

FACULTY COUNCIL
Tuesday, October 7, 2014
3:30 – 5:15 pm
Executive Boardroom (2390), University Capitol Centre

MINUTES

Councilors Present: F. Abboud, S. Ali, P. Brophy, S. Campo, D. Caplan, S. Daack-Hirsch, C. Fox, E. Gillan, K. Kieran, P. Muhly, S. Seibert, P. Snyder, H. Udaykumar, S. Vos, J. Wilcox.

Officers Present: C. Bohannan, E. Lawrence, A. Thomas, T. Vaughn.

Councilors Excused: M. Voigt.

Councilors Absent: None.

Guests: R. Green (Daily Iowan), H. Hoerschelman (Staff Council), H. Hovenkamp (College of Law), L. McLeran (Office of the President), J. Menninger (Emeritus Faculty Council), M. O'Hara (Psychology), E. Van Allen-Shalash (Office of the Provost).

I. Call to Order – President Thomas called the meeting to order at 3:35 pm,
<http://www.uiowa.edu/~facsen/archive/documents/Agenda.FacultyCouncil.10.07.14.pdf>.

II. Approvals

- A. Meeting Agenda – Professor Campo moved and Professor Gillan seconded that the agenda be approved. The motion carried unanimously.
- B. Faculty Council Minutes (September 2, 2014) – Professor Abboud moved and Professor Fox seconded that the minutes be approved. The motion carried unanimously.
- C. Draft Faculty Senate Agenda (October 28, 2014) – Professor Muhly moved and Professor Campo seconded that the draft agenda be approved. The motion carried unanimously.
- D. Committee Appointments (Christina Bohannan, Chair, Committee on Committees)
 - None at this time

III. New Business

- *Annual Meeting of Coalition on Intercollegiate Athletics Update (Mike O'Hara, Psychology, UI COIA Representative)*

Professor O'Hara explained that the Coalition on Intercollegiate Athletics (COIA) is an alliance of the faculty senates of the NCAA football subdivision schools. COIA's mission is to provide a national faculty voice on intercollegiate sports issues. Areas of concern include academic integrity, inequality, student-athlete welfare, campus governance of intercollegiate athletics, commercialization, and fiscal responsibility. COIA emerged in 2002 out of conversations among the Pacific-12 and Big Ten Faculty Senate presidents; the University of

Iowa, therefore, has been integrally involved in COIA since its beginning. Currently, 64 (about half) of the football subdivision faculty senates are members of COIA. Many of the Big Ten institutions are now members. COIA works with various academic governing bodies, as well as with the Knight Commission, the American Association of University Professors (AAUP), and the Faculty Athletics Representatives (FAR's). COIA holds annual meetings, of which Professor O'Hara has now attended four. At this year's meeting, February 28 – March 2, at the University of South Florida, the primary focus was on NCAA re-structuring. COIA ultimately was highly critical of the current re-structuring efforts. COIA attempted to get a greater faculty voice in NCAA governance, but eventually decided to push for a greater voice for the FAR's. In the NCAA principal governing council, there will be two FAR's, out of a total of about 64 members.

Athletics finances were another topic of discussion at the annual meeting. This is a huge problem throughout the country, although UI is lucky in that its athletics department is self-supporting. The great majority of athletics departments, however, run deficits that need to be made up by their institutions' general funds. Professor O'Hara expressed the opinion that some of the funding lost to UI through the performance-based funding model would go to support athletics at ISU and UNI; he found this thought troubling. COIA also addressed antitrust issues. A draft of a legislative bill to provide the NCAA with an antitrust exemption was presented for review. The NCAA Chief Medical Officers gave a presentation on issues related to sports concussions. A member of the commission that investigated academic fraud at the University of North Carolina discussed lessons to be learned from that situation, including being alert to possible instances of faculty-abetted fraud. Professor O'Hara noted that COIA has a good relationship with the NCAA, the academic staff of which usually attends the annual meetings.

Professor O'Hara then turned to the issue of faculty involvement in athletics. He stated that, in his view, UI has a good athletics administration, led by Athletic Director Gary Barta, who, in Professor O'Hara's opinion, is very supportive of academics. He praised the staff of Student-Athlete Academic Services in the Gerdin Athletic Learning Center. The Presidential Committee on Athletics (PCA), of which Professor O'Hara is a member, includes a number of faculty members, and there are two FAR's on campus. The PCA and the FAR's both strive to do a good job. Professor O'Hara commented, however, that the PCA members serve at the pleasure of President Mason and their role is purely advisory. Although the Faculty Senate nominates individuals for service on the PCA, it is nevertheless a presidential committee. He added that President Mason does not interfere in the activities of the committee and supports its work. The meetings of the committee are public. Addressing broader athletics issues, however, can be difficult for the group, which is focused on local issues. Professor O'Hara observed that in his experience, the Faculty Senate is a body which can create change. Therefore, an independent faculty committee, concerned with athletics and reporting directly to the Faculty Senate, might be the ideal entity to deal with these broader issues.

Turning to his concerns regarding athletics, Professor O'Hara noted that student athletes' extensive travel schedules may prevent them from choosing majors such as teaching, nursing, or engineering because of the requirements of those programs for various types of off-campus experiences. There is already pressure from some coaches to relax policies regarding missed class time, especially now that the University of Maryland and Rutgers University have joined

the Big Ten. The policy currently limits missed class time at eight days, but travel for championships and some non-NCAA games is excluded from this limit. Some students, therefore, may end up missing quite a bit of class time. Professor O'Hara also expressed concern that building and upgrading athletics facilities, part of the national athletics "arms race," may drive a search for new revenue streams. Athletics department spending on student athletes already far exceeds the university's spending on non-athlete students; this is also a concern. All of these issues impact academics. Professor O'Hara requested that the Faculty Senate look carefully at these issues and perhaps create an ad hoc or standing committee dedicated to a close examination of these topics.

Vice President Bohannon asked Professor O'Hara to comment on some of the athletics issues in the national news, such as stipends for student athletes or the possibility of unionization. Professor O'Hara noted that various changes are already on the way for the five wealthiest conferences, such as full cost of attendance support, multi-year grants-in-aid, and scholarship protections.

- *Antitrust Issues in Collegiate Athletics (Herb Hovenkamp, Law)*

Professor Hovenkamp began his remarks by indicating that there are two important things to keep in mind about section one of the federal Sherman Antitrust Act. First, it presupposes an *agreement*; therefore, unilateral conduct taken by a single school would not be covered. The other is that antitrust laws are passed under Congress' authority to regulate commerce. With respect to most businesses, what constitutes commerce is fairly clear. The outstanding exception is the university setting, specifically university athletics programs. On a transaction by transaction basis, the federal courts have divided antitrust issues into commercial and non-commercial. For example, in a 1984 case, the Supreme Court took the position that television contracts were clearly commerce. As a result, cartelization of those contracts was judged unlawful. In a Colorado case 15 years ago, a court held that coaches' salaries were considered commerce. The most difficult cases have concerned the status of student athletes. Generally, the courts have found that there is no commerce in three areas, *in loco parentis*, academics, and amateurism. This has been the line that the NCAA has adhered to, narrowing their actions to regulating GPA requirements, class attendance, etc., without fear of antitrust liability. In an important case about 15 years ago a court held that the non-commercial status of student athletes permitted the NCAA to bar students from accepting payment for wearing the insignia of a major manufacturer of sportswear.

Professor Hovenkamp observed that compensation issues regarding student athletes are the trickiest because they involve money changing hands. At the same time, the money is characterized as financial aid or support of some sort and all of the aid recipients are students. In the 1984 case the Supreme Court identified amateurism in terms of compensation; in other words, amateur athletes are those who do not receive net compensation more than the cost of educating those athletes. The NCAA rules force compensation down below that level and use the extra monies to finance unprofitable sports programs. In the recent *O'Bannon v. NCAA* case, an agreement among the NCAA schools to suppress payments below the full cost of the education was deemed illegal under the Sherman Act. It was ruled that student athletes were entitled to some amount of money up to, but not exceeding, the cost of their education. To remedy this

situation, a suggestion has been made for the schools to establish trust funds to be drawn upon when necessary. The case is currently under appeal. Professor Hovenkamp expressed the opinion that there was some chance that the decision would be reversed.

Another potentially troubling development is the decision of the National Labor Relations Board several months ago that Northwestern University football players are considered employees, meaning that they are entitled to unionize. Professor Hovenkamp commented that this decision breaks new ground. Teaching assistants have been allowed to unionize, but they are typically paid a salary by the university; they are not just receiving financial aid. That decision will be appealed. Turning to the current situation, Professor Hovenkamp observed that the question of a Congressional exemption to antitrust laws for the NCAA is a complicated one. Some in Congress believe that universities are a big cartel suppressing athletes. There is some precedent for an exemption; for example, medical schools agree with each other to place residents around the country through a lottery. If this were happening in a commercial setting, it would clearly be illegal. The American Medical Association was able to obtain an exemption from Congress, however, for the lottery.

Professor Hovenkamp stressed that it is important for the purpose of a proposed exemption to be carefully thought out. If a broad exemption is needed from things that are clearly commercial, such as coaches' salaries, then there is no case law currently that would allow the NCAA by agreement to get coaches' salaries down. In order to do that, a Congressional antitrust exemption would be required. Regarding both the Northwestern and O'Bannon cases, he recommended waiting and seeing how the cases play out, although an exemption could be drafted at this time. He commented that if the courts generally uphold the right to unionize for student athletes, there would probably be no limit on what student athletes could ask for. Market forces would eventually create equilibrium between labor and employers. This could mean labor disputes, strikes, teams that don't show up for games, etc.

Secretary Vaughn asked what the consequences would be in this environment for student athletes who do not have scholarships. Professor Hovenkamp responded that this would most likely be taken up on a case by case basis. The National Labor Relations Board might rule that student athletes without scholarships cannot be considered employees. Professor Abboud pointed out that the issue appears to be whether the student athletes are salaried or not. Professor Hovenkamp concurred but noted that the National Labor Relations Board did not see the issue in this way. Professor Udaykumar asked about the impact on other, less profitable sports. Professor Hovenkamp commented that the impact could be significant. Professor O'Hara observed that the NCAA, as of next January, will allow the five biggest conferences to provide student athletes with the full cost of attendance. He speculated that about 85-90% of cost of attendance is currently covered.

- *Update on TIER Efficiency Review (Laura McLeran, Assistant Vice President for External Relations, Office of the President; Erika Lawrence, Past President)*

Laura McLeran indicated that on October 2, Deloitte Consulting presented the final eight administrative business cases to the Board of Regents, State of Iowa. Initially there were seventeen cases that were considered. The five academic cases among these are on hold for now.

Four other business cases have already been approved by the Board. Detailed information about all of the cases can be found on both the Board and UI websites. Deloitte is now hosting town hall meetings on all three campuses to gather input about the newly-released cases. The UI town hall meeting will take place on October 9. The focus of the eight new business cases include information technology restructuring, human resources, finance, and facilities management. The cases on facilities management only minimally impact UI. Past President Lawrence pointed out that these cases, unlike the previous ones, have been released early enough to allow the campus community significant time for review and feedback. She noted that the Sounding Board, on which she serves and which is made up of members of a variety of campus constituencies, received the business cases before their public release and had the opportunity to offer feedback to Deloitte staff.

Ms. McLeran noted that the shared governance group leadership will have the opportunity to meet with Deloitte staff following the town hall meeting. The Board will hear additional feedback from the institutional presidents at their October 22 meeting in Iowa City. The Board will then vote whether to approve the cases at a special meeting on November 14. Two of the five academic cases, dealing with scheduling and space utilization, are being overseen by Ad Astra, a firm with which Deloitte subcontracted. The other three cases were being overseen by another subcontracted firm, KH Consulting, but that firm is no longer involved with the review, so the three cases have been tabled. A new firm to replace KH Consulting is expected to be hired by the end of the month. Past President Lawrence thanked Ms. McLeran and Transformation Project Manager for the TIER Study Mark Braun for their openness about the process with the shared governance bodies. She also commented that Deloitte staff have frequently been impressed by the efficiency already achieved by UI faculty and staff.

In response to several questions and comments, Past President Lawrence and Ms. McLeran indicated that some of the information technology business cases involve consolidation of printing resources, use of virtual desktops, and reduction in the number of computer applications across the three campuses. Regarding shared services, a collegiate model, rather than a departmental or university model, seems the most likely goal at this point. It is highly unlikely that a system-wide model would ever be implemented. For clarification, it was noted that shared services refers to accounts payable, travel reimbursement, human resource functions, and other administrative tasks of this nature. Rather than having an employee at the departmental level, for example, process travel reimbursements, this work would be done by a collegiate-level employee who specializes in these types of transactions. Expertise in certain procedures would therefore be consolidated in a small number of individuals, rather than requiring many individuals at the departmental level to become proficient at these procedures. A university model would move these individuals with specific transactional expertise out of the colleges and into a centralized location, from which they would process transactions from throughout the university. While the university model might yield the most cost savings, it has also garnered considerable criticism from various constituents across campus.

Past President Lawrence pointed out that cost savings have been projected based on Deloitte's experiences at other institutions. Professor Campo cautioned against allowing projected cost savings to distract us from the hidden costs or unintended consequences of

actions taken to reduce expenses. For example, reducing the number of employees at a certain level might cause the remaining employees at that level to take on overtime hours to complete the work that still needs to be done. Or, employees at a different level may need to take on those tasks, thus reducing their productivity in the activities for which they were hired. Ms. McLeran commented that Deloitte is aware that specific cost savings for the UI are difficult to predict at this stage. Once implementation gets underway, a clearer picture will begin to emerge. Deloitte has stated that they are making the best cost savings estimates possible based upon similar experiences and best practices at other institutions, using the data provided to them by the three Regents universities. Professor O'Hara expressed reservations about having Deloitte both recommend changes and assist in the implementation of those changes. He considered this to be a serious conflict of interest. Ms. McLeran responded that at this time there is no agreement with Deloitte that the consulting firm will be involved in the implementation phase. In fact, implementation could take place without the assistance of a consulting firm. Other options include consultant-coached or consultant-led implementation. Past President Lawrence added that fears about a reduction in the UI workforce as a result of the Deloitte recommendations would most likely not be realized.

In response to various comments, Ms. McLeran indicated that implementation, if it is conducted with the assistance of a consultant, would proceed with institutional teams working closely with the consultants. It would be in the best interests of any consulting firm to achieve outcomes deemed workable and successful by the institutions they are assisting. Professor Wilcox observed that undoubtedly, given all the work that has thus far gone into the efficiency review, changes will be made as a result of the recommendations. He added that it is important for faculty to keep a close eye on the details of any changes that are made. Vice President Bohannon reminded the group that Deloitte has been very receptive to concerns expressed by faculty about the review process, and the consultants and the university administration have been quick to change course in response to these concerns. She stressed that engaging positively and directly with Deloitte has brought about results. She encouraged faculty to convey any concerns about the efficiency review to the Faculty Senate officers. Ms. McLeran indicated that she and Mark Braun are also available for questions. She added that it is possible to submit questions and concerns through UI's TIER website, <http://efficiency.uiowa.edu/efficiency-recommendations>.

- *Update on Performance-Based Funding (Christina Bohannon, Vice President)*

Vice President Bohannon reassured the group that the Faculty Senate officers are continuing to monitor this situation. She reminded Councilors that the current performance-based funding model allocates state funding 60% based on in-state enrollment and 40% based on performance metrics such as progress to degree, accessibility, etc. The Board approved this funding model in June. In September the Board approved a proposed budget for the Regents institutions for FY16 based on the model. This proposed budget included an additional \$12.9 million to implement the new model. President Mason has indicated that it will take some time for UI to adjust to the new funding environment and the additional money will assist in that effort. Administrators have told the Faculty Senate officers that UI will continue to lose money each year only if the university does nothing to change its circumstances. However, a massive recruiting campaign is underway that is expected to bring many more in-state students to UI over the next few years. It

appears likely that UI will be highly successful in these efforts, which may have negative consequences for other public and private institutions in the state.

Administrators have also stressed to the Faculty Senate officers that there have been no changes in the university's mission, values or priorities as a result of the new funding model. Graduate and professional programs, research, and recruitment of out-of-state and international students will all continue to be of great importance to the university. The university will merely grow through the recruitment of additional in-state students. The Faculty Senate officers continue to advocate for either a shift in the funding model or the allocation of the extra \$12.9 million. The officers have been striving to maintain a positive working relationship with the Regents through direct communication with them. Partly as a result of these efforts, a slight adjustment had been made to the funding model to allow for greater recognition of the needs of graduate and professional education.

The officers have also begun to engage local legislators on this issue because the performance-based funding model will be taken up by the state legislature in the spring. It is possible that our local legislators will introduce a modified version of the model for the legislature's consideration. The officers have also reached out to the governor and plan to meet with him in December, as he begins drafting his proposed state budget. Vice President Bohannon welcomed suggestions from Councilors on how to advocate for the university most effectively. Professor Udaykumar commented that many faculty members seem unaware of all of the efforts the officers are undertaking on their behalf and he suggested that the officers publicize their activities more. The officers concurred and urged Councilors also to spread the word in their colleges. Professor Ali suggested that the officers send periodic email updates to Councilors, who can then share that information with their colleagues. President Thomas noted that she had recently spoken to the Faculty Assembly in the College of Liberal Arts and Sciences and indicated that she would be willing to speak to similar bodies in the other colleges.

- *Proposed Change to Council on Teaching Membership (Shelly Campo, Chair, Council on Teaching)*

Professor Campo indicated that this is her third year serving on the Council on Teaching, a charter committee made up of faculty, staff and students, and her second year chairing the committee. It was brought to her attention last year that there was no provision for allowing lecturers to serve on the committee, even though they are deeply involved in the teaching enterprise and are eligible for some of the teaching awards that the Council on Teaching hands out annually. Faculty membership on charter committees is currently limited to those faculty members eligible to serve on Faculty Senate; lecturers are not eligible for service on the Senate. To allow a lecturer to serve on a charter committee, an exception must be written in to the individual committee's charter in the Operations Manual.

Professor Campo commented that both the Council on Teaching and the Faculty Senate's ad hoc Lecturers' Committee are in favor of allowing a lecturer to serve. She presented revised language for the Council on Teaching's charter, increasing the number of faculty allowed to serve from eight to nine members and explicitly stating that one lecturer must be included among these nine faculty members. The lecturer would be appointed by the Senate. Professor

Campo noted that having an additional member for the Council on Teaching will also be very helpful during those times when the committee must review numerous award nominations. President Thomas added that the Faculty Senate officers are in favor of adding a lecturer to the Council on Teaching and that this change would also need to be approved by the other shared governance bodies. She reminded the group that the Lecturers' Committee will present a report based on their three years of work to the Senate in the spring and that may lead to university-wide policy changes regarding lecturers. However, adding a lecturer to the Council on Teaching is a small step that can be taken quickly and is of great benefit to the committee's membership. Professor Wilcox spoke in favor of this action.

Professor Fox moved and Professor Ali seconded that the modification to the charter of the Council on Teaching allowing a lecturer to serve be approved. The motion carried unanimously.

IV. From the Floor – There were no items from the floor.

V. Announcements

- The inaugural State of Research address by Dan Reed, Vice President for Research and Economic Development, will take place on Monday, November 10 at 5:30 pm in the Art Building West Auditorium (Room 240). A reception will follow in the ABW atrium. Vice President Reed will present an address titled, *Iowa: A Great Public Research University*. Seating is limited, so please register to attend at: <http://research.uiowa.edu/impact/news/state-research-address-be-held-november-10>.
- The next Faculty Senate meeting will be Tuesday, October 28, 3:30-5:15 pm in the Senate Chamber of the Old Capitol.
- The next Faculty Council meeting will be Tuesday, November 18, 3:30-5:15 pm in room 2390 of the University Capitol Centre.

VI. Adjournment – Professor Campo moved and Professor Wilcox seconded that the meeting be adjourned. The motion carried unanimously. President Thomas adjourned the meeting at 5:15 pm.