

System Relations Committee Meeting
Wednesday May 9, University Center Room 218 - Chickasaw, 3:00-4:30PM

MINUTES

Members Present: Beauvais Lyons, Chair, Toby Boulet (UT Board of Trustees), Guoxun Chen, Hillary Fouts, Greg Petty, and Svetlana Zivanovic.

Members Absent: Lloyd Davis, Tricia Hepner, Susan Speraw, Doug Blaze, David Patterson (UTFC Representative) and Sam Swan.

Guest: Catherine Mizell, Vice-President and chief legal officer of the UT System. Mizell is responsible for providing all legal advice and representation for the Board of Trustees and the university-wide system. She also is secretary of the university, serving as the principal staff liaison for the Board of Trustees.

1. **Approval of the Minutes of February 27, 2011** (approved)
2. **Discussion with Catherine Mizell**

Catherine Mizell introduced herself and her background studying history and then later completed her degree in Law from UT. She clerked for the chief justice of the Tennessee Supreme Court, and then started working at UT as a staff attorney. She was later the General Counsel to the TBR system for about two and a half years, and then came back to UT where she has been working continually since 1984. She has been the General Counsel since 2000.

Her office provides central legal services for the whole system, with staff on the Health Science Center and Chattanooga campuses. She handed out a diagram of her staff, which includes 15 attorneys, several of whom have primary duties with litigation. The General Counsel is required to provide independent advice, and to that end she has a dual direct reporting relationship to the President and the UT Board of Trustees.

She also handed out a sheet that listed five broad practice areas of legal activities including students (from academic misconduct to FERPA), employment (from faculty to civil right laws), business/finance (from contracts and construction to real estate and investments), specialized (from immigration to intellectual property) and litigation (from medical malpractice to discrimination). In comparison to other universities more of the litigation is handled by her staff rather than outsourced. She said that handling as much as possible through her staff represented a cost savings for the university.

Catherine Mizell noted that there are instances where faculty and staff can be sued in their individual capacity for acts done in the scope of their employment. In those cases, her office goes to the Tennessee State Attorney General, who, by statute, determines if and how representation will be provided. In most cases, the Attorney General designates her office to provide representation. Toby Boulet asked about suits where both litigants are university employees. Catherine Mizell said they might represent the person being sued, but not the person initiating the grievance.

In response to a compliment and a question from Greg Petty, she indicated that the Office of

General Counsel could do a better job of communicating the role of her office in relation to faculty and administrators. Petty found the information she had presented informative, and as a former department head, he noted that it would be useful to the orientation of department heads and deans so that they had a better sense of the work of her office. Catherine Mizell said they had done some orientation sessions through the Office of the Provost at UTK, but that more of this kind of effort would be constructive.

In addition, Catherine Mizell passed out a chart showing a 2010 cost study of her office, with UTK being 28.2 percent, of which 5.2 percent was auxiliaries, which is primarily Athletics. Boulet remarked that this was a fairly large portion of legal services provided to the Knoxville campus. By contrast, UTHSC was 28.5% and University Wide Administration was 13% of the work her office did across the UT system. She said that this kind of assessment of percent effort is not done every year and that the volume of work done for any particular unit could vary significantly from year to year due to litigation or other time-consuming matters occurring in a given year.

Below are a set of questions that were prepared for the meeting with responses:

One recent faculty leader wrote to our committee with this observation: “The General Counsel’s office has tended to view faculty not as a lawyer views a client, but merely as potential sources of liability. It has seemed uninterested in the ways its rulings may make academic life more difficult or less attractive for faculty. Having regular meetings with faculty leadership could help to mitigate this problem.” In addition, please talk about the role of your office with regard to the review of faculty handbooks.

Catherine Mizell noted that under the rules of professional conduct governing lawyers employed by an organization, the client is always the organization (i.e., the university) and not individual employees, be they administrator, faculty or staff. The university acts through the board, the president, system and campus administrators, and other authorized employees. The further down you go in the organization the issue of whether the individual is acting on behalf of the university in an authorized capacity becomes more complex. She does not see the Faculty Senate or the Faculty Affairs committee as being her client. She did agree that there was been a lack of effective communication regarding these matters with faculty leaders and hopes to address this in the future.

How do you handle advising the UT President and the UT Board of Trustees when legal and moral obligations might be in conflict? In response to a clarifying question from Toby Boulet, Catherine Mizell focused her answer on litigation over employment related issues. She said such cases seldom go to trial, which is very costly. She noted that as a lawyer she advises the President and the Board of Trustees when financial and moral outcomes may be in conflict, but that the final decisions in such matters rest with the President or the Board.

The UTK Faculty Senate, as well as the campus Vol Vision planning effort is looking at extending various forms of benefits for unmarried and same sex partners of UTK faculty and staff. What specific Tennessee statutes or other regulations prevent progress in this area?

Mizell said that because this issue is before the university administration currently she can’t talk about this issue.

Can faculty have any expectation of privacy in their use of email? Talk about our Acceptable Use Policy. Mizell said the problem is that state statutes require that any record made or received in connection with the transaction of university business must be publically accessible, unless an exemption applies. Examples include student records under the Family Educational Rights and Privacy Act (FERPA), and some research records such as patentable information. Unless it falls under these exemptions, email is a public record. Toby Boulet inquired if this applied if a law professor used the university network with a private email account on a personal computer. Catherine Mizell said she could not give a definitive answer to that question, but she also said in response to a question from Beauvais Lyons that during her time as General Counsel there have been no public requests for access to faculty emails related to non-University work that have been fulfilled. She also noted that when it was drafted the AUP policy was vetted with faculty input, and that there are justifiable reasons for the university itself to have access to emails for a variety of reasons.

Talk about the legal dimensions of UT and ORNL linkages.

Greg Petty talked about a project he is involved in conjunction with ORNL and asked specifically about the memorandum of understanding. Catherine Mizell did note that the memorandum is very broad in its terms. She also indicated that she is in periodic contact with lawyers with ORNL regarding matters of common concern.

Faculty involved in research contracts have reported that matters sent through your office have sometimes been held up for many months. Are there efforts to address these concerns?

Catherine Mizell said that her staff does an excellent job in handling the extensive workload they are confronted with, but agreed that some matters can get tied up for longer periods than she would like. She said that within the terms of state laws and regulations, they try to be problem solvers – but this is not always possible in light of the university’s status as an instrumentality of the State of Tennessee. Toby Boulet asked if this is a matter that would benefit from better communication, especially regarding specific constraints in state law. Catherine Mizell noted that all of the provisions to which the university cannot agree under state law and regulations are in university fiscal policies regarding contracts. An example is when the other party has asked the university to hold it harmless of any liability. Svetlana Zivanovic gave the example of a research project she inherited from a prior faculty member when she first came to UTK that presented issues of personal liability in relation to the effects of pesticides, and that potential liabilities can create an impediment to research productivity. Both Lyons and Boulet argued for the Office of Research and her office to be more proactive in working with faculty to develop contracts that will present fewer legal hurdles later in their development.

Beauvais Lyons thanked Catherine Mizell for meeting with the committee and noted that there are a number of good ideas that had been addressed at the meeting that should be followed up by the committee next year. He hoped she would make an opportunity to meet with the committee again when invited.

3. Final Year-end Report. Beauvais Lyons sent a draft of the year-end report in April for input and review. He thanked the committee for their work this year, and expressed thanks to members of the committee who will continue in 2012-13, noting that Guoxun Chen had agreed to serve as committee chair for next year.

4. Adjournment at 4:25pm