

Texas Tech University
Minutes -- # 214 Faculty Senate
March 21, 2001

The Faculty Senate met on Wednesday, March 21, 2001 in the Senate Room in the University Center with President Charlotte Dunham presiding. Senators present were Elam, Thorvilson, Giaccardo, Buelinckx, Donahue, Drager, Hartwell, Lee, Lewis, Lodhi, Lucas, Meek, Perez, Reeves, Schaller, Walker, Weinberg, Boal, Hein, Malone, Hartmeister, Murray, Thomas, Lakhani, Mann, Norville, Zhang, Blum, Khan, Cochran, Bradley, Cardenas-Garcia, Carr, Cooper, Marbley, Smith, Willis-Aarnio and Becker. Senators excused from the meeting were Keith, Held, Iber, Spallholz and Trost. Unexcused Senators were Tuman, Murray, Reeder and Swafford.

- I. Call to Order** was announced by President Charlotte Dunham at 3:15 pm.
- II. Recognition of Guests:** President Dunham recognized Provost John Burns and Vice Provost Jim Brink along with Assistant Provost Liz Hall. Because of a large number of guests and media representatives, President Dunham did not attempt to recognize all those in attendance at the meeting.
- III. Approval of Minutes** for meeting # 213, February 14, 2001, were approved as modified. The modification involved adding Senator Tess Trost's name in section IV as a co-sponsor for the resolution mourning the death of Dr. Douglas G. Birdsall, Associate Dean of Libraries.
- IV. Approval to Amend the Agenda** was requested by President Dunham. The Senate unanimously approved asking Texas Tech University President David Schmidly to address questions surrounding the proposed hiring of mens' basketball coach Bob Knight. The election of new officers for the 2001-2002 Faculty Senate was also relocated on the agenda to follow Dr. Schmidly's remarks.
- V. Remarks from Invited Guests:**

Texas Tech President David Schmidly. Prior to President Schmidly beginning his remarks, Senate President Dunham provided ground rules for how she intended to structure this portion of the meeting and handle questions from Senators and other members of the TTU faculty following President Schmidly's comments. Twenty minutes were allocated for Dr. Schmidly to make his prepared remarks, followed by an additional twenty minutes for questions. President Dunham stressed the controversial nature of the issue and urged everyone to maintain proper decorum and professional behavior.

After relating a humorous anecdote about a recent luncheon conversation he'd had with a local clergyman, President Schmidly stated that the decision as to whether Bob Knight should be hired to replace James Dickey as Tech's next mens' basketball coach is the toughest issue with which he's dealt since assuming the University's presidency last August. Acknowledging that he can't please everyone but nevertheless was inclined to listen to multiple points of view, he welcomed the opportunity for a civil and spirited discussion.

President Schmidly indicated that he had read and studied a petition he had received from a number of Tech faculty opposing Coach Knight's hiring, and that he had examined lots of other input as well. He said he wished to dispel any notion that a proper process for finding and hiring a new coach had not been honored. He indicated that, at this point, he had not yet received a final recommendation from Athletic Director Gerald Myers as to whom should be hired from among ten prospective candidates. He concluded his introductory remarks by stating that he wants to keep an open mind about the coaching decision and that he also wants to hear and have the opportunity to consider all points of view.

As the focal point of his formal remarks, President Schmidly responded to a series of seven questions that he had received from President Dunham in advance of the meeting. In general, the questions touched on various aspects of Coach Knight's personality and prior conduct during the 29 years he coached at the Indiana University as well as on circumstances that may surround his prospective employment at TTU. President Schmidly read each of the enumerated questions which follow prior to giving his response.

1. Would you plan to hire Mr. Knight on the expectation that he will continue to conduct himself as he has done in the past, or on the expectation that he is a changed man and will fundamentally alter his attitudes and behavior? If the former, will he be held to a different standard of conduct than other educators at Texas Tech? If the latter, what evidence has Mr. Knight provided that he plans to change his attitudes and conduct?

President Schmidly replied that he has done considerable research on Coach Knight's background, including asking the coach about his behavior. President Schmidly suggested that Coach Knight says he has learned some things that will help him handle things differently in the future. Patience, controlling his temper, and changing the way he coaches were foremost among the things Coach Knight intends to modify. President Schmidly said he made it "crystal clear [to Coach Knight] that, if he is retained here [at Texas Tech], any repetition of any of that kind of behavior will not be tolerated for one instant. I think he knows that." President Schmidly then urged everyone in the University community to focus on the present and on the future, and, "as we look for the best in people,"

to giving Coach Knight a “fresh start” here on the South Plains.

2. Did you contact the president and the athletic director at Indiana University as one might contact the references of any potential job candidate?

President Schmidly said he contacted not only the president of Indiana University but also more than three dozen other individuals. He said that the effort, aided by a professional investigative firm, is extensive and ongoing. President Myles Brand from Indiana University stated that he “is unable to comment on the situation.”

3. Could you clarify what code of conduct is expected of athletic coaches at Texas Tech both on the court and off the court? Are they permitted to conduct themselves in ways that are not permitted of regular faculty? For example, regular faculty are frequently warned against touching students. To what extent are athletic coaches permitted to touch students beyond the ways that are directly necessary for coaching?

President Schmidly responded by saying that “there is no special code of conduct for coaches. The same code of conduct applies for faculty and coaches alike. There is a clause in every contract that calls for termination for behavior that is detrimental to the university, to its employees or students. That includes physical abuse.” President Schmidly also noted that he had stated publicly that “if the incidents that happened at Indiana would be repeated at Texas Tech, then I would have to terminate Coach Knight as our coach.” The same would hold true for all other employees at Texas Tech – they would also be fired. Because of these circumstances, President Schmidly is confident that incidents similar to those that occurred at Indiana will not be repeated here.

4. If Mr. Knight is hired, and he were then fined \$10,000-30,000 by the NCAA for unacceptable behavior, who would pay the fine?

Although the Big 12 conference does not impose fines, President Schmidly said that if an individual received a fine from the NCAA, then that individual would be responsible for paying the fine “if the fine were specific to that individual.”

5. If [Coach Knight] were hired, will he have academic rank? Will he be tenured?

President Schmidly said that rank would depend on whether Coach Knight teaches after having been invited to do so by the faculty. Coach Knight has expressed an interest in teaching at Texas Tech as he had for all of his 29 years at Indiana University. With regard to whether Coach Knight would have tenure, President Schmidly said “the answer is ‘no’.”

6. How can the Texas Tech University administration and the Texas Tech athletic department convey the fact that the Athletic Council represents the faculty when the operating procedures do not compel the administration to use the Senate’s recommendations for members [on the Council], and has on more than one occasion not used all of the names recommended?

President Schmidly replied that the Athletic Council represents a broader cross-section of the university than just the faculty. As President, he suggested that he makes his appointments to the Athletic Council to represent diversity. He concluded by stating that he could not tell how this particular question was linked to the issue of hiring our next basketball coach.

7. Have you considered the impact of hiring such a controversial figure on the public image of Texas Tech – both with the general public and with legislators who are considering providing funding for Texas Tech as one of the flagship universities in Texas?

President Schmidly said, “Of course we did that, and we don’t want to minimize that. That’s extremely important.” President Schmidly went on to say that a comment Coach Knight made the first time they met was also important. Coach Knight’s comment was that he sees himself “first and foremost as [being] a teacher – a teacher first and a basketball coach second.” President Schmidly concluded by stating that a higher graduation rate for the men’s basketball program will not jeopardize our academic reputation or our goals for diversity for Texas Tech. He doesn’t see how having a stable of successful and, in some instances, “best ever” coaches can possibly create a problem for endowments. With that, President Schmidly opened the floor for questions.

Professor Ed George began by making several points about (1) whether Coach Knight’s previous record would be “wiped clean,” (2) the impact that Coach Knight’s widely publicized comment about “the pressure of the game being like rape – you might as well sit back and enjoy it” had on the then-president and administration at Indiana University, and (3) that Coach Knight’s 98% academic record for graduating his players is somewhat misleading if student athletes who transferred from the program at Indiana University are factored in – then, the rate is closer to 65%. President Schmidly agreed that Professor George made several very good points. The past cannot be dismissed, but President Schmidly is confident that Coach Knight is not likely to engage in similar behavior as evidenced during his time at Indiana University. He said the strongest opposition to Coach Knight comes from people who have not known him. Indiana University faculty who have been contacted indicated that Coach Knight has been “one of the premier educators on their campus.”

Next, Senator William Hartwell prefaced his remarks with several personal anecdotes about his own prowess and experiences as a young athlete. He noted that Coach Knight was the most recognizable coach in the 20th Century. He emphasized his agreement with President Schmidly about the importance of athletic events as an integral part of the university community. He stressed that the exposure generated by Coach Knight's hiring may help us recruit students from around the world. Senator Hartwell concluded his remarks by asking rhetorically, "If you want to feel the blood flow, if you really want to hear and feel the blood flow at Texas Tech, the quickest way of doing it is getting more tremendous national exposure at Texas Tech."

Senator Don Lucas asked President Schmidly to address "the behavior thing" and how that issue will be addressed with Coach Knight. President Schmidly said he asked Coach Knight "point blank in front of the Coach's wife" about his serious concerns of behavior and anger. In response, President Schmidly said that Coach Knight acknowledged some mistakes he had made in the past, that the year off since his firing last fall gave him the opportunity to put things in perspective, and that the reduction of stress since he left the emotionally-charged environment at Indiana University has him eager to make a fresh start somewhere else. President Schmidly suggested that, if Coach Knight does end up coming to Texas Tech, then the Faculty Senate should consider inviting him to a meeting to express our concerns about his behavior and conduct.

Indicating that he is neutral on the issue of Coach Knight's hiring, Senator Lance Drager asked about the possibility of Texas Tech protecting itself against the possibility of being involved in litigation as is apparently the case with Indiana University. President Schmidly said he had asked Coach Knight about the issue, and the coach indicated that he is not suing his former university. Rather, he has merely filed a letter that, in the event that the university fails to honor its agreements with the coach, will allow him to file a suit without violating the statute of limitations.

Commenting on his days as a graduate student at Indiana University between 1974-1980, Professor Ron Rainger asked President Schmidly if he had attempted to contact Dr. Ehrlich, an I.U. president who preceded Myles Brand. President Schmidly said that he had not yet done so but would now try. Professor Rainger then made several remarks about aggressive incidents and situations involving Coach Knight and his players during the late 1970s. President Schmidly said that if he hadn't already been contacted, then every effort would also be made to try and contact Randy Whitman, a former player for Coach Knight who had been forcibly pulled off the court by the coach. President Schmidly stressed the discussion he had with Coach Knight about the importance of discipline, having a work ethic as a fundamental value, and "really being tough on players." However, Coach Knight also agreed that times have changed and, in the modern age, he needs to adjust his coaching methodology to approach players in a new way. Coach Knight said that he would bring in all of the current Texas Tech players and ask them, "What is it that you think needs to be done to improve this basketball team?" Recording their responses and having a discussion about their input and what they are willing to do to make that happen will, in effect, create a contract with the current players to improve the team and themselves. Coach Knight thinks that this is a part of his new philosophy to which young players will respond well.

Senator Julie Thomas inquired about the possibility that Coach Knight's hiring might create the perception of a double standard at Texas Tech. President Schmidly replied that he has expectations for Coach Knight to have graduation rates for his players comparable to those he had at Indiana University. Further, President Schmidly won't tolerate NCAA violations, and he is encouraged by Coach Knight's library fund raising efforts and fascination with Civil War history. President Schmidly said that Coach Knight is not just concerned with the "won and lost record;" rather, he is equally concerned about how his players behave, whether they graduate, and how they lead their lives after their playing days have ended.

As someone who signed the faculty petition opposing Coach Knight's hiring, Senator Marc Giaccardo asked President Schmidly to address the divisiveness that the current discussion is having on the Texas Tech community. Senator Giaccardo stressed that there are other philosophies and coaching alternatives that might be considered in this instance. President Schmidly said, "In all this, there is no gray. People are either adamantly for this or adamantly opposed to it. I've never seen anything like it, quite frankly. Most of the mail I get personally are people opposed to it."

President Schmidly concluded his responses by stating that, "This is more than about winning basketball games. This has to be about what is the final product, and what is it that you do for a young person when you give them a basketball scholarship. . . . The most important thing to me is that you get them graduated, you get them educated, you give them values in their life that go on and make them productive citizens, because that changes an entire family and an entire generation. And so, those are the qualities that I like in a coach. I don't condone what he's said. I don't condone what he's done. The questions that I'm wrestling with is, 'is this a person that sees that things must be done differently, who's looking for a fresh start, will come here and give us the best of what he has, and be willing to control the side that we don't like. I can't predict that. If I could, I would be a magician. I cannot. . . . This is a decision that won't be reached, I'm afraid, by [applying all the logic in the world]. This is a decision that is going to boil down to . . . what do you feel in your gut and in your heart is the right thing to do, and that's a decision that I have to be responsible for, and I will accept the responsibility for that decision."

President Dunham thanked President Schmidly for attending the meeting and appreciation was shown with a round of applause. To provide for an orderly departure for many of those in attendance, President Dunham then called for a short break. The Senate recessed from 4:09-4:12 pm.

VI. Election of New Officers

As a member of the Nominations Committee, Senator Cochran facilitated the introduction of candidates for officer positions for the 2001-2002 Faculty Senate. The candidates for President (Loretta Bradley, James Carr and Marc Giaccardo), Vice President (Scott Hein and David Weinberg) and Secretary (Shane Blum) made short campaign speeches. Senator Cochran was then assisted by Senators Hartwell and Thorvilson in the distribution, collection and tabulation of ballots. Because neither candidate for Vice President received a majority of the appropriately-cast ballots in the initial round of voting, a run-off was conducted. The final tally indicated that next year's Faculty Senate officers will be: President Marc Giaccardo, Vice President David Weinberg, and Secretary Scott Blum.

VII. Remarks from Invited Guests: (continued)

Personnel Department Representative Penny Burns. Ms. Burns provided the Senate with an overview of Texas Tech's leave policies and procedures. Specifically, she discussed the sick leave pool, the Family Medical Leave Act, and disability leave. In addition, Jim Brown from the Personnel Department also mentioned implications of new legislation governing an employee earning an additional year's worth of TRS retirement credit as well as TRS disability retirement benefits. The main points raised during the presentation focused on faculty familiarity with the leave rights, benefits and obligations in O.P. 70.01. Senators raised several questions to which Ms. Burns and Mr. Brown responded. Mr. Brown also cited a Texas Government Code provision (§ 661.203) requiring faculty to report illnesses; failure to do so raises red flags when an institution is audited.

University Strategic Planning Steering Committee Chair Gil Reeve. On behalf of Texas Tech's Strategic Planning Committee, Gil Reeve provided a handout and helpful explanation about the planning process.

VIII. Old Business: There was no old business.

IX. New Business:

Study Committee B. On behalf of Study Committee B, Committee Chair Cochran provided an update on developments since Dr. Walter Haeussler visited with the Senate in February, 2001. Among other things, Senator Cochran expressed concern that inaccurate messages were being sent by Dr. Haeussler to the administration with regard to the Senate's "approval" of proposed modifications in intellectual property rights policy O.P. 74.04. Specifically, Study Committee B is concerned about the absence of faculty oversight, the right to grieve, percentage ownership of copyrightable material, and royalty distributions.

Because of the urgency in getting Senate input forwarded to the administration in a timely fashion, President Dunham asked Study Committee B to continue working on a "final" version of a resolution stating the Senate's concerns about various aspects of proposed O.P. 74.04. In the meantime, the Senate considered, discussed and voted upon a preliminary "draft" resolution and Statement of Concerns submitted by Study Committee B. The resolution passed unanimously. The "final" resolution (similar to the preliminary draft with minor modifications from Study Committee B) reads as follows:

WHEREAS the University administration sent a copy of draft revisions of Operating Policy and Procedure 74.04 to the Faculty Senate for study and comment, and

WHEREAS the Faculty Senate has carefully studied the drafts, including expressing concerns by its Study Committee B directly to the Director of the Office of Technology Transfer and Intellectual Property, and

WHEREAS significant areas of disagreement still remain, even after some changes were made to the draft in an effort to respond to concerns expressed by Study Committee B, therefore

BE IT RESOLVED by the Faculty Senate that it forward the document entitled, Statement of Concerns by the Texas Tech University Faculty Senate regarding the Draft of Revisions for O.P. 74.04 dated February 19, 2001, as an attachment to this resolution and as an expression of the differences that remain between the Faculty Senate and the administration in this matter, and

BE IT FURTHER RESOLVED that the Faculty Senate urge the administration to adopt the recommendations of the Senate contained in the Statement of Concerns.

**STATEMENT OF CONCERNS
by the Texas Tech University Faculty Senate
regarding the Draft of Revisions for**

1. *Establishment of Intellectual Property Committee* - The current draft mentions an Intellectual Property Committee, but it fails to provide any specificity with regard to the make-up of the committee. The present O.P. 74.04 is much more specific in requiring "representatives of the Provost, the Vice President for Fiscal Affairs, the General Counsel, and the Faculty Senate." Section 12(6) defines the Intellectual Property Committee, but the revised draft, like its predecessor, contains no further mention of the Committee, its composition, or its duties. The Faculty Senate recommends that a new section, numbered "7" be added, and the following sections be appropriately renumbered. The new section 7 would read as follows:

7. Oversight by Intellectual Property Committee

The TTUS Intellectual Property Committee is established. The Committee provides a forum for discussion of policies and procedures affecting Intellectual Property and the implementation of this policy by the Director of the Office of Technology Transfer & Intellectual Property and to advise the Chancellor and the Office of Technology Transfer & Intellectual Property regarding Intellectual Property. The Committee shall meet at least twice each year. The Chancellor shall appoint the members of this Committee, a majority of whom are faculty members, representing the various components of TTUS, including, but not limited to the TTU Faculty Senate and the TTU Health Sciences Center. Faculty members not satisfied with the determinations made under this policy by the Director of the Office of Technology Transfer and Intellectual Property may appeal the Director's decision to the Intellectual Property Committee which shall make a recommendation to the Chancellor concerning the resolution of the dispute.

The Director of the Office of Technology Transfer and Intellectual Property will considerable power if the revised O.P. is adopted. His decisions would be not subject to review, as are those of other administrators under O.P. 32.05. The Faculty Senate views as very serious the lack of faculty review of the Director's decisions.

If it is viewed by the Director that the Intellectual Property Committee should have an advisory function only, then provisions should be made for a grievance procedure with significant faculty input, similar to that in O.P. 32.05. The grievance procedure of O.P. 32.05 would not be suitable here because it does not apply to the TTU HSC. Since O.P. 74.04 will apply on a system-wide basis, we need a grievance procedure that is system-wide as well.

2. *Ownership of Copyrightable Works (1) Books, Articles and Similar Works* - The last sentence of ' 16(1) of the draft now provides that "TTUS shall retain a royalty-free right to use [] materials for educational purposes" for course materials that are not works for hire produced by faculty members. This appears to be a significant change from the current policy, and the phrase "for educational purposes" can be interpreted broadly. This expansion of University rights is not warranted, and the Faculty Senate recommends that the last sentence of ' 16(1) of the draft be stricken.

3. *Ownership of Copyrightable Works (2) Institutional Works or "Works for Hire"* - Section 16(2) asserts an ownership interest by TTUS in works assigned to employees, but it makes no mention of other policies that may be promulgated to grant faculty members some rights in using materials created for distance education courses. The Faculty Senate recommends that the following sentence be added at the end of the section:

Faculty members may have, under other University policies, royalty-free licenses to use for instructional purposes products that they have created as Institutional Works or "Works for Hire."

4. *Distribution of Income from Commercialization and Licensing* - The Faculty Senate continues to view with great concern the proposed royalty distribution schedule contained in ' 18(1). By significantly reducing the royalties distributed to the faculty member/creator, the draft actually dampens the very spirit that the policy seeks to encourage---the creation of new works. The Faculty Senate recommends changing the draft to increase by 10% in each bracket the amount distributed to the individual and decrease by 10% in each bracket the amount retained by TTUS, as follows:

Net Royalty	Individual	TTUS	Dept.	College
\$0-\$100,000	60%	20%	10%	10%
\$101,000-\$500,000	\$50,000 + 50% of amount over \$100,000	20%	15%	15%

\$501,000+	\$170,000 + 40% of amount over \$500,000	20%	Set by Board of Regents	Set by Board of Regents
------------	--	-----	-------------------------------	-------------------------------

5. Distribution of Income from Copyrightable Works (3) Works Developed with Significant Use of Resources and Distributed by TTUS - Section 19(3) proposes a 70-30 split for royalty distribution for works commercialized by TTUS that were developed by employees. This proposed distribution, as with that in ' 18 of the draft, would work against maximum creative effort. The Faculty Senate recommends that the royalty structure be altered to provide 50% to TTUS and 50% to the author.

In a return to an earlier issue previously considered by the Faculty Status and Welfare Committee, Study Committee B also submitted a resolution dealing with the University's statement on sexual orientation. Instead of recommending the selection of one of three anti-discrimination statements given previous consideration, Study Committee proposed a resolution as it relates to language contained in O.P. 40.01. After a brief discussion focusing on editorial changes to the proposed resolution, the Senate voted on a statement which reads:

It is the policy of the Texas Tech University System not to discriminate on the basis of a person's race, color, religion, gender, sexuality, national origin, age, physical or mental disability, Vietnam Era or Special Disabled Veteran Status in its recruiting, hiring, training, promotion, or termination practices consistent with Texas and Federal law. TTU will take affirmative action to ensure that applicants and employees are treated equally without regard to their race, color, religion, gender, sexuality, national origin, age physical or mental disability, Vietnam Era or Special Disabled Veteran Status.

The resolution passed with one Senator voting in dissent.

Budget Study Committee. A resolution concerning the Board of Regents' recent approval for construction of a parking garage at 18th Street and Flint was submitted to the Senate by the Budget Study Committee on February 14, 2001. With little discussion, the resolution which follows was voted upon:

Whereas the TTU Board of Regents recently approved the construction of an \$11.5 million on-campus parking garage at 18th Street and Flint, and

Whereas the parking garage will be paid for through increased parking fees charged to Faculty, Staff, and Students, and

Whereas the Faculty Senate requested but did not receive information regarding engineering and traffic survey assessments for:

- 1. The impact of the garage for on-campus traffic and, especially, city commuter traffic along 19th Street in the vicinity of Flint Avenue, and**
- 2. The potential for solving the estimated future parking needs through existing on-campus surface parking realignment and/or on-campus transportation alternatives to the \$11.5 million parking garage;**

Therefore, be it resolved that the Faculty Senate request, in a renewed spirit and action of shared governance, that the TTU Administration:

- 1. Provide complete and accurate factual information regarding any future on-campus parking garage proposals, in a timely manner,**
- 2. Show courtesy to the Faculty, Staff, and Student Senates in allowing sufficient time for each body to study the information and provide meaningful input, and**
- 3. Include and present, in any report or proposal for approval to the Regents, the voting decision of the respective senates regarding matters related to Faculty, Staff, and Student funding responsibility for future garages.**

The resolution passed by unanimous vote.

X. Announcements: There were no announcements.

XI. Adjournment: Since there was no other business, President Dunham declared the 214th meeting of the Faculty Senate adjourned at 5:39 pm.

Respectfully submitted
Fred Hartmeister
Secretary, Faculty Senate