

The Autumn of our Discontent – Problematic Participation

By Tricia Jones, President, Faculty Senate

This has been a difficult fall for Faculty Senate process and deliberations around the Cosby issue. Hopefully this explanation will clarify how the Senate works and why we have come to where we are on this issue. Revisiting our process on the Cosby issue raises questions about what is problematic.

Let me begin with the most basic reminder of what the Faculty Senate is and what it is not. The Faculty Senate is the elected body of full-time faculty that engages in shared governance processes for all faculty in all colleges and schools at Temple University. Our charge is to work with the administration to set matters of academic policy and practice insuring that the faculty have voice in decisions that affect them. Each school or college elects a small number of their full-time faculty to serve as senators and that group comprises the Representative Faculty Senate which meets monthly in Representative Faculty Senate meetings where only the senators can bring motions to the floor or vote on motions on the floor. Once a semester we also hold a University Full Faculty Senate meeting where all fulltime faculty are invited to participate and where motions are voted on by all fulltime faculty present. The Faculty Senate Steering Committee (FSSC) consists of the Senate Officers (President, Vice-President, Secretary, Past-President) and an elected representative from each school or college. FSSC meets 2-3 times a month, oversees faculty senate committees and elections, identifies issues for attention, and interacts with guests from administration to discuss current issues of faculty concern.

Temple University has faculty unions (TAUP and the union for College of Law) and Faculty Senate, but these are different entities and serve different purposes. Perhaps the most consistent error I hear in conversation with faculty and administration is the assumption that TAUP and Faculty Senate are one and the same. That is not the case. Faculty unions exist to negotiate contracts that define the terms and conditions of employment for faculty. Faculty Senate exists to help set academic policy and protect faculty voice in all decisions that impact their teaching, research and service and the quality of faculty life. Obviously TAUP and Faculty Senate may share interests on an issue, but they can also be in opposition on issues. Relatively few institutions of higher education have both a faculty union and a faculty senate – and having both raises confusion and concern about who speaks for faculty on what issues. At Temple, the overlap between Faculty Senate membership and TAUP membership was probably much stronger in the 1990s than it is now. FSSC works to maintain contact with TAUP leadership about their work without engaging them in FSSC or Senate decision-making.

So let's come to the issue of the moment – the motions on Cosby and O'Connor in the context of the sexual assault policy – and review what happened and why. At the beginning of the semester Professor Marina Angel (faculty senator from the College of Law) sent a memo and set of motions through the faculty senate listserv and introduced those motions on the floor of the senate at the September 9th meeting. Any faculty senator can introduce a motion to the Representative Faculty Senate and that motion is then discussed and voted upon at the next available Representative Faculty Senate meeting. The following are the motions Prof. Angel put forth on 9/9.

The Temple University Faculty Senate drafted, passed, and proposed to the Temple Board of Trustees, the first Temple University Anti-Sexual Assault Policy in 1992.

Temple was the first U.S. college or university to prohibit sexual or romantic relationships between faculty members and faculty members' students.

Temple's Sexual Harassment and Sexual Assault Policies were strong statements of ethical standards, not just law.

Temple's Sexual Harassment and Sexual Assault Policies were and are applicable to all members of the Temple University community, including Trustees.

The actions of then Temple University Trustee, Cosby, assaulting a then-Temple University employee, Andrea Constand, violated both Temple University's Anti-Sexual Harassment and Anti-Sexual Assault policies.

Temple University Trustee, now Chair of the Temple University Board of Trustees, O'Connor, nevertheless, provided legal representation to Trustee Cosby, was fully aware of the facts of the Constand's case, including the availability of ten other women who experienced similar assaults [now over 30], and tape recorded admissions by Cosby. O'Connor was bound by the Temple University Sexual Harassment and Sexual Assault Policies. He also violated these policies.

THEREFORE, the Temple University Faculty Senate

1. Condemns the actions of then-Trustee Cosby and then-Trustee, now Chair, O'Connor:

2. Calls upon President Neil Theobald to include as a majority of a Committee drafting new No Sexual Harassment, No Sexual Assault and No Stalking Policies, nominees of the Temple University Faculty Senate and students.

3. Calls upon President Neil Theobald to adopt and implement the proposal of his own Committee to form a single office to oversee and implement Temple University's Sexual Harassment and Sexual Assault Policies.

The posting of these motions and the accompanying memo on the Faculty Senate listserv was one instance of problematic participation. Without going into too much minutiae – the listserv that Professor Angel accessed was supposed to have been closed down years ago when the FSSC made the decision to limit postings to faculty senate officers and staff only. The purpose of the listserv is to disseminate faculty senate business rather than to serve as a discussion board or blog. Our motivation was not to silence any faculty member but to have some control over the kind of content that came out under the faculty senate umbrella. A faculty member or senator can post on the Senate listserv after review of the content by faculty senate officers. Frankly, Professor Angel's memo is an example of why we believe there is merit in the current system of review and approval of postings. I believe that the memo and motions were confused and conflated and contained language that was overly aggressive and potentially defamatory. Whether Faculty Senate should provide an open listserv is an issue we can discuss, but in this case, that access did not exist and Professor Angel's unseen and unedited motions should not have come out under the Faculty Senate heading without review and discussion.

Between the September 9th meeting and the November 16th Representative Senate meeting the FSSC discussed these motions at almost every meeting and often at length. Our discussion focused on trying to find information that clarified aspects of the motions. Some of the clarifications sought included the following:

- (1) Are Board of Trustees members considered members of the Temple community and thus covered by the Sexual Harassment and Sexual Assault policies? We revisited the 1992 policy as well as the new August 2015 policy for clarification and found none. We reviewed minutes of the Board of Trustees meeting in 1992 when the initial policy was approved and found none. We reached out to University Counsel and received a response on December 3rd that the members of the Board are covered by those policies.
- (2) What internal review process was used by the Board of Trustees to allow Trustee O'Connor to act as representation for Trustee Cosby during the 2005 Constand case? We were not able to find or access reports or documentation about what happened other than a general statement that an internal review had been conducted and no reason was found to restrict this act. We interviewed members of the law faculty to get a sense of how legal practices approached potential conflicts of interest. But in the end we concluded that we would not find definitive records of the 2005 Board internal review discussions or process. In the absence of evidence to the contrary we were uncomfortable asserting that wrongdoing could be assumed to have happened.
- (3) Was faculty senate involved in selecting faculty who sat on the committee that revised the Sexual Assault policy? We knew that in the spring of 2015 the Provost had asked FSSC to nominate several faculty for possible participation on this committee and that three faculty were selected to serve. Thus, we knew that what one motion requested had already been completed.

Based on our review, on November 10th the FSSC wrote and passed amendments to the original motions. Those amendments were distributed via the faculty senate listserv immediately after in the announcement of the upcoming Representative Senate meeting on November 16th. In that announcement I stated clearly our level of concern with the motions and that we would be voting on the amendments at the meeting.

In the November 16th meeting we introduced the amendments. There was discussion on the amendments and there was a call for a secret ballot. The result of the secret ballot vote was 14 in favor of the amendments, 16 opposed, and 1 abstaining (please note that only the representative senators vote in these meetings). Unfortunately, some senators had come in during the voting process and were not able to vote before the count was concluded and announced. Having failed, the amendments were removed and the focus returned to discussion of the main motions from Prof. Angel. However, when we turned to discuss those original motions Professor Angel indicated she didn't want them discussed at that point and there was a motion to table that was passed without opposition.

At the December 1st FSSC meeting the FSSC voted their preference that the discussion and vote of the motions be delayed to the January senate meeting rather than the December meeting. The main motivation for waiting was the hope that we would get requested information from University Counsel about policy coverage of Board members and indications on whether legal action would be taken against Cosby. I communicated that decision to Marina Angel after the FSSC meeting and the expectation that, without additional information, her motions would be brought back to the floor on January 25th. Her response was that she would move to Suspend the Rules at the December meeting so her motions could be voted on. And, on December 3rd I received an email from University Counsel Michael Gebhart clarifying that the Sexual Assault and Sexual Harassment policies applied to Board of Trustees members.

Thus, the motions came off the table at the December 4th meeting and were debated and voted upon. In the course of the debate, a fourth point was added:

4. Calls upon the Board of Trustees to revoke the honorary degree(s) given to Bill Cosby by Temple University.

In the beginning of that meeting I explained the process and how we came to this point of deliberation. It is important to note that the December meeting was a University Senate meeting which meant faculty other than senators could vote on the motions. It is also worth noting that several faculty were attending the meeting on WebEx and voting privileges are not possible unless someone is in the room. So those participants were not able to vote on the motions. An amendment was added to the original motions that called for a withdrawal of Cosby's honorary degree. That amendment passed by voice vote unanimously. And then a voice vote on the main motions resulted in a unanimous vote for the motions.

Hindsight is always 20-20 and even more so when a decision is followed by more contentious events. Technically, there was nothing in the procedure that was "wrong" – that failed to follow our bylaws, guidelines or parliamentary procedure. But, there was not enough in the process that was "right" and as Faculty Senate President I have to take responsibility for that. I

could have done more to let people know the motions would be coming up for vote, to encourage all interested to attend the session so they could vote, and could have asked other FSSC members to request a secret ballot vote that may have changed the outcome.

As my earlier email this week has already explained, the most problematic aspect of participation was the unauthorized distribution and misrepresentation of this December 4th vote in the media.

Many of you have seen the media coverage in the *Philadelphia Inquirer* and *USA Today* (among other outlets) about passage of motions at the 12/4/2015 University Senate meeting concerning the Cosby situation and the role of Chairman of the Board of Trustees Patrick J. O'Connor. The media coverage is troubling and damaging.

The Faculty Senate had no part in taking the story to the media and was not consulted by the individuals who chose to take this unilateral action. At least two individuals decided that their agendas to chastise Chairman O'Connor for representation of Bill Cosby were more important than the potential damage to Temple's reputation and to the impact that has on the rest of the faculty, staff and administration. In so doing, they have damaged trust between the faculty and administration. They have impeded the ability of the faculty to engage the Board of Trustees and Temple Leadership on the range of issues of concern to us. We are collateral damage in their war on O'Connor.

The Faculty Senate is dedicated to providing processes of shared governance for faculty to raise issues, express their opinions, make decisions. The Faculty Senate is not TAUP. Whatever your opinion of the Cosby/O'Connor situation, you have your right to it and the Faculty Senate respects and protects that. But we all have a responsibility to Temple University to consider how our discourse affects others and to respect their right not to be blindsided or embarrassed. And as educators we have the responsibility to provide accurate information rather than manipulate content for political ends.

Making things worse, the *Inquirer* coverage was inaccurate and misleading. Very unfortunately, as happens with sensational stories, it is much harder to get correct information out after the more salacious reporting has happened. And as this story has spun forward from the *Inquirer* coverage, the mistakes and misrepresentations are repeated. Here are some of the inaccuracies that we must be honest about – not only with ourselves but in our interaction with external audiences.

- (1) The vote on 12/4 was not a representative vote of Temple Faculty. It is misleading if not unethical to suggest that this vote definitively “speaks for” the majority of Temple faculty. While Temple faculty may or may not agree with the sentiments of the final vote in favor of Marina Angel's motions – we simply can't say from the less than 40 faculty members involved (far fewer than the 100 suggested in the story). Much more information is needed before we can draw that conclusion or say with any certainty where “the Temple faculty” stand.
- (2) The motions did not ask for a formal vote of “no confidence” in Chair O'Connor or for his removal from his position as Chairman of the Board of Trustees. In fact, those topics and that language was never a part of the initial motions or the arguments on the floor about those motions or discussions about these motions since their introduction to the Senate on 9/9. There was a motion that passed on 12/4 to “condemn” Cosby and Chairman O'Connor, but to what extent and with what impact was never clarified.
- (3) The motions were not embraced by the Faculty Senate. Since the introduction of the motions by Marina Angel on 9/9/2015 the Faculty Senate Steering Committee has had very serious concerns about the motions and tried to amend the motions. A copy of those amendments were distributed to the faculty prior to the November 16th Faculty Senate meeting and are attached again for your review. At the 11/16 meeting those amendments failed by a very close vote of 14-16-1. The rationale for the FSSC amendments should be reviewed again, even in light of their rejection. The Steering Committee felt that these motions are seriously flawed.

Some may argue that last week's media coverage was “speaking truth to power.” But if you did not have your voice protected in how your university was presented to the world then what happened could also be seen as a very vocal minority speaking “their truth to enhance their power.” It is not acceptable when faculty voice is eclipsed by the unelected, unselected few posing as spokespeople for the rest.

If you have specific questions about the process that occurred that are not answered in this *Faculty Herald* article please let me know. I will promise to answer them as fully as I can with the information I have.

-Tricia Jones, President, Faculty Senate