

UNIVERSITY OF CINCINNATI
COLLEGE OF LAW
Regular Faculty Meeting
March 12, 1999

The regular faculty meeting was held on March 12, 1999 in room 203. In attendance were Joseph Biancalana, Paul L. Caron, Jack Chin, Christo Lassiter, Betsy Malloy, Bradford C. Mank, Carol A. Martin, John J. Murphy, Donna M. Nagy, Jim O'Reilly, Leslie Ostrander, Wendy Parker, William J. Rands, Michael E. Solimine, Joseph P. Tomain, and Barbara G. Watts.

Dean Tomain called the meeting to order

After an opportunity for discussion and amendment, the faculty approved the minutes for the regular faculty meeting held on February 19, 1999.

Faculty Research & Development Committee

Professor Caron, Chairperson of the Faculty Research & Development Committee, reported that there would be a presentation in April by Professor James Lindgren from Northwestern University.

Library & Technology Committee

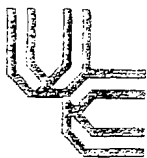
Professor Biancalana, Chairperson of the Library & Technology Committee, reported that the law school's website was complete and proposed a vote of thanks to those who worked on it, including Nick Finke, Joe Madlener, Rick Goheen, and Mike Church. The faculty voted by acclamation to thank these individuals.

Faculty Elections

Dean Tomain referenced his recent proposal to the faculty containing new rules and understandings for holding elections to the Committee on Committees and to the Reappointment, Promotion & Tenure Committee. He reported that Professor Biancalana had offered an alternative proposal. After Professor Biancalana highlighted the differences between the two proposals, the Dean asked for a motion to allow a motion to substitute the alternative proposal for the Dean's proposal. Upon proper motion and after discussion, the faculty voted to allow a motion to substitute. Next, upon proper motion and after an opportunity for discussion, the faculty voted to substitute the alternative proposal for the Dean's proposal and adopted the alternative proposal as the new set of rules for holding the Committees' elections. After the vote, Dean Tomain announced that he would begin preparation for elections immediately.

The meeting was adjourned.

Respectfully submitted,
Carol A. Martin



4 March 1999

To: The Faculty

From: Joseph Biancalana

Re: Rules for Electing Committees

Last week Dean Tomain distributed to the faculty proposed new rules and understandings for holding elections to the Committee on Committees and the Re-Appointment, Promotion and Tenure Committee ("RPT Committee") to be considered by the faculty at its meeting on 12 March. I will refer to that proposal as, well, the Proposal. This memorandum presents an Alternative Proposal.

I put the Alternative Proposal before the faculty for two reasons. First, obviously I think that the Alternative Proposal is better than the Proposal. Second, faculty discussion of election rules can be enhanced by consideration of a specific alternative proposal.

Let me apologize in advance for the length of this memorandum. Given the issues involved I could not find a way of making it any shorter than it is.

**Alternative Proposal
for
Electing Committees**

A. The Basic Rule

1. The Committee on Committees will be composed of five members elected from the faculty. All members of the faculty are nominated unless, after notice, they request that the dean remove their name from the ballot. The five nominees with the highest number of votes over a majority of the ballots cast will be elected to the Committee on Committees. In the case of a tie or an insufficient number elected, a run-off will take place.

[This is the current rule, except for one stylistic change.]

2. The Reappointment, Promotion and Tenure (RPT) Committee will be composed of five members elected from the faculty. All tenured members of the faculty are nominated unless they request that the dean remove their name from the ballot. Untenured members of the faculty may, with their consent, also be nominated. The five nominees with the highest number of votes over a majority of the ballots cast will be elected to the RPT Committee. In the case of a tie or an insufficient number elected, a run-off will take place. In the event that there are five or more candidates for RPT review, then seven members will be elected.

[This, too, is the current rule, except for two stylistic changes.]

B. Implementing Rules

1. Any ballot submitted in any election or run-off election for Committee on Committees or the RPT Committee that does not cast at least one vote for a candidate is not valid and will not be counted for any purpose.

2. Only full-time members of the tenure-track faculty, including those on leave, whose terms and conditions of employment are governed by the AAUP contract with the University are eligible to vote in an election or run-off election for Committee on Committee or the RPT Committee.

3. Voting will be by secret ballot

4. No later than 5:00 p.m. on the second business day next following the day on which ballots are due in any election or run-off election for Committee on Committees or the RPT Committee the dean shall distribute to each member of the tenure-track faculty an Election Result Memorandum. The Election Result Memorandum shall

a. The total number of ballots cast in the most recent election or run-off election;

b. The total number of votes cast in the most recent election or run-off election;

c. The total number of votes cast for each candidate in the most recent election or run-off election;

d. The names of the candidates elected in the most recent election or run-off election;

e. Whether there shall be a run-off election and, if so, the number of positions to be filled in the run-off election.

5. In the event of run-off election, the Dean shall distribute to each member of the faculty eligible to vote in the run-off election a ballot for the run-off election no later than 5:00 p.m. on the fourth business day next following the day on which ballots were due in the last preceding election or run-off election. The ballots shall present the names of

a. those candidates not elected in the previous election or run-off election except those candidates who have withdrawn their names from further consideration, and

b. the names of any additional candidates nominated for election since the previous election or run-off election.

6. The ballots for election to the Committee on Committee shall be due at the dean's office no later than 5:00 p.m. on the tenth business day of April in the year preceding the academic year in which unelected committees are to serve. The ballots for election to the RPT Committee shall be due in the dean's office no later than 5:00 p.m. on the tenth business day next following the first day of upper-class classes in the academic year in which the RPT Committee will serve.

7. In the event that the number of candidates nominated to serve on the Committee on Committee or the RPT Committee equals the number of positions to be filled, an election shall nevertheless be held.

Explantation and Discussion

The Basic Rule and Rule B (1).

The Proposal would change the current rule. The change from the current rule is highlighted in bold in the Proposal. The

change from the current rule would require each member of the faculty to vote for as many candidates as there are positions to be filled on an elected committee.

At the outset, I think we can dismiss one reason for this change: decanal convenience. Decanal convenience is not a reason for or against any rule shaping faculty self-governance.

At issue are two values. One value is that members of the faculty express in their votes their unadulterated judgments about the merits of the candidates up for election. The other value might be called the value of collegiality or compromise for the sake of getting a committee up and running. The issue is precisely how and where to draw the balance between these two values.

The proposal requires members of the faculty to draw a particular balance between the two values on the first ballot of an election. For example, you must vote for five candidates for Committee on Committees no matter your assessment of the candidates. Otherwise your vote is not counted for any candidate.

The Alternative Proposal recognizes that an election procedure is itself a collegial enterprise that aggregates the diverse judgments of the members of the faculty. There is a role for the value of collegiality to play on top of the election procedures themselves. But that role is limited and, more importantly, the balance between the two values may legitimately be drawn differently by different members of the faculty. The Alternative Proposal respects a greater diversity among members of the faculty in where they draw the balance between the two values. Some members of the faculty might believe that their civic duty requires them to cast votes for as many candidates as there are positions to be filled. The Alternative Proposal respects that judgment. The Proposal imposes that judgment on all members of the faculty. Other members of the faculty might believe that, because an election aggregates the judgments of all members of the faculty, their civic duty requires them to vote only for those candidates they truly believe to be best for the job. The Alternative Proposal respects that judgment. The Proposal does not. Yet other members of the faculty might believe that on the first ballot their civic duty requires them to vote only for those candidates they truly believe to be best for the job but if there is a run-off election then to make the compromises necessary to get a committee up and running. The Alternative Proposal respects that judgment. The Proposal does not.

Rule B(1) of the Alternative Proposal would require members of the faculty to cast a vote for at least one candidate. A ballot without a vote is a purely negative ballot and does no more than create difficulties for other members of the faculty. If a member of the faculty believes that no candidate is acceptable, it is likely that that member of the faculty is not a candidate. If

someone is unwilling to step forward, or even is unable to step forward, that person should not be allowed merely to create difficulties for the other members of the faculty.

Rule B(2) - Eligibility

A precise, though innocuous, rule defining eligibility to vote seems appropriate in a set of rules for holding elections.

Rule B(3) - Secret Ballots

This provision is identical to a provision in the Proposal.

Rule B(4) - Election Result Memorandum

This is a new provision. It makes for greater transparency in the election process.

Rule B(5) - Run-Off Elections

Although the Proposal contemplates there being run-off elections, the Proposal does not provide any rules or procedures for having run-off elections. One thing, I think, we do not want is controversy at the time of a run-off election held under the Proposal or the Alternative Proposal. It is better to have rules in place.

Rule B(6) - Timing of Elections

As to the timing of elections, the Proposal simply says "Voting will take place prior to May 1 of the year." Greater precision is attainable. Why must both committees be selected at that time, whatever it might be? Does it mean that ballots must be distributed before May 1, that ballots must be due by May 1? Can a run-off election straddle May 1?

The Alternative Proposal seeks greater precision and clarity. It requires the Committee on Committee to be elected in the year preceding the year in which unelected committees will serve and it permits the RPT Committee to be elected early in the academic year in which it will serve. Nothing prevents the election of the RPT Committee in the academic year before the academic year it will serve. The Alternative Proposal avoids issues of run-off elections by stating only when the election, or first ballot, must be completed.

Rule B(7)

This rule requires an election even if the number of candidates equals the number of positions to be filled. One can, albeit with some imagination, appreciate decanal delight in the quick formation of committees. One might even think that an

election where the number of candidates equals the number of positions to be filled is an empty ritual or ceremony. But an election affirms our commitment to responsible faculty self-governance. It is not an empty exercise. It helps to affirm and define who we are as a community of scholars.