

MEMORANDUM

From: Distinguished Professor Lisa Blomgren Amsler
To: Indiana University President Pamela Whitten
Date: May 10, 2024
Re: Listening Session, Indiana Memorial Union, State Room East, Bloomington, Indiana

Thank you for your willingness to listen to faculty viewpoints. I would like to put these remarks in the context of who I am as a faculty member.

First, while I am a lawyer, I am retired from the practice of law and not a member of the bar. Nothing I say is legal advice.

Second, I speak for myself alone, not on behalf of others. When I refer to the Administration in the following remarks, I include Provost Rahul Shrivastav.

Third, I endorse the recent Message to the Board of Trustees from the Executive Committee of the IUPUI Faculty Council regarding recent events on the IUB campus. I believe the issue of exercise of free speech and academic freedom related to Dunn Meadow as a public forum is a separate issue from antisemitism on campus. The IUPUI Faculty Council Message to the Board of Trustees includes but is not limited to both issues.

On Thursday evening, Apr. 25th, I learned of the Administration's new policy adopted on the evening of Apr. 24, 2024, and the subsequent events in Dunn Meadow. I wanted to hear firsthand from those arrested about what they experienced, so I attended the faculty protest in front of Bryan Hall on Friday morning, Apr. 26. I then discussed with other lawyers present the serious 1st and 14th Amendment issues presented by the Administration's actions. The American Civil Liberties Union of Indiana has already filed one lawsuit against Indiana University claiming violations of the Constitution; it has a good likelihood to succeed. State Police in riot gear injured faculty and students. Faculty may file Workers Compensation claims. Students and their parents may file civil lawsuits. I also contemplated the damage this has caused to the reputation of an institution I love and have been privileged to serve for most of my life: Indiana University.

To put my views in context, I attended the University of Connecticut School of Law and practiced public sector labor and employment law for a decade, becoming a partner at Shipman and Goodwin, the largest law firm in Connecticut. I represented management, primarily school boards and municipalities, in collective bargaining. While there, I also argued three cases before the Connecticut Supreme Court, winning one that held that school board management need not bargain with teacher unions over the process for evaluating tenured public school teachers. I also advised my clients on compliance with the Constitution, the rule of law, and the role of public institutions.

In 1989, I joined the faculty of Indiana University Bloomington, first as a NTT Lecturer at the Law School and in 1992 as a TT Assistant Professor at what is now the O'Neill School, where I currently serve as a Distinguished Professor. For my 35-year career at IUB, I have taught constitutional and administrative law, negotiation, mediation, and conflict management, as I have

also conducted 30 years of empirical research on employment systems, including an award-winning 12-year national study of EEO cases and mediation for the U.S. Postal Service. As a member of the National Academy of Public Administration, I am participating in a nationwide study in collaboration with the Federal Judicial Center mandated by Congress on employment dispute resolution in the federal courts.

In short, unlike most IU faculty, both my scholarly and practitioner expertise relate directly to the legal, policy, and management issues presented by the events of Apr. 24 and 25, 2024.

On Friday, Apr. 26, O'Neill School had a regular faculty/staff meeting. I proposed that the faculty vote to ask you to withdraw the new policy on Dunn Meadow adopted Apr. 24 by the Administration through its "ad hoc committee." We also held a separate vote on lifting the ban to allow those arrested back on campus for exams and graduation. These passed by a majority of our faculty. Ours were the first such votes (TT and NTT). Other units have since voted to adopt similar motions. This demonstrates a strong consensus across the IUB and IUPUI faculty that the Administration's actions in adopting, implementing, and enforcing the new policy were wrong.

I am a graduate of Smith College, Northampton, MA, a historic women's college. I believe in women's leadership. I was excited for IU to have its first woman president. I enjoyed meeting you at a Bryan House Faculty Luncheon on June 27, 2022. I also respect the need for administrators in higher education. I am deeply grateful to all my colleagues who take administrative responsibility for the quality of our programs, success of our students, and management of our resources.

However, success in any institution requires engaging all the stakeholders. In higher education, all faculty, staff, and students play an essential role in defining and implementing the mission. This requires representation; IU has a tradition of shared governance and consultation with faculty, voice for the student body through democratic institutions, and for staff through unions and associations.

What the Administration did in changing the Dunn Meadow policy, without a timely prior exercise of faculty consultation, violated the norms of shared governance at IU. A web search of Dunn Meadow on the IUB website still takes you to the 1969 policy and its rules. The average student would have no meaningful notice that rules on Dunn Meadow had changed.

I also examined the 1969 minutes of the Board of Trustees in which the Trustees adopted the policy on Dunn Meadow as a public forum (quoted below in relevant part as an Appendix to these comments). The Board of Trustees voted to pass the Dunn Meadow rules through a resolution pursuant to state law that required IU to establish a code of student conduct. BL-ACA-I18 Policy for the Use of Indiana University Assembly Ground is a policy that expands upon the Dunn Meadow language in the Trustees' resolution, but it uses "we" throughout to explain the terms. It provides "We believe the University should not use physical force to enforce these rules." It also provides:

We believe the Bloomington Provost should create an [ad hoc committee] to oversee the implementation of these provisions, to give continuing advice on changes of policy, and

to provide, if necessary, more detailed regulations than those in the previous paragraph. That committee should also have the power to review denials of permission for uncarried overnight signs, symbols or structures. Because that review should be prompt if it is ever needed, we think the committee should be very small--perhaps the President of IUSA, the President pro tem of the Bloomington Faculty Council, and a member designated by the Provost.

Note that this language illustrates IU's culture of shared governance because it includes both student and faculty representatives. My understanding is that the process used on Apr. 24 to adopt the new Dunn Meadow policy *did not* include the President of the Bloomington Faculty Council or the President of the IU Student Association.

"We" is plural. It does not refer singularly to the President of IU. It directs the Provost to implement the policy, so it does not appear to include the Provost. It is possible that the "we" in this language referred to members of the Board of Trustees, or perhaps its committee.

How would the 1969 Board of Trustees, who had considerably more experience dealing with protests on campus than we do today, view this? How would they assess an Administration who used a new policy, adopted unilaterally, to call in State Police who then posted snipers on the Indiana Memorial Union? What about State Police in riot gear bashing shields on an aging woman faculty member, hitting her with a baton, and then knocking her down and pinning her to the ground while binding her hands behind her back?

I recognize the Board of Trustees has given you its full support. I have one question: Did the 2024 Board of Trustees vote on this new policy?

Thank you, President Whitten.

APPENDIX:

In BL-ACA-I18 Policy for the Use of Indiana University Assembly Ground on the IUB website, the Policy specifically refers to the 1969 minutes of the Board of Trustees.

These September 6, 1969 Indiana University Board of Trustees minutes contain language regarding the following Trustees' vote designating Dunn Meadow as a public forum:

A RESOLUTION

RESOLVED by the Board of Trustees of Indiana University, under the authority conferred by the General Assembly of the State of Indiana, in compliance with the mandate of the General Assembly in Chapter 273, and in compliance with Chapter 444, both enacted in the 96th Session of the Indiana General Assembly in 1969, the following rules and regulations are enacted:

PART IV - REGULATIONS AND POLICIES APPLICABLE TO STUDENTS
ON THE BLOOMINGTON CAMPUS
Section 4.1 Policies; Assembly Ground

(a) The Board of Trustees has designated an area on Dunn Meadow immediately north of the Memorial Union as the Indiana University Assembly Ground. Here, members of the University community may express themselves freely on all subjects, within the limits of applicable laws and regulations, with or without advance notice. It is expected that all persons will respect the rights of free speech and assembly that are enhanced by this action, and will maintain courtesy and good order during such speaking and assembly as may take place.

(b) Gatherings on campus elsewhere than on the Assembly Ground will not "be permitted to disturb classes or interfere with traffic. Reservations for University facilities are made on a first-come, first-served basis and are subject to the Facilities Use policies specified in Section 3.6. The use of the streets of Bloomington for parades or demonstrations is subject to the ordinances of the city.

PART V - EFFECT OF RESOLUTION

The Resolution now adopted is effective September 6, 1969. Acts performed before that date are governed by the rules in force at the time of the act. The procedures for determination of violations of rules applicable to students established by this Resolution are effective with respect to charges of misconduct made against a student after the effective date of this Resolution. Other cases of alleged misconduct shall be determined under the procedures adopted by this Board of June 6, 1969.

Unanimously approved on motion duly made and seconded.