on both the Bloomington and the Indianapolis campuses the campus level advisory committees, which I think is certainly a good thing. There are certain details of these committees, I think, are yet to be worked out, and I expect that the faculty will have strong voice in insuring that they come out in a way that is acceptable to the faculty. But those campus committees, and I am of course more familiar with the one in Bloomington, which has been in existence for many years now, will I think continue. There will be a strong faculty presence on that committee, and so I am encouraged by that. As many of you know, the University Faculty Council does have a new committee, Technologies Policy Committee. One of the questions I would say that is not so clear at this point is how that committee will interphase with the structure that the Vice President McRobbie has set out. That is an issue that I think will need to be pursued and discussed further with him. As I say, Bill and I met with him only this morning and I really don't think that I should go any further than this in talking about it right now, but there will be discussions on these matters on the various campuses, certainly, in a very short period of time. He is clearly interested in getting this advisory structure set up quickly. He has a rather large job in mind for the committees to perform.

SCHNEIDER: The UFC=s Technologies Policy Committee rather through wisdom or blind luck is in place and cannot only advise the Vice President for his technology, but also will review the proposal for distributed education, which isn=t and so in some ways it is an advantage, that the same group can have knowledge and comment on both. The agenda committee of the UFC has also envisioned that the more traditional education policy committee will certainly want to take a look at the proposal for the committee as well, because of it=s impact on the educational policy, as well. I think that we are ready to move on it, once we have something that we can react to.

MILLER: Let me say something about the Cronin report in a more direct response to, the BFC, as of those of you who are from Bloomington know, did hear a report from Dean Cronin, basically summarizing the document that now has been distributed. As the president says it is kind of a status report and it really isn=t a document that makes proposals, it basically, I think alerts the faculty to the fact that this is coming and that to the extent that Indiana University is going to engage in this kind of activity, certainly the faculty will have to be very heavily involved. I think that is the main message that I heard him trying to deliver to the faculty in that

meeting. Now just where this is going to go, I think is not clear to me. I think we are really waiting for the next report, I think will be a little more specific in terms of proposals for administrating this activity and so forth. At that point I would think that the various faculty committees would be actively engaged in discussing those issues in making their recommendations.

BRAND: I think that is right, again, the time table that I have heard is that it is going to come before Christmas. So I would expect that in the next semester we will have an opportunity to look at the subsided recommendations.

DAVILA: I very much commend what you have referred to, these three documents, the school of library and information science. I think that it is important for all of us, at least in our consciousness to be aware that these are working documents, but they do (150) to the discourse and the tilt, that even at this early stage a report might have. In terms of the consideration of rather or not descriptive that this might be if the idea the (153) is a thing of the past. It is suggested in the initial pages of these working papers that are not etched in stone or concrete, but if we are very much conscious of the fact that this is all being investigated and looked into the (157) and this should be a world of social practices. I think that we would be better ready for the dialogue that will ensue. So I commend these three documents, that I think should be available through the deans office in Bloomington, as they were available to me and some of the other faculty members. It=s a very breath taking panoramic view of what the future holds and it is very exciting, but we must be there at the creation also.

BRAND: I agree with most of what you said, those are good documents and I commend it to people as background reading and knowledge. That does not dwell very much on IU=s position and sets out the landscape nationally. Nor is there any hint in there and I suspect that there will be no hint in the final report and Cronin committee that we turn IU to a virtual university. There is a question of how we should use technology to better enhance our learning environments and to what extent we are already reaching out through technology and to what extent we should focus our efforts, so don=t take some of the vendors view that universities are going away, there is no thought of that in the Cronin=s committee mind or I dare say anyone=s mind in this room. So I don=t think that that is the issue. Any other comments or questions. Very good.

AGENDA ITEM #4: STATUS OF STRATEGIC DIRECTIONS CHARTER

BRAND: Jeremy Dunning is not here yet, so with your permission I=ll go onto number five which is the Proposal on Fair Use of Copyrighted Works for Education and Research.

AGENDA ITEM #5: PROPOSAL ON FAIR USE OF COPYRIGHTED WORKS FOR EDUCATION AND RESEARCH (CIRCULAR U6-98)

BRAND: I would like to ask Professors Ken Crews and Fred Cate make a presentation and then.

CREWS: It is not necessary to really summarize the material because I am quite sure the people have read it.

BRAND: Perhaps you can give a context of where you are heading.

CREWS: Thank you President Brand and thanks all of you for your kind attention to this matter. My name is Kenny Crews, I had the pleasure of meeting everybody in this room, but I know many of you. I come to you as your guest and as a faculty colleague, I am Associate Professor of both Law and Library Information Science. I am also director of the Copyright Management Center, which provides copyright advice and guidance and service to faculty, librarians, staff members to rule out all of Indiana University and I have been of service to people at all of our campuses and so in that regard and in our growth of the position, a project that spawned under strategic directions was given the directive of working to develop fair use policy for Indiana University and in close consultation with my advisory board on the project we formulated the policy that we are putting before you today, for your comments and reflections and consideration. I am happy to report by way of news development that we did go before as a matter of convenient timing, did go before Bloomington Faculty Counsel last week and Bloomington Faculty Counsel decided to take action at the meeting where we introduced it, and by an overwhelming vote, voted to support this policy and so it has been through BFC and now it is our turn to deliver it to you. You should have then before you, the policy itself, which is really the only element that we are calling upon this group for any action, now or at some point in the future. The policy itself is really only about a half of a page, but then accompanying it are some supporting documents that explain the background purpose and functionality of this policy. We are at a critical turning point in the relevance of copyright to higher education. As we move more and more into innovative material, electronic resources, multimedia development, distance learning, I have been startled at how much of my time, has been consumed by the tremendously complex copyright problems surrounding distance learning. As we move into a world of these innovations the copyright questions are becoming more and more important to us and more and more obvious to us, that at least there is a question that needs to be addressed and so we hope in our own creative way, we can address the fair use issues in a good faith, reasonable and balanced manner and that is the thrust of this proposed policy. So with that brief introduction.

DOWNS: Can you tell us how this policy differs from the approach taken both here and at other universities. Because this policy has a rather unique approach to it and the group should understand that.

CREWS: Thank you, I would be happy to. In terms of its relationship to the policy of the Indiana Universities in the past, the answer I can give to you very simply on one level at that is, it is a policy and so its formal matter at Indiana University has a tradition of not having a policy, at least on a formally established level, for fair use within the university. So any policy in that regard is a change. We have had which is typical of most Universities, a variety of less formal constructs and those will continue to be valid. For example, the main library in Bloomington has many years ago, about 15 years ago developed a fairly comprehensive policy manual, that detailed, photocopies for preservation and so on, those kind of positions will continue to be important and valid in this context. So we are looking at re-addressing the fair use questions in the context of the recent history of our University. On the other hand, how does this proposal compare to fair use policies at other Universities. It is considerably different. It is both radical in the sense that it is different and it is also very conservative, in that it goes back to what fair use

really is. One of the problems with fair use policies at universities and many of our peer research universities around the country is that they generally fall into two camps, they are iffy statements that say we will comply with the law and that is it, and not say much of anything more than that. They say much more than that, most of the ones that provide some explanation of what fair use may be get into the repeating the text of a variety of proposed guidelines that have attempted to interpret what the law of fair use really is, but those guidelines clearly the historical record has shown and I think all of our practices have shown that those guidelines are simply something that we would like to avoid and that they manifest in understanding a copywriter of fair use, really legally has very little validity and that more over offer up a standard that is merely impossible for us to comply with. A good example of that is the classroom guidelines for what can you photocopy to hand out in class. They have been around since 1976, when congress first enacted a fair use statute. Those are guidelines that would have count the words on the page and excerpt only 1000 words of an article before we can photocopy it. I won't ask for a show of hands, but it would be my expectation based upon talking with other groups here and around the country that there really isn't anybody in this room who has likely counted those words. So it would be rather duplicative for us to adopt such a policy, because it is not very meaningful into the relationship of what fair use really is and it is not very meaningful to what serves our educational needs. So this is a break, this is a proposed policy that really sends each of us to make a reasonable good faith understanding of what fair use means in our particular context, what are our particular needs and I hear it is an education resource. Of all of the labels that I have educator is the one that I appreciate the most and I am here as an education resource, to give you information about what fair use is. To equip you to make good faith reasonable interpretations, as applied to your circumstances, because your circumstances are different from the circumstances of the person next to you and fair use is flexible to address that reality of diversity.

BRAND: That is helpful, I might add another comment. There is a tension between what the publishers of the materials would like to see occur and remuneration that comes to them in virtue with their policies and what the law requires and permits university faculty in terms of the carrying out their educational duties and those two do not always come to the same conclusion. What I asked Ken and his advisory committee to look at is that within the meaning of the law, what opportunities do faculty members have to exercise fair use and our University Policy can reflect that perspective and this is what the advisory group proposes as a result of that charge.

DOWNS: I have a question, in principle number nine, reference is made (282), can you tell me what the IU (283) policy is.

BRAND: Can you ask the University Counsel to address the directly please.

FLAPWELL: In 1971 the board (288). It does say that the university will subject (294-308). The University reserves the right to offer to defend you or if they choose to not defend you and hired your own lawyer. If you should prevail on any action on the merits of those circumstances, the University would have to pay you your legal fees and any judgment, that might be rendered against you. On the other hand, were you to lose, in some instances, I can only think of two times as long as I have been here that the University had not defended and individual who has

had an action brought against them. (313-319) the University does reserve the right to say, You are on your own. Now if you win, we have to pay you back your legal fees and any judgment that might be rendered against you, but we don't have to undertake in your defense.

BRAND: So with respect to this, suppose that the trustees adopt this policy, you act in good faith according to this policy and some publisher wants to test it. Just for the sake of argument, then you are identified under those circumstances.

DOWNS: Principle #9 states that if you act in good faith (332). That seems to undercut the purpose, if I act in good faith and consistent with my university duties, it seems that the (335) policy would (336). Likely, is a word that conveys something than and absolute comment on the part of the University if I acted in good faith and consistent to my duties to the University. (338).

BRAND: Probably a better way of saying it is if you follow the identification prerequisites you will be indemnified.

DOWNS: I do feel better all ready.

BRAND: But maybe it is a problem we can change. Maybe before we submit it to the trustees.

FINEBERG: This policy is extremely open ended, clearly claiming much more emphasis on personal responsibility on the Universities responsibility and with that in mind, I think, although it protects the University, it does not protect the individual because the fact the individual has very little in the way of information to guide them as to what... and I would urge and hope that the committee, the office that is involved in this will in fact supply us with examples at least of periods where the policy would clearly be violated and those which most individuals would accept as being in compliance. Without that, I think (360).

CREWS: No I think that is the absolutely the same observation that I have, so for example we do have a variety of materials, a simple if you want it real short, a simple trifold brochure, that gives you a quick introduction to what is fair use and how it plays out, you want a little bit more detail about a 30 page booklet, another context about another 30 page booklet, the variety of materials we can make available, plus others that have referred to here. I agree, all by itself, this policy, in fact the documentation that supports it that is distributed to you today, also will not tell you anything about what fair use is. That is not the purpose of this documentation and I agree with the frustration that results from that, so this supplemental material is absolutely imperative and I do believe that the central job of my office is to prepare and distribute a paper on the Web and so on this kind of helpful material, exactly as you described it and get that into your hands and then you are exactly right in that the decision is one of ultimately your individual responsibility. You can come to me and frankly I don't have any authority to tell anybody what do to, so if I say, oh no you can't do that., the decision is still yours, the reality is that we are not likely to come to disagreement at a point like that. The decision is ultimately yours. If it is your multimedia project that you are cutting and pasting for, it is your decision about how to manage that, it is my responsibility to make available to you the resources to make that good faith reasonable decision about what you are doing and let me hasten to add, reasonable people will

differ about what their use is. It is not just educators versus publishers, I know that within our own community, our own academic community, there are very different perceptions about what is and what is not fair use and part of my response to that is, that's okay. We don't have to agree on these things within our community and I think it is that drive toward a uniform standard of what is fair use, that really gets us in trouble and that really comes as a real sacrifice of the flexibility that fair use really does offer. So it is okay if two faculty come to different decisions about what they can cut and paste for multimedia or even what they can photocopy and hand out in class, as long as each one made a reasonable good faith determination based on the variables that we are to consider in a fair use decision.

BURGAN: I am from Bloomington and I have a question for Professor Crews. The Bloomington Faculty certainly did overwhelming endorsement policy and I think that the general feeling was that it was very well thought through and it was very well explained. There was however, considerable discussion of the wording of the third item of the policy and I think, I haven't (410), but I think that the Bloomington Faculty Counsel is endorsing this policy, included (413-414) avoid wherever possible adopting or supporting policies were (415). Recommendation was the (417) and my understanding was that some such change would be separable, is that right?

CREWS: That is correct, in (420), you should have the yellow sheet, which includes the added language and that was perfectly acceptable to me and it came from a very good discussion how this will play out in a given context. The example that was used to illustrate the point was if the director of the chemistry library which was the real example, is considering entering into a licensed agreement for the acquisition of electronic resources for the libraries purposes, but the agreement came with all kinds of restrictions associated with what one may do with this material, even prohibiting activities that would otherwise be perfectly lawful. Would this point three (434) and I made clear that if a library director had tried to negotiate his way into the restrictions, ultimately just hit the wall, the publisher was not going to be flexible on that, I certainly do not want to be in a position of saying, therefore we can't have those materials. We have to go back to cost benefit and decide rather we can proceed with that agreement, with that license with the restrictions and so we soften the language to assure that flexibility. That I think was a very good point.

KEFFER: As one of teachers creative handbooks, doing distance ed, distributed ed, Web based course, plus traditional classroom, I get confused, to say the least and what I wanted to do when I looked at this was find a list of things I could and couldn't do. Have a cookbook list of yeah you can use this video for this, but not for this, is this kind of check list, going to pick up on this principle #3 and be in the Web site, so I could call up the Web address and say yeah, I can use this video, but I have to go through these various steps to do it, to help me, or am I going to be a test case for some.....

CREWS: You might be my test case. I have a feeling that I am about to give you an answer that is going to disappoint you.

KEFFER: Probably.

CREWS: But I hope that in the long run it will elate you. If you would like a check list and a cookbook, I and a thousand other people can give it to you, but my clear resolution is that such checklists and cookbooks may make your life at that decision making mode easier, but it will make your life less pleasant and it will actually constrain your ability to use....

KEFFER: It already is.

CREWS: Your life is unpleasant.

KEFFER: What I am saying is, that in terms of developing a Web course, there are things that I have used in the classroom, i.e. Videos or whatever, that I am constrained from using because of copyright, therefore it is making the construction of what I would call a more enriched course, less pleasant.

CREWS: I agree entirely, in fact, let me introduce you if I haven't had the chance to do so, to one of the labeled problems that we have here. Fair use is actually just one of many different exceptions to the set of rights belonging to the copyright owner, but we tend to use it as sort of and umbrella term for all of them. It certainly is not it is one particular exception, but it is the very problematic one because it depends on variables that can be interpreted many different ways. On the other hand, if the question is, I bought this video tape at Target, I went to the store and I bought it off of the shelf and I now want to show that in the classroom, that can be construed as a public performance of that copyright protected video. Is that okay? The answer to that is not a fair use question, the answer to that is buried in another exception in the copyright act, but one that is by comparison, highly specific and does allow us to give a clear yes you can, no problem whatsoever and for certain questions we can be very specific because they are not really fair use questions, now go to the other tempo. I am cutting the pasting for my multimedia project or I want to use that video in distance learning. We have a distance learning statute, but it has a very narrow and so it leaves us often with a real fair use convolution to go through. If you want to be very specific, the specificity tends to diminish the need to preserve fair use. Tends to diminish the need preservation of fair use. So for example, I had one just the morning. Can I show clips of the feature release motion picture in distance learning. There is, this is one of the least known, aspects of copyright law, there is actually a statute specifically on distance learning and it is a real monstrosity and when it comes to the question of video tapes in distance learning the answer is nothing is allowed, no video tapes. So can I use it as a matter of fair use, it doesn't fit that exception, can it fit this other one. My answer is yes Others will says now. So already we have a conflict with the world.

KEFFER: It sounds like law talk.

CREWS: It is and I think that there are ways that just as we are talking about there that can make it actually remarkably simple given that it is law talk. Where are we going with all of this, we are really discovering that a lot of our activities mean that we have to pay attention to certain legalities. I see that it is my job to make that process of working with the legalities to be as nonlegalistic and as painless as possible. But when you buy a house you got legalities in the

mortgage and when you do your income tax return you've got legalities and rules that you have to read. Legalities are inevitable and as we move in to make this transition as a University to the innovative materials that we create and work with, there comes this baggage with them. I don't see my job as being the baggage handler for its own sake. I see my job as not copyright for copyright sake, my job is to help you work with the copyright issues, not for their own sake, but for purposes that best advance your teaching and your research within the University. So when we run into legalities we have to keep them low and tolerable and when we run into barriers we have to think of alternatives and get to that end result as efficiently as we can.

ROTHE: I think I join those who have some problems with this policy. If I read my dictionary correctly it says that a policy is an overall plan raising the general goals, which it has and acceptable principles which are very carefully trying to avoid. (000) and I looked at the first one on page two and at this address there was information (001) and it was copyrighted in 1995 and (002).

TAPE 1: SIDE B

CREWS: That is a local software issue.

Finally on page six, I get to a Web information page and that one is quite helpful and that one starts given us all sorts of information and it is very down to earth. But it gives case studies, and it gives us information it seems to me we need. And for you to say we need to obtain seminars, some of us don't have the time available to devote to some more seminars. And we have specific questions and so I want to encourage you to update this second Web page, because this policy is almost, seems to be me, geared towards the University and excludes those of us who are working in the classroom, in the research lab, it is not giving us much help saying you learn on your own, if you have some doubts we'll check with me. That is going to be of great difficulty, in terms of good faith, that we do not have some guidelines to go along with some, as the dictionary says, general principles and I am not very impressed with that very sort one third page policy.

CREWS: I am very sympathetic with these concerns, in fact we went through a process in the planning stage, developing a policy that would articulate in some substance level and we tried all different levels and we always ran into the same kind of problem and that is that these are issues that are changing, maybe not month by month, so in '96, '95-'96 document is not so terribly out of base, but they are changing and there are bills in congress that would make some changes that are significant to us, there are always new cases that cause us to rethink some general principles and what they mean. So we always ran into the problem of the hazard of providing substance and content and as we provided substance content, we always ran into the problem of that, substance of content, going out of date. So we could narrow it all of the way down to say the four factors that we are told to consider in the copyright statute and simply rearticulate them. That would be about the minimum substance that one could include in a policy and but even there, there are some changes that may come down from congress in the coming couple of years and so that would leave our policy out of date and the need to come back and readdress it. And moreover it would really take us back to where we are right now and that is we need elaborations to explain what these issues, what these four factors mean and any particular context. So again,

we move after consideration of lots of alternatives toward keeping it general and then providing the other elaboration in other ways. If the elaboration does not begin to approach the kinds of situations that you confront, we need to know that, I need to know that personally and so that we can develop materials that meet that need or we can just talk it through to address your particular concerns.

BRAND: This discussion is not in preparation for a vote this time, it will come up for a vote next time. I am happy to continue the discussion a bit longer, but we do have other things on the agenda, so a few more questions.

MAWHINNEY: I (043). If one of us goes out on a limb and does something creative in something that we think is our science or technology or art form in some important way, but it does not conform to whatever the occult ideas are in rigid legal believes and we will be left hanging in the wind and twisting there, I think that is the sense that I have as I listen to this extraordinary complex matter driven by new technology and really putting us all in a bit of a tail spin.

BRAND: The alternative, you understand, that the group was trying to address was to have very specific rules that are also limiting your creativity and so they were trying to walk a path between allowing faculty members to use their best judgment with some protections, but not overly limiting their ability to work, not only new media, but old media as well, in terms of copyright issues and so on. That is where the group is trying to head and it is tough going.

It is tough going and it leaves some of us feeling a little cramped. (057).

If you are going to try to do something creative, risky, it probably would be a good idea to consult, but at least this policy if I understand it myself, gives you the opportunity to take the route if you so desire, where as if you just have a cook book it would preclude your even moving that direction, if you so desired.

SENUCK: I think I am troubled by the idea of this as a policy. I really wonder about what its value is. (068) I see it as perhaps that you agree to comply with the law and to see that would have much weight. I think that we have policy of this sort, and it might well address itself to things like requirements that the faculty members at certain points ought to consult. People can kind of get some better view of what=s required (072). I=m just not seeing why we need a policy (073).

CREWS: This policy actually, as I=ve had the chance to discuss it with colleagues in private conversations from other institutions. They=re quite amazed that we would go forward, that the university would want to, whatever that university is, the (076), I guess, that we would want to move forward with a policy that is actually so generous to faculty. This really is a faculty oriented policy, in comparison to any other form of policy that I=ve seen from any other university. This is a policy that scrupulously is intended to help us avoid getting into meticulous measures of fair use that tend to cut off faculty opportunities. This is a policy that leaves decision making lines in place. It does nothing to decision making lines. So therefore if it is

your project that you are responsible for, you have really a privilege of making a decision. So that is a privilege as much as it is a responsibility.

SENCHUK: (086) that you regard as a statement? (086).

CREWS: Absolutely. Look at the first sentence of this second unnumbered paragraph. It is therefore the policy of Indiana University, this proposed policy, to facilitate the exercise and good faith of full fair use rights by faculty, librarians, and staff in furtherance of their teaching, research, and service activities. There is no statement of comparable flexibility and generosity at any other college or university in the country. There=s nothing like it out there. That=s a policy statement that reflects a position by the university that there is, on the one hand, in a fair use decision, there=s a question of how does fair use help me fulfill my teaching and research, and then how does this understanding of fair use help me avoid liability. As we look at policies from around the country, they are overwhelmingly in typical favor of statements that are designed overwhelmingly to protect against liability. This is a policy statement that says fair use exists to serve teaching and research. And it=s the policy of Indiana University to help facilitate your teaching and your research, by means of fair use and whatever else is in the (100), in the next policy.

BRAND: Let me just (101). I was in Washington a few days and had an opportunity to sit in a group leadership of (101), Foundation. Just sitting there talking about something entirely different, it was mentioned to me. We understand Indiana University is considering a fair use policy like this. And the point was made, this is a very important change in direction and we are looking at it very carefully to see if Indiana University will do that, because it puts back in faculty hands the ability to use materials fairly that has been coopted by the publishers. So this is really something that will be looked at nationally. If we decide to adopt it, my guess is that others will follow us. But to my knowledge, and this small meeting confirmed it, Ken is right in that it is setting out a new direction. And it=s looking at the whole issue of fair use, not in the practices that evolve in limited fair use through publishing houses, but rather what is important in the university perspective. So it really is a, I think (112) was right, it is a radically different approach. And different approaches have risks. I understand that, and some people are (113).

BRISTOW: I am Ann Bristow from Bloomington, and I=d just like to speak very briefly in favor of this policy of both a member of the Bloomington Faculty Council that already voted in support of it and a librarian who tried to work for years under this policy of which you refer briefly to, a very elaborate policy. And my experience with that is exactly as you describe it to us, that any institutional policy will be (118) very, that gets into details and specifics, will try to follow guidelines, and those guidelines will be always very limiting and conservative and will tell us not to do things that in fact might be quite reasonable to do.

HOOK: As another librarian/(121) rights and copyrights law, I can speak in considerable favor (122) from the school of (123) library in favor of this policy. I think Ann Bristow=s comment is exactly correct. The more specific we get in terms of what=s acceptable, what=s not, the more that can be, not only invading faculty member=s rights to choose and to be as (125) and as innovative as possible, but we also limit our legal rights to the use of material, particularly when

it=s for educational purposes. The one thing I might suggest is in some of the material I know that one good avenue when faculty have questions is to contact Kenneth Crews and his copyright management center. The one thing I=d like to see added is the particular importance of documenting your decision making, in terms of who did you contact to see about copyright permission, how to determine if the material is under copyright or why did you believe it was not? Why did you think it was fair use? And I think that is extremely important in terms of documenting your decision and being able to prove my decision was reasonable. So I think if you can show that, your conscious efforts to abide by the policy and the law, and your decision making process can only help too.

GALANTI: Paul Galanti, (136) Indianapolis. I=m very much in favor of the policy, but I=d also like to point out that there is a flip side. I=m hearing about our use of someone else=s material, but we have to remember that someone else might be wanting to use our materials and you might look at it differently when you pick up something and say, that=s mine. And I=m not getting any royalties from this. Who is this person who is using my videotape, my article, whatever it might be. So we should always keep it in mind that there are two sides to this. It=s not just our use of someone else=s material, but it=s someone else=s use of our material. And with that, we might have a slightly different viewpoint on exactly how free fair use should be.

DOWNS: Mike Downs. I=m in favor of the policy. I think it=s a liberating policy. I teach in business education, and I shop a number of different places to get advice which I can use to make it possible so that I can use materials in business education. I think the policy is liberating. And because it is liberating for some people, it will also be (149). That=s the problem with liberation. But to the extent that the university can ensure faculty that there are one or two cautionary steps that they can take that will ensure that the university will appear with them if they are in trouble, the real liberating effect of the policy will create (153) for the improvement of teaching a great deal. I=m in favor of the policy, and I=m glad we=re looking in this direction.

ROTHER: It seems to me that (155) should be what would (156). State the university. If the faculty had been informed, and (156) fair use, the university will stand behind them. It=s inevitable.

BRAND: Right, that=s the intention.

ROTHER: So (158). **Laughter.**

BRAND: If you have questions, I=m sure Ken, either by email or phone, will be happy to answer them. I=m speaking for you, Ken. Excuse me. Other than that, we=ll take this to next time.

AGENDA ITEM #5: CONTINUING STUDIES - DUNNING

BRAND: I=d like to move back to the agenda item 4 now. And that is the proposal for faculty governance in the school of continuing studies. I=d like to get Jeremy Dunning to describe to you the situation (165).

DUNNING: I think it's probably a good time to preface the specific organizational chart, or preliminary organizational chart that I'm going to give you with a description of what the school's been doing for the last four months, in terms of trying to understand its role in the university, its connection to the faculty of all campuses and all schools. And to try to really get a clear idea of what markets exist, how well we're reaching them, how high quality are our courses, and what new markets exist and how well are we positioned to address those new markets. For the last four months we have been undergoing an internal review carried out by management advisory assistance under (176) Thomas and Joe (176). In that process, we have held numerous meetings within the school to try to get a clear understanding of how everything works, where the quality control is, and first and foremost, where do we get faculty input. The results of this review were in one sense disturbing, because there is a lack of faculty input in the school. But they were encouraging in the sense that by the time we went through the review it was obvious to us that not only did we need a lot more faculty review and faculty governance than we had in the past, but I think we would benefit from more faculty governance than usually is required in the school, because of the special nature of the school. We have a literally hot-off-the-press (it was just finished yesterday), an updated version of what we call the vision of the school. And basically it contains the results of the discussions we've had within the school. We are now going to be releasing this vision to all the campus faculty councils, all of the chancellors, or I should say faculty senates because in some cases they are senates, all of the program directors (credit and noncredit) in the school of continuing studies, the alumni association in the school of continuing studies, and we may even try to publish most of it in the newspaper Continuance. So that everyone will get a chance to look at how we've sort of evaluated, what we do, and where we are. We now need to get input from all our constituencies, and that includes students, faculty, and program directors on individual campuses. That process is going to take a few months. At the same time, we need to start to institute the faculty governance we need to have in place, even while we're designing the new structure of the school. Those types of faculty governance fall basically into two categories. We have departments within the schools, like labor studies, adult education (which is a masters program), and general studies, which is a confederation of campuses and the school offering associates and bachelors degrees in general studies. We do have faculty governance of the traditional and rigorous kind in labor studies and in adult education. There are real faculty members teaching real courses and they are faculty governance for those two divisions. Those are the only faculty, or true faculty governance, committees or councils that serve the school. What we are proposing to do is create two additional layers of faculty governance. One would be a faculty governance council for general studies. And that would contain representatives agreed upon by the faculty senates on each campus and the chancellors who would represent the needs and desires of general studies program and the students of those campuses. We would also ask university faculty council to suggest several members also, and not specifically tailor to specific campuses. We would also like to have representation from students in an advisor (218) actually vote. And we would also like to have some representation, and I use the quotations Afaculty of the noncredit programs.@

Because we do have 60,000 enrollments annually in noncredit certificate programs. And I think we need to make sure that any local decisions that are made don't have a negative impact on those noncredit programs. So that faculty governance committee would basically govern general studies and propose policy/regulations for general studies. There would also be a school of continuing studies council that would serve almost like the university faculty council does in that it gives global recommendations for policy and direction for change, and things like that. But it would not provide particular curriculum suggestions to the actual departments we have where we actually have a discipline. One of the problems that the school of continuing studies has is we only have faculty in two areas: adult education and labor studies. Beyond that we use all of the faculty of all campuses. So we don't have a subject matter of expertise. And so in terms of faculty council, it's good to have as much representation from as many fields and as many campuses as possible on sort of a global basis. I would also anticipate that we may have a representation, representative from industry. Because a lot of the opportunities in distance education and in continuing studies are serving the private sector. Especially in campuses like Indianapolis, Fort Wayne, South Bend, Kokomo, all have great opportunities to provide tailored degree programs and things like that for companies which would (241) our student population significantly. What I was going to do was show you kind of a current (243) organizational chart. And again I emphasize that none of these (244) are (245) cast in stone. Because all we've done is work diligently on it ourselves and talk to program directors and talk to students, anybody, to make sure we understand what we're actually doing. Once we begin to put this (248) faculty governance (248) again, then we're going to have to completely revisit a lot of these issues. For example, we discovered that while we have some of the best correspondence courses in the United States, only 27% of our correspondence courses are created by faculty and managed by faculty. That's not good. And I'm sure our faculty governance council would want to look at that fairly closely. I suspect that (254-256) and interpretation, we need to (256) creating college courses unless they're created by a faculty member and monitored by one. So there are lots of decisions that haven't been made and other things that need to be fine-tuned. So this is very much a preliminary sort of organizational chart. Basically, at the top there is the dean, and there is kind of a global school advisory committee. But mostly the faculty, administrators, and university for all campuses. And for (262) contain private sector and government officials with expertise in distance and have a clear understanding of what the requirements out there are. This would be an advisory committee that would advise both the dean and the school. Between the dean and the four new traditions we're proposing would be the school's faculty council, (266) very much like the university faculty council on a university level or the individual faculty (267) on campus level. They would provide suggestions and would ratify or propose particular local policies, regulations, things like that. They would not have direct control over the curricula, for example of elementary education, labor studies, general studies, because each of these (273) divisions will have faculty governance of their own. It's very much like the faculty (274) on the campus providing more global policy, but not specific curriculum advice, for example (276). So the faculty council would be a more global organization. The actual divisions for the school would be the administrative division, the academic division, distance learning developments and production division, and the special projects division which would include corporate university initiatives, workforce training, and things like that. Now, within the administrative division there would be a business manager, which the school up to a couple months ago did not have. With a business manager, it is amazing how much clearer the financial picture is when you have a

business manager. The technical people would have a technical support division, which would help in creating web courses, help in training of faculty because we train probably 150 faculty a year in how to use distance education, how to create web courses and things like that. We have a relatively renowned workshop that we run to train individuals in distance and technology. We would also have a marketing division, which exists today, but will be folded into the administrative division. The academic division would contain three specific divisions too, which already exist. Adult education, labor studies, and the new one would be general studies. Right now, it's figured as part of the extended studies division which contains independence studies and general studies. There is a faculty advisory board for the independent studies division now which is called the Extended Studies Council. But it's somewhat flawed in the sense that a good number of members of the committee are administrators from the school, which I don't think is a good idea. And of the faculty, many of them are retired. And some of them, it is not clear whether they were elected by the chancellor, faculty council, or whether they just volunteered. And so we want to try to put a more acceptable way of creating faculty governance(303). So the Extended Studies Council that now exist would disappear and would be replaced by the General Studies Faculty Governance Committee. And that would be populated by members from each campus that will ratify, (307) council on that campus and the chancellor. You would also have some student (308) that would be on hand (309) basis. We would also develop a division called the distance learning development and production division. We produce about thirty courses a year for correspondence (311), multimedia, some with traditional paper, some with web courses, some with video courses. We are very well, there's one part of the school that is extremely well (314) to operate the Virtual Indiana campus, which is popular now that we're actually running it at time slots. And that's been done very well. We have very good training within that division. In fact, our (317) workshop has been approached by two publishers to produce a book, video, and multimedia (319) by this workshop. But because the organization (320). So that's a high quality kind of service. Now, the last division is special projects. That would really be a kind of innovation division that would do workforce development training, tailored degrees, (323) that would actually involve all of these 8 campus divisions of General Studies, and would also involve some research on assessment and effectiveness of various types of distance education models. So that gives you sort of an idea of where we're headed. And again there are going to be at least three levels of faculty governance. And the members of those government councils will be selected by the, or the (331) committee will be selected by their local faculty councils and the chancellors.

BRAND: Any comments, in particular any comments from members of the faculty governance committee, if there are any here?

HEHMAN: I am sort of new to this, so I have some questions. I'm Jennifer Hehman, and I'm cochair of the Faculty Governance Committee from IUPUI. You're talking about members of your faculty in the school of Continuing Studies. Some of these are already under academic appointments to other departments. And you're talking about them having representation in two different faculty councils in a way? Is this part of the problem?

DUNNING: As it stands now, our only true faculty. We have some by historical (342). We have a couple of faculty members who don't teach, don't research. They actually (343). So I'm not (343), but our true faculty belong to adult education and our (346) has appointments in

the school of education, which is in the process of being transferred over to the School of Continuing Studies, by agreement between the previous (348). The other two changing faculty of adult education, their appointment is with the School of Continuing Studies, but they have doctorate degrees in education, specifically adult education. And labor studies is somewhat of a different unique situation. The faculty of labor studies are all faculty of the school, but they all have expertise in labor studies. They were trained in the traditional way that labor studies professors are trained. There is no terminal Ph.D. degree in labor studies. So (357) get a masters degree. Those we're currently hiring, of course, have Ph.Ds or probably a quarter of the faculty of labor studies have (361) degrees, and the rest of them either have their (361) master=s degree, and the main faculty have Ph.Ds in Economics or (362) Science or (363) various other (363). But they are real faculty members, but in Continuing Studies they are real faculty and they constitute real faculty. So (366).

KEFFER: I want to know how a virtual university can run out of time?

DUNNING: Believe me, I put a lot of things in virtual space, and it never seemed like I was running out of time.

HEHMAN: I have another question, since I'm the guardian of the constitution of bylaws here. We have the requirements for faculty to be voting members of this body, who are academic appointees. And also on tenure track. Are any of your faculty then going to be on tenure track, promotion tenure learning?

DUNNING: All of the faculty of labor studies are tenure track faculty, either tenure or (376). 3 of the 4 faculty of the adult education are on tenure track employment=s. The other is paid just a part-time track. He=s an excellent teacher, but for (381) reasons, it isn=t possible to make that person a (382). So there is one other real faculty.

HEHMAN: So, how many real faculty do you have?

DUNNING: 14, including the new hires in labor studies. We have one virtual faculty member.

HEHMAN: So there are 14 real faculty, people that are on academic appointments and are on tenure track. Well, they are already represented by this body, are you giving them additional representation here or?

DUNNING: They will continue to govern their own discipline. Labor studies has a very (395) experience. Adult education is also well-served by faculty governance. What concerns me is the general studies degree. Because there are a large number of students in the general studies program. There are 25,000 enrollments, and there are also 5,000 students on campuses, plus another 1200 that are taking it through the (402), by a correspondence course. We are seeking to eliminate that correspondence course option and create a (405) program with faculty (406) and courses. But those students, instead of entering through our system office, would enter through the campus in other areas. And actually the head count and tuition would go to that campus. So our degree of completion by our correspondence course would be out of state, in state (411).

BRAND: Any other issues? Again, I don=t want to spend too much time, but let=s continue for a little bit.

RIEMANSCHNEIDER: IU South Bend. (414). The body which you are talking about is (415-416). And the question concerns the distribution of voting members of the faculty council, whether there is consistent (418-419) is their two-month representation from the area of continuing studies. Basically, you say that one faculty member from each Indiana University campus on the advisory committee, I=m assuming that (425).

DUNNING: No, these are faculty. These are tenure-track faculty, active, not retiring, who serve on the general studies advisory council. That=s where suggestions (428) and faculty, the , the chancellors for the campus would ask professors to teach courses that are generally taken by general studies students. Obviously somebody from (432) wouldn=t have a lot of experience with general studies because we don=t have language.

RIEMANSCHNEIDER: So are these faculty members that are teaching in the general studies program?

DUNNING: Well, practically every faculty member actually teaches in the general studies program. Because general studies (436) all the courses, (436).

RIEMANSCHNEIDER: I see.

DUNNING: We aren=t proposing specific faculty members, and we=re not even proposing that they be on the General Studies advising board for that campus. That=s up to the campus.

CUNNINGHAM: Doug Cunningham, IU Bloomington. I figured that I might ask an impertinent question. As I look at this School of Academic (442), it seems to be where the (443-445). And as I look at the activities in my school of education that we are undertaking significantly more, a higher percentage of our activities compared to (448). So my question is there, will there be a continuing role for the school of continuing studies in the future?

DUNNING: Well, if you look at the most of the distance education efforts of all the schools, I would say probably 85-90% of them either (453), for the school, (454) was creating it before is the professional school, by the school of continuing studies, by the faculty. So while it is (457), I think it is excellent that the individual schools do their interim education and professional development. Our role is to help them in training and starting to design and actually producing and delivering the course. So I guess that answers your question. Maybe not completely, but Dennis?

SENUCHUK: Dennis Senchuk with (464). I just wanted to clarify the curricular oversight (466). What happens with the course changes and course (467), your faculty, how do you control (469).

DUNNING: I love the (470). Each campus has the ability to provide a certain curriculum design. For example, South Bend, the general studies degree is really not much different than other bachelor degrees because there is a (474) and there is language option. Other campuses are just (475), some have just (475). The school, basically, as an administrator, helps kind of organize so that all the campuses are (477). It doesn=t mean that the degrees have to be the same, doesn=t mean that the curricula has to be the same. But at least we=re all talking at the same time, and there are some guidelines from the accrediting or centrum, what this degree

should contain. There are any adding to the complexity of or the rigor of the degree. So I think our goal is to (484) that and try to see if campus resources can be shared. Sometimes we do a lot with a big network, there=s Indianapolis, Kokomo, or (487) in New Albany, we provide the mechanism to do that. So the exact requirements of the general studies degree on each campus, provided they fit the accrediting structure, are really the campus=s decisions.

BRAND: That was the same question that (495).

DUNNING: I should also point out that we are (495) the best we can to try to dovetail other organizational with the (498-499). Judging from the email messages, I think a lot of you have seen the (500), confidential. And I would only ask you to remember that that was the (501) of the chairman. There were lots of discussions.

BRAND: We discussed earlier forever before you came that the committee=s draft will be given around Christmas time.

DUNNING: Yes, but because it has leaked, and it has (507) the school altogether. Why are you ...?

BRAND: If I might, Jeremy, I think the answer to the question as Cunningham is something like this. There are activities that are not now based on any campus, or in any school. And the question can be can you distribute those activities across the university without laws? If you continue the school, as apparently we are, the answer is no - it will be a loss. That articulates the argument (518).

DUNNING: It is also important to realize that many of the (520) professional education programs offered by the schools and (521) wouldn=t be possible.

BRAND: That=s what you would lose.

DUNNING: The (523) program, for example, which was entirely designed by the School for Continuing Studies. I mean, is basically it=s not under contract. We=re doing the same thing for the National (526) or external project. So there is a big section of the infrastructure of technology education that is supplied by the school of continuing studies. It doesn=t mean that the school presently exist, doesn=t need to be (531). But I think it is important to realize what parts are from the school and what parts aren=t, because when you produce a reward, it makes the (534) without taking into consideration its (536).

BRAND: Jeremy, let me ask you one question. Did IU (537) redo or revamp all the correspondence courses?

DUNNING: What we are doing is there=s about a 3-4 year cycle on every course. What I ask, or told the Continuing Studies they must do is every time a course comes up for renewal, we - myself and the acting director of general studies -- needs to convene some sort of a discussion with the chairs of those departments under (548). Then we need to decide that if a course is not (549), if it is to be revamped and revised, it will not be unless it provides (552).

BRAND: You are not suggesting that you put all the courses on the computer? We still have

some (555) out there who don't use computers.

DUNNING: (556-558).

BRAND: Presently, we do have a (559) of people who do not use computers.

DUNNING: Yes, in fact 95% of our correspondence students do not take it by the web.

BRAND: Any other questions or issues on this? These copies of that provision and the approach will be available.

TAPE 2:

AGENDA ITEM #6: AFFIRMATIVE ACTION

BRAND: I=d like to return now to item 6, the discussion of the report on the Affirmative Action office and Bloomington University responsibilities and if I might I=d like to call on Dottie Frapwell to give the background of the report. Has the report been circulated and has everyone had a chance to read it? Or can you just put it into context and then we=ll take questions?

FRAPWELL: To give you some of the background of the report, I was not on the committee that did it. Barbara Bell chaired the committee. After Shirley Boardman resigned as Affirmative Action officer, Julia Lambert took over as chair of that council. It was decided it was a time to review that office, the functions of that office, and (008) an ad hoc committee to look into some of these issues. I think if you=ve read the report and the attachments (010), and trying to put together a report to give suggestions on the best steps to take next in terms of filling the position of Affirmative Action officer of the University. This report, as you can tell, is a result of I think a number of months of work on the part of the committee and I think they have done a very good job, setting forth some of the issues. There is a lot of material contained in here, it is a very important office. It is difficult, dealing with difficult issues. Someone told me, some time ago, a good affirmative action officer sometimes should be able to (016), they deal with issues that sometimes make people uncomfortable, but it is important to the institution and it is important to (018-019). So it is really important that we get somebody good in this position, who can help move the university forward on (020). That=s the background of it.

BRAND: Thank you. Was this discussed in the BFC

EISENBERG: Yes.

BRAND: Is there someone on the Affirmative Action Committee who would like to address this.

EISENBERG: Yes, there was a quite retracted discussion on this matter on the part of the Bloomington Faculty Council Affirmative Action Committee. And secondly we were focusing on the discussion on the question of whether the search should be for (025), affirmative action professional (025-027). Whether the search should be for a internal or external candidate, who has faculty positions (026). Although that discussion on the part of us faculty members began with widespread support among us, for the latter option, the discussion itself was led, I think, to that changed view of many of us. (030-035). And that said, it would be very (035) if a new officer or faculty member, if she or he be (037) followed by a staff, then that situation is already. More interesting would be the opposite case, supposing this new director turns out to be a staff person, it is very important to us on the affirmative action committee, that he actually enter the office available for daily, if not hourly, consultation (041) faculty members. All of that in addition to (042) currently being (042) in the Affirmative Action Committee, both in the UFC and the BFC, and other (043) campuses, in addition to any advisory faculty committee that might be formed. The results of the discussion in Bloomington is something that I informed my

colleagues at the university faculty counsel committee by email. So far I have received only one response which (046-047).

BRAND: Any other questions or comments?

PORTER: I am Rebecca Porter from the IUPUI campus, co-chair of the UFC Affirmative Action Committee. Although my comments are more from the IUPUI perspective than the university perspective. I would hope that as we move forward on appointing the university officer, that we consider some suggestions of areas for clarification or amplification within this report. I think it would benefit Indiana University if within the mission of the officer there was an amplified statement emphasizing education so that the office is responsible for education mission beyond what is described as educating the officers on the various campuses, so that they can act as compliance officers. If we are to be consistent with our view of fair and equitable treatment to all members of the University Committee, it would be very helpful if this officer took a role in educating all members of the community on how to accomplish this. It would also help to clarify which campus high level administrators are covered by the university level officer. It is not clear whether or not this is the chancellor of each campus, or whether or not it filters down to include other high level officers on the campus. It would also help to clarify who is responsible for assistance schools so that it is clear whether it indicates that an infraction occurred on a specific campus and it was by a member of the assistance school. Is it a university level officer who is going to have jurisdiction or would it be the campus officer. We would hope that there are some, in addition to this report, that we continue to look at some clarifications.

BRAND: I hope all of those questions are in the minutes, because they will need to be addressed. Please.

DAVILA: Actually, I would like to state that throughout the history of Affirmative Action, I served on I think one of the first task forces that was created here at IU when we first established the office or offices of Affirmative Action. And looking at the trajectory and the (074) of this office, in my estimation and in that of some others, I think by and large, even though it is a very difficult role to hold, when we have had great amount of faculty involvement in this office, in spite of the need to have duracritic and technical memory and knowledge and lawyerly advice and consultation, I feel that, for instance in the most immediate office folder, where we have an law professor (faculty member) that has been able to wear two hats at this particular transition. I noticed the difference in the correspondence that=s forth coming for the very few, black, Asian, and Latino faculty and students, Bloomington wise and system wise (085). So this is merely to implore that even though we reached certain stages of consultation and advising that we not forget that the university students and faculty are what is it all about. And that whenever we have staff as wonderful and as indispensable as they are, and not involved directly at the heart of things, faculty administration and direction, we (091) those particular ventures that we will need them. I served on the most recent review of the Affirmative Action officer, which was Shirley Boardman. I chaired that committee and that report that we turned it, (093), we recommended that at minimum we have a very strong advisory committee, beyond what is affixed to the respected faculty counsels throughout the system. And that this advisory committee, if at all possible, given all of the constituencies, be strongly represented faculty wise and that we have distinguished professors that we so admire and listen to from the board of trustees on down. So

again, this statement is mainly to again affirm the need for what I believe needs to be a faculty type of appointment, faculty involvement, so that we don't stumble inadvertently, (102) what can be a condition of denial and neglect. So I think we can do better in Indiana. We have a great institution and not everyone is an amrick to what now has become a little bit of a dirty word in some corners, and that is Affirmative Action. I think if we look at (106) rating as of today=s newspaper, he is way down and people do not want him to run for president. I think we and our constituencies here in America, our taxpayers and we ourselves, owe it to Affirmative Action to involve faculty directors, as we have had in Julia Lambert and as we have had in the past. When we (110) members at the heart of that office. It has at times gravitated toward denying neglect.

AGENDA #7: PRELIMINARY DISCUSSION OF POST-TENURE REVIEW

BRAND: Thank you. Any questions or comments. Okay. Let us move on to number seven, Preliminary Discussion of Post-Tenure Review. Let me just give a word of context to this. I am going to ask for a report from IUPUI and their progress on this issue. We are not going to decide anything today. I will just bring you up to date on what is happening, beginning the thinking and the thoughtful process necessary to take whatever steps we would want to take. It will go out, the IUPUI report, will then go out to the individual campuses for consideration. Then come back to this group for its deliberation. So this is just the first step. That is the context. Please.

HOOK: Thank you President Brand. To those who don't know me I am Sara Hook, currently co-chair of the UFC faculty affairs committee. I co-chair with Pat Brantlinger, seated over here. I am also chair of the IUPUI faculty affairs committee. The document distributed is the policy coming out of the IUPUI faculty affairs committee and I think that I would like to say a few words. Those who have heard my (128) report before please bear with me. Our committee began working on this document in February and at the time the agenda committee did have a meeting and it was decided since IUPUI already had a committee working on such a document, that we would wait and see (132) University Faculty Council what IUPUI=s committee came up with and perhaps use that as a discussion document for and as framework for proceeding with such a policy. At that time IUPUI faculty affairs committee, broke of into small sub committee of six people and we studied a wide range of policies around the country on post tenure review, we came up with a draft document, we sent that back and forth between each other and after considerable extensive discussion we brought that document forward to our full faculty affairs committee. At the same time I met with Dean of Faculty, Dean (140) and he was kind enough to give me an administrative prospective on the document and we further refined it, based on the input from these different groups. We finished our work on the document around in June and forwarded it on to the executive committee of the IUPUI counsel and Rebecca Porter was kind enough to meet with me throughout the Summer, not necessarily changing any of the substance of the document, but rather moving and shaping it so that it conforms with some of the policies in place. It was brought forward to the IUPUI faculty counsel for discussion. One or two comments that I might make about the document, at the study, post tenure review around the country, really the policies kind of fall into two different camps, if you will; one is what we might call the broad rush, everybody has to do it type policy, (150-153). On the other hand, many, many other institutions have adopted, what I call a trigger mechanism, whereby existing

routing mechanisms are used and at the point I use to identify faculty that may be additional and meeting a standard productivity. One thing else I will say about post tenure review policies, 69% of institutions out there even have post tenure review in place, are working on post tenure review policies as we speak or are seriously considering working on that, so it is clearly not a new or unique problem. One thing I will say about our policy, will choose, and this was based on some statistic (161), showing that estimate anywhere from 1-3%, usually not much more, faculty are truly what we might call, chronically unproductive. So it seems to ask a philosophical point, that and seems rather silly to make 100% of the faculty go through a process, when what we are really talking about is 1-3%. We rather decided on the, if you will, triggering mechanism, the committee did not like that, I did, so we chose to call it an initiating mechanism. But in terms of that, again, assisting review of these would be used to identify chronically unproductive faculty. Another thing I will say, the motives of choosing a different title, and I think for many, many faculty members, myself included at full range have gone through post tenure process three times and the last thing that I wanted to do was do it again every five years, we decided instead we would look at it in a more positive light and chose to call it faculty review and enhancement. (176). One committee thought it should be faculty enhancement and review which was (laughter), also seemed too appropriate. But what we wanted to focus on, I think, was the positive aspects of this again (179-180) and that ought to be the first thing pointed out in any document and I believe. Another, thing that we wanted to focus on was that this is not only a review, but an enhancement and along with that must come significant investment in faculty development, not only the faculty that are having problems, but also the faculty in general and to a better (185), faculty development efforts that are already in place, in departments in schools and on campus and throughout the university. (188) of the importance of faculty development. Another aspect of the plan, was that (189). Plan A is probably my favorite, part of the document, I think that our faculty members for whom a change in direction, a change in (191) is a great manner and will be looked at as a favorable item. That is what plan A is intended to do and to provide that service structure. I think basically the plan is fairly faculty friendly. I think that there is lots and lots of safeguards in place, not only for decision making, in terms of when a plan would be opposed and the carrying out of that plan, but there is also significant safeguards for the university, in terms of not continuing to embus year after year, unproductive people and also putting within the faculty plan, a variety of marks, standards and stopping points, so that faculty can see where (201) and they can be judged accordingly. In terms of how the document is being handled, I did meet with the chairs of different schools and faculty govern body on this campus and I have spoke with (205) over the telephone so it has gone out that way. And I think, at this point, what co-chair and I along with our committee will prepare a cover letter based on any feedback we might get today, so that this document can be set out to campus to get feedback. One thing I will say about the document, is that it seems to be written in two sections, section background, rights and responsibilities and principles, of what I really think campuses ought to focus on first, in terms of rather or not they can be supported on the university wide basis and the second half of the document, the plan A, the plan B are really quite specific and I think (213), copy right law and detail, and there is always going to be causes that don't fit the language. So that is something that those particular sections were written very, very much with the IUPUI situation, departments in mind and I think you can see that reflected. So I would urge you in the first, pay considerable attention to old variety of themes, issues and philosophies that we have taken to reflect in the guide principles and after that we will turn our attention more to the detail

of trying to see how the policy needs to be revived and reframed so that it fits individual campus needs.

BRAND: That is a good introduction, thank you.

SPECKLER: I'm Martin Speckler. I have served the last 5-6 years on this committee, and was chairman for two recent years. So I've had some opportunity to consider this matter and also had the opportunity which some of you have had of reading the (226) report of the American Association of University Professors published (227) subsequent to this report. And using the accumulated experience of the AAUP, I think there are (229) that there are a couple principles that we should adopt, which I will try to promote in the committee this year. I think that the central issue is why does Indiana University need post-tenure review? Well, the need is very narrow. After all, the vast majority of tenure professors at Indiana University, it's likely admitted, are doing satisfactory or better jobs. And most of us are reviewed every year or every two or three years. In my department, all (237) professors, as well as, are reviewed at least once every 3 years. And I think that should be a general policy throughout the university. (240) review every year for salary increases, as I'm sure you are. At the other end, we have those who are (242) unproductive. We just did what. And everyone recognizes that there could be, probably is, phenomena of that sort. But that is a very small group. And here too, there are mechanisms in place, and have been for many years to deal with that. I referred to early retirement, (247) retirement, and our new policies on incompetence and (248). So this policy, if I understand it rightly, is intended to address this very small margin between the vast majority who are doing satisfactory or better work and those very few, who are clear to everyone, are not (252) to the university. Well, we may want to have a policy to address this small margin, but I'm just pointing out to you that the cost is going to be considerable. In terms of morale, fairness, possible lawsuits, it is going to be quite difficult. Because we are dealing usually with faculty at advanced stages of their careers, where it's going to be difficult to get outside references where the personal matters of dealing with a colleague with whom you've had a relationship many years are involved. These are not (260) judgments that we're going to be called on to make. It's going to be quite difficult in personal terms to carry out this (262). And if we're called (262) administrative judgment, well in my view of the balance between the possible benefits Indiana University and the variety of cost is a close matter. It is very close. Whether we should have this or not. But let's assume that for reasons that may have already occurred to you we must have a close tenure review. In this (268), what principles should we, as professors who are here not representing only ourselves, but perhaps less successful colleagues that may be subjected to this kind of procedure. What should we insist on to maintain the high morale and standards of Indiana University? I would like to suggest two principles which really come from the AAUP, but are (274) themselves, it seems to be by common sense and a sense of decency in our academic community. Well, the first one, and I'm referring now to the report on post tenure review, and I've brought a few copies and I'll be happy to provide this to anyone who is interested. We need a standard. After all, the purpose of post tenure review is not to (281) out money; we already have procedures for that. The other purpose that Sarah mentioned about helping senior faculty members find their way, give them faculty development, and (285). We already have this. And what's more, we're talking about telling a faculty member who has been performing well here for twenty years what he or she needs to do to pep up their career. Doesn't that sound a little patronizing to you? I think it would if you were the object of this kind of

device. So really the end of the pencil with respect to post tenure review, the end of the report is that when push comes to shove, you will be pushing a faculty member out before the normal retirement age. We can do everything else, (294) report, I believe. In fact, they're already doing everything else in the report, more or less satisfactory, more or less (296). Except terminating people=s (296). That=s the end of the pencil. Now, if you're going to do that, we have to have very clear principles. And the two that recommend themselves, at least to me, that the principle ought to be, and here are two of them. That the member under review discharges conscientiously and with professional competence their duties appropriately associated with his or her position. We're talking about people who have already gone through the tenure process. The burden of proof (304) beyond the university that that faculty member is not conscientiously carrying out the duties associated with that position. That=s number one. The emphasis should not be on results, but it should be on whether the faculty member is conscientiously carrying out the duties. Secondly, it is obvious to anyone who looks around, or (310) their own (311), that results will differ with age. This is (312), and the (312) says that the post-tenure review should be flexible enough to acknowledge different expectations and changing different expectations and different disciplines, and change expectations at different stages of the faculty career. Now, we already have a teaching capacity model which this faculty council had approved about two years ago. But it does seem to me that we have to allow for the possibility that as the faculty member ages, he or she may wish to participate more in the service, administration, and teaching functions of this university. And less in the grant writing and research element. That will reflect common sense. And yet, that faculty member that is doing more teaching, more service, more administration not be subject to the demeaning processes of post-tenure review.

BRANTLINGER: Professor Patrick Brantlinger, Bloomington. Since my name is attached to this, I know I should say something about it. I am cochair of the University Faculty Affairs Committee. I should clarify that the committee has not discussed this copy of (328). We're in the process of trying to gather some information about what review procedures exist on the various campuses. I agree with Professor Speckler in that in many cases at least, many of us have such procedures, and in some cases, quite elaborate procedures on an annual basis. For example, the salary merit review that the English Department adopts on our campus. But it=s the School of Education (334) conducts its annual merit review for every faculty member in all three areas of (335). I, too, brought these issues of Academe along, and wanted to urge people, as Professor Speckler is doing, to pay special attention. There are actually two back-to-back issues that I think (338) remain relevant. One is the topic is the culture of tenure. And that was a (340) 97 issue, and then the September/October issue which is the one Martin is referring to. Several of the articles are focused on the post-tenure review. And then there=s a AAUP report which concludes with a set of guidelines, and they're (342) too. And I think that this council, before we do anything with this document. I=m sure IUPUI has gone over this. But (345) before it does anything in the way of ratifying this document, should pay special attention to these guidelines. My own feeling about the plan coming from IUPUI, (349) hasn=t been totally discussed by the Faculty and Affairs Committee of the UFC or the (350). My own feeling is that, like Sarah=s, that at least Plan A is faculty friendly. Plan B is something that does seem to institute, call fro instituting a new level for the dismissal procedures. And we need to ask if this new level will strengthen dismissal procedures where they are rightly being invoked. I think we=ve all had experience, certainly from the chairs or deans trying to work with colleagues who

are for whatever reason (360-361). And it is very very difficult now to deal with such people in terms of (362) to the university. The AAUP guidelines say that where dismissal procedures are already in place, post-tenure review plan should not itself operate as a new form of dismissal procedure. That should be a completely separate question. So we might want to ask whether Plan A is okay with us, the voluntary plan. Plan B, which does seem to add this new level of dismissal procedures, may be a very different issue altogether. So thank you.

HOOK: My two colleagues raised extremely helpful comments. Martin did share with me the Academe article, and I really had made a note to myself there was language in that article that I particularly liked, and it's not just because I'm a lawyer. But it does talk about the shifting of the burden of proof. When we're on a tenure track (376), the burden is up to us to prove that we should have tenure, and to show and to make that kind of a case. As the article suggested, the (378-379), the burden is clearly on the institution to prove why we should not have tenure. And so I think we want to be careful with any policies we do institute to keep that burden very very clear. That brings another excellent excellent point, and I think this is where there is some confusion in the policy. For one thing, this is more meant to take care of a gray area, that area where you can't really point to any single instance of (387) conduct that will lead to the dismissal. This is sort of the first kind of floats along way below even a very very minimal standard (389) year after year after year. And yet they never really do anything truly bad enough to warrant the dismissal for incompetence or misconduct. There is (392) I'll say those policies are in place at IUPUI, and anyone (393) I've been Xeroxing those and sending them out. This plan, as it stands now, is designed then after, and let me go through the scenario. I'm a faculty member and I have now, through our annual review process, I've been deemed to the meeting of a review and a faculty development plan. I'm reviewed, my elected committee of faculty decides yes - (399). A plan is developed with my input and with consultation of the dean, I get through the three years of the plan. I have not achieved even minimal level of compliance with that plan. At that time (403), it goes into one of the two IUPUI dismissal tracks, if you will. So the faculty member, this is not, in my mind, a new way to dismiss. It's just a new track that leads to one of the transiting ways. So I want to make that clear. The other thing I'll say in relationship to the plan is that as a manager, and also as an employee, feeling the frustration of and not feeling (413) that it's fair to say, you're not doing your job, but I'm going to have to tell you why, and furthermore I'm going to have to help you do that job. And I think this policy couldn't really (415) our department chair wants to use this type of policy to (416). They're going to have to say why a person is chronically unproductive, and try and help them to no longer be in that state of affairs. And the one other thing I think I'll say, and I know Ted has brought this to my attention, (420-421) along with the detail, I think the real burden that is going to be on schools. There is a great great variety in terms of what schools have in place. Some people listen and say well our school doesn't even have a missions statement, how am I even to know that what I'm doing is not on the right track. Other schools have, as my colleagues have said, quite sophisticated systems of annual review, and three-year review, and salary review in place. So the burden, even if such a policy would get accepted and approved, the burden then shifts to the schools clearly to put some of these elements into place before it would ever, say, stand up in court. And the other thing, I think, is that schools would have to set some guidelines as to what it means to be chronically unproductive. It won't be enough to say that; there will have to be some sort of a scheme to (434) and others have mentioned a concern that that not only be fair within

the department or school, but also there be an (436) on campus and university theme about what those concepts mean. So that I know that the (438) really (438-439), easier. And the other thing I=ll say is that I=ve read concerns writing this formal (442) perspective, but also having served on the board to review, I appreciate how pretentious this is, and again I think that=s why it=s very important to have this discussed and considered and get feedback. I will say that we had (447) come a week or so ago and give a talk on post-tenure review, and we were pleased to hear that she felt like our policy was going on the right track and was going to address some of these typical issues. So that was one good thing that=s happened with the plan.

EISENBERG: (454-456). Guidance and dismissal. That the cost of the (459) plan offers, dismissal procedures. They may be flipped with dismissal procedures already in place. The point of mine is this. That the person who is frequently (462) dealing with the (462), between (463) should be (464) for their retirement. Could now, over such a plan, exist should he have another, say, three years. Everybody going into the whole procedure would know that it was going to (468). And then the last (469) option that is available as part of University policy might be possible (470). I=m not saying that I see that as a commendable outcome, but I wonder if the (472) needs to be given to this kind of (473), so as to block the continuation (475). Someone who I most recently (478) question who I thought to be appropriately removed from the university rather than continue through some other (480).

ZUREK: I=m David Zurek from Bloomington. Like all of those policies, I think this one could benefit from some work on the details, and presumably specifically might benefit in light of the AAUP statements. That said, I do not see anything (487) of the existing AAUP statements on the tenure review that are grossly violated by the procedures that are outlined in this. I think the provisions for peer review by faculty, offering them an opportunity to mediate the provision of resources and so forth, the due process guarantees, strike me as being very sensible. AAUP guidelines do suggest that it might be helpful to separate the issues upon those tenure review and dismissal issues. And I think it would help our conversation in the formulation of this policy if those were kind of separate. I think the issue of burden and burden shifting in terms of proof ought to be addressed. I think the need for a policy is clear on the Bloomington campus. In talking with campus and local administrators, I find embarrassment over this issue because it is very difficult for senior level administrators (505). Two instances where incompetence as opposed to, say, sexual harassment, has lead to the initiation of termination proceedings. On an ad hoc basis, there were (509) evaluations of occasional use, but we do not have those formulated procedures. And I have, as Patrick mentioned, heard many chairs frustration dealing with university council, campus (513) administrators in the prosecution of difficult cases. I think (515) clear, the prior observation I would make is that I did hear a very different point (517) from President Brand last spring when he talked about post-tenure review, and he offered the surprisingly optimistic projection of perhaps .1 to .2 percent, I think he said, of the faculty might be labeled as chronically underachieving or not adequately performing their duties. I actually (526) by those numbers, because there is a part of this proposal that we haven=t mentioned, but I think is important. It=s not only the professional development activity, and we should never forget that part. But also the intermediate sanctions. And I think if we use the professional development activity, peer review, and the intermediate sanctions wisely, we will really have a very small number. So I think the policy has enough in it that will (534), maybe never, I wouldn=t say never, but really get down to the point which would initiate dismissal. If we can,

in fact I would be most happy if professional development and intermediate sanction solves all our problems. But I think it will solve most of them. (540-541).

FENEBERG: (540), School of Medicine. I think that Martin=s first statement about this policy is a little bit disturbing. I think that really it should be (545) in a more positive light. I think all of us who have tenure realize that it is not (547) responsibility, and in fact we are a public university responsible to have tenure that is meaningful. And tenure that is meaningful implies that it is a continuing obligation. And at least this is one way of assuring the public who (554) from time to time that we need for tenure to be a meaningful award.

PORTER: Rebecca Porter, IUPUI. At an (558) conference discussing post-tenure review, I heard a (560) that I think is helpful to keep in mind. You=ve heard the term (562), and I think when we think of that term (563), we should think about policy dealing with incompetence. And at IUPUI we were (564) adopting recently policies dealing with incompetence and misconduct. Instead, we should review those policies...

TAPE 2: SIDE B

PORTER: ... and make it into something new. So what we're talking about is a plan to address those individuals who are adrift and hurting the other productive faculty members of our community.

DAVILA: And I think (003) President Brand in the evaluation interview of two weeks last was more ahead of us than the one or two percent that the (004). If my hearing was right, he said that 99.1, 99.01, or it was something like (006).

ROODA: In this (007) fast discussion, I have a real simple question. Did I hear you say that you were going to get this out to campuses for the purpose of discussion, and how is this going to occur?

HOOK: The plan is that Pat and I will convene our committee and what I would like to do, I think, is prepare a cover memo introducing the document, and then send that out to the different campuses. Just so that (011) just as it is.

ROODA: Do you have a sense of when that might occur?

HOOK: As soon as we can work on it. But before November.

BRANTLINGER: Let's go back to the issue of the two plans, and (013) an immediate kind of dismissal procedure with Plan A, which is a voluntary plan. The more I thought about it, the more I wondered about the consequences that had the two tied together, quite frankly whether Plan B violates one of the guidelines (016) of the AAUP report. If (017), if we had a voluntary faculty friendly plan, people, it seems to me, would be more apt to use it if they saw it as a genuine enhancement plan, as opposed to being coupled with a plan for incompetent faculty (021), people who are violating some rule on sexual harassment and then research (022). They have the two plans linked together, and it seems to be invading the positive aspects of Plan A, (024) where people will see it as (024), see it as a plan for strengthening the university's hand in dismissal procedures. People won't volunteer to have this kind of (027) plan, but (027). But on the other hand, the AAUP guidelines say pretty clearly that if there is a problem with dismissal procedures, if they're weak or if they don't exist at a university, then there should be a (029).

ORENSTEN: I'm David Orensten, I'm senior vice president of IUSA at Bloomington. And I have a question specifically (030) regarding the makeup of her committee. (030-032). And I'm wondering if this plan would include that on the existing review committees, and if this is something that student representation is being considered on the post tenure review committees.

HOOK: I think in terms of the committees, we left that quite open saying that there would be a minimum of three elected faculty members, and I don't think that all would (034) the school from saying we'd rather have five, or we'd rather have six, plus an appointed member, or even having student representation. And I think the other thing that would point out is clearly within the spirit of this, is the idea that student evaluations can come in as other student input can come in as evidence of the faculty member's productivity and competence.

BRAND: Presently, we don't have students on any of our review committees for faculty, (039) would be a change in policy (040) information. Otherwise student input, but we don't have students acting as acting members of those types of committees.

BRISTOW: I'm awfully glad you said that, (041) to me. As we speak of AAUP principles, that does seem to get to the core of the peer review. I wonder if I could just ask a quick factual matter. Someone referred to 69% of the universities in the country either having such policies or undergoing it. I wonder if you could tell us where that figure comes from, and if perhaps you or President Brand could give us some idea of another (045) universities.

HOOK: Good question. Over the summer, I listened to a series of tapes provided by (046) office, and it was on faculty roles and responsibilities, and several of them did address post-tenure review and other issues related to faculty members. And that's where, not only the 69% figure came about, but also the 1-3% figure in terms of chronic performance.

BRISTOW: So the 69% figure was quoted in some (050).

HOOK: So it was off of one of the tapes I listened to. Which specific one, I can listen to all of them...

BRAND: There are such states, Texas is an example, which is legislative mandates. Virginia is another example of a post-tenure review. And to the best of my knowledge of those states, it's been legislatively required a post-tenure review of all faculty that use the (054) mechanism approach. Those institutions that involve the (055) mechanism have been preempted in that they redevelop their own.

BRANTLINGER: I don't believe these issues of mandating (057), but they do talk about a lot of specific cases.

BRISTOW: Oh yes, and they refer to a very large number. I'm not questioning that. I'm just trying to get a (058).

ROTHER: (058) was here and she is president of AAHE. She uses specific numbers. She's the one I went to find out. Prior to her job as president of the AAHE, prior to that she was the president of the Virginia Higher Education Division, legislative (061) where she supervised the institution for the (061) states.

BRISTOW: The point to me is not. These are questions that always come up, and I think it would be good for us to have an understanding of the environment. I don't think myself that it dictates what we want to do or what we don't want to do. But particularly, I think some view comparable institutions, some view the CIC would be helpful to the discussion.

ROTHER: I don't have a complete answer to that. I'm a (067).

FINDLING: I'm John Findling from IU Southeast, and I'm having a little trouble seeing the point of Plan A. If a person or faculty member is a piece of driftwood, then he or she either satisfies doing so or doesn't realize he or she is doing so. In either case isn't going to volunteer for Plan A, and if that faculty member is not a piece of the driftwood, then he or she is not going

to need Plan A or is going to be able to (070-171) on his or her own.

HOOK: I think that we've gotten it confused in our terminology. I think I would consider Plan B for being for driftwood, because to me the driftwood concept is a person just floating around, floating around in attempt to just keep the status quo. I wouldn't see Plan A as being for driftwood; I would see Plan A, again, as a voluntary choice where a faculty member actively and of their own coalition and their own soul-searching, decides that they're ready for a change in direction and they want some help with that. Perhaps it's going to be a new research direction and they know they're going to need some support and they know they're going to need some downtime, shall we say. They know perhaps that for the first two years there won't be a lot of publications to show for that effort, that is what that is not for. And I adopted Plan A, I believe, from the University of Kentucky where they clearly had the Plan A and the Plan B. Myself, personally I like Plan A, because again I saw it as an opportunity for a faculty to make that choice that they want a new direction. Where I see the driftwood is clearly Plan B. Because that's the person who will, forever and ever, drift along until you put a (085) in place to stop the drifting and create, as Doctor (086) said, create something new.

FINDLING: This is a little confusing, the (087) of the (087). It seems to be focusing on two different purposes.

GALANTI: Paul Galanti, from IUPUI. (089) truly (089). I'm somewhere between drift and dead (**laugh**). I would say that I would like Plan A, and that process will go on for a year or two. And then it won't produce anything. (093) because the materials can't be used in any other faculty evaluation. I will then propose that my two years of unsatisfactory reviews followed by a three-year faculty development. (095) ready for retirement. (**Laughter**). (096-097). That process should be over and followed then by the dismissal procedures for (098). I'm very (098). But I wonder what kind of a timeframe are we talking about, or (099) to be productive.

BRAND: This is Paul's point all over again. I think it needs consideration.

SPECKLER: Briefly, I'd like to ask you to consider a case that is hypothetical, but (102). Suppose we have a faculty member of middle age who is no longer contributing to the national disability of his or her department to prestigious publications. But none-the-less, is making an effort in that area and is continuing service and teaching at the same reasonable level. Is that person up for dismissal, according to this post-tenure review process? It is a very common almost universal process associated with aging. And (109) or not on how their profession in the sixth or seventh decade of their lives the way they were in the second or third. Is it possible? I think that this is really a (111). Is it possible for a chair, in association with a dean, (112-113), is it possible for a chair or for a dean to devise dismissal for such a person? Would not at all be unusual, even at Indiana University.

BRAND: I'm not totally sure about that case. But something provocative occurred to me as you were speaking. It is true that the younger people are the ones who are most productive in terms of their research efforts and contributing to the journals, and we gray hairs aren't doing as well. Perhaps our salary raises and increments are inverted.

BRANTLINGER: Yeah, I was going to say that Plan B does differ from Plan A in a little bit in ways (123). Because in Plan B, the initiator of the (124). In Plan A the initiator is the (124) or the chairperson. But in Plan B the language is the dean initiates the procedure. And since, in our discussion already, I think we've proved the incompetence and driftwood over into Plan B. Maybe the percentage or the majority instead of .1 is like .01 (**laughter**)

MILLER: I believe the (131) of the issue here, the pages aren't numbered here, but under Guiding Principles at the bottom of the second page, there is a paragraph which (133) the phrase Unsatisfactory performance@ appears in quotations. To me, the (134) of this problem is what do we mean by unsatisfactory performance? I don't believe that in any of the policy statements of the university, that there is such a (137). And it is clear to me that if we're going to forward with this, that we're going to have to create such a definition. And a lot of the fact in this paragraph, something that does concern me is that the paragraph, as it reads now, suggests that each school pursue this definition itself, with the exception that the definition must include the concept of lack of effort rather than a lack of results. I really think that we should probably, well one of the issues that I hope the Faculty Affairs Committee will encourage us to pursue, is how much campus level, how much university level structure should be embedded in this concept of unsatisfactory performance. I would really hate to see us get into a situation where, for example if we take the annual salaries of the deans, because that is kind of the base from which this stuff is going to probably unfold in practice, in many units the annual salary of deans are very detailed reviews, focused on all kinds of little areas that may or may have not been pursued. I would really hate to see us be in a situation where the failure to (150) in a slice of area over a two-year period triggers some kind of a review. I think that would be a disaster.

BRAND: I think we need to bring this to a close. If you want to have one last statement, Mike?

DOWNS: Just an observation. As (154) describing a hypothetical case, it seems to me that a lot of people who have faculty training and student administrative responsibilities, and while they're able to do research, (156). I think the policy should be clear that they're not referred to as administrators (*laughter*).

BRAND: We need to draw this to a conclusion. This is the first cut at it, obviously. I'm pleased that there was such engagement in the issues. These are critical issues for us. A lot of thinking must go on before we reach a resolution. But I think a number of very important comments were made during this discussion. It was a very good discussion.

SCHNEIDER: I wanted to come back to the (164) question about where specifically do we go from here. I'm not surprised at the amount of discussion. The Agenda Committee thought a bit about whether to add to an already full agenda, but we thought it was very important to get it out as soon as we could. There is only one other UFC meeting before Christmas, and then we don't meet until February. I hope that will give us enough time for us to get it out to the campuses so we can at least contemplate perhaps, coming back to discuss it again. It wouldn't be (168) any earlier than February. I would guess that once the Public Affairs Committee can draw up something of a cover directive (170) to alert the campuses on what they should really pay attention to, we'll send it to both the Faculty Governance and Administration of all the campuses to make sure it gets to the appropriate places. And then it's up to you on your campuses to

discuss it as widely as you can. We've started that process here on this campus, and it will take us awhile, but we hope that you'll continue the discussion, and that when we come back again to address it, that we'll perhaps be able to take a shot at whether we want to do something or not.

BRAND: I wonder if it would be too much to ask your committee to consider what would be appropriate background materials? Some of the Academe articles, and some other information, and scan them onto the web or something so they're generally available to engage into the discussion. So we can have some background to learn from other's thought processes.

ROTHE: He has it all written out. But there may be materials in addition to AAUP.

HOOK: Many other institutions on there have their policies as well as their background, committee work.

SCHNEIDER: And my request is that the committee direct us toward what they consider the most appropriate materials.

GROS: Before we go into our executive session, I'd like to make one comment. You know, these meetings of UFC don't happen by accident. A lot of hard work goes into not just getting here, but preparing materials and so on. We've (188) a better room. Even this kind of room requires arrangement. The primary responsibility of supporting the University Faculty Council resides in the Bloomington Office, but given the responsibilities of the co-secretary of IUPUI and the number of meetings that are here, we're also dependent on the support of our staff as well. I wanted to take this opportunity to acknowledge the work that Bernice (192), the secretary of the faculty council here has done for us, who is about to retire. This will be her last meeting. We appropriately thanked her at the Faculty Council, but I also think it would be nice of you to join me in thanking her for her service.

AGENDA ITEM #8: EXECUTIVE SESSION

GROS: