

FACULTY COUNCIL
Tuesday, April 11, 2017
3:30 – 5:15 pm
Executive Boardroom (2390), University Capitol Centre

MINUTES

Councilors Present: S. Daack-Hirsch, F. Durham, R. Ganim, T. Marshall, L. Plakans, G. Ryan, J. Szot, K. Tachau, C. Thomas, S. Vos, E. Wasserman, J. Yockey.

Officers Present: E. Dove, E. Gillan, P. Snyder, T. Vaughn.

Councilors Excused: A. Durnev, P. Romitti.

Councilors Absent: R. Oral, H. Udaykumar, M. Voigt.

Guests: D. Drake (College of Dentistry; Faculty Athletics Representative), B. Harreld (President), A. Hesseltine (Office of the General Counsel), R. Hichwa (Office of the Vice President for Research & Economic Development), L. Hill (English; Office of the President), K. Kregel (Office of the Provost), D. Weinreich (Military Science), L. Zaper (Faculty Senate Office).

I. Call to Order – President Vaughn called the meeting to order at 3:30 pm.

II. Approvals

- A. Meeting Agenda – President Vaughn explained that there are always additional items for approval at the last Council meeting of the year. In order to be sure that we have enough time to hear from our guests, those approvals have been moved near the end of the agenda. He noted that the agenda had been updated after distribution to include the names of the presenters for the *Intellectual Property Policy Revision* item. Professor Plakans moved and Professor Vos seconded that the revised agenda be approved. The motion carried unanimously.

III. New Business

- *Executive Session: President J. Bruce Harreld*

Professor Tachau moved and Professor Marshall seconded that the Council move into closed session, inviting Associate Provost Kregel, Professor Hill, and Professor Weinreich to remain in the room. The motion carried unanimously.

Councilors discussed the state of the university with President Harreld.

Professor Thomas moved and Professor Tachau seconded that the Council move out of closed session. The motion carried unanimously.

- *Faculty Athletic Representative (FAR) Update (David Drake)*

Professor Drake began his presentation by providing some historical background about the Big Ten. The organization was formed on January 11, 1895 at the Palmer House hotel in Chicago, when the president of Purdue University joined with leaders of other universities to develop principles for the regulation of intercollegiate athletics. During that meeting, a blueprint was created for the administration of collegiate athletics under the direction of appointed faculty representatives. Joint group meetings that include athletic directors, senior women administrators, and faculty athletics representatives (FAR's) still occur today. The chair of the FAR organization runs these meetings.

Turning to the responsibilities of contemporary FAR's, Professor Drake noted that they serve as the faculty voice to the NCAA and the Big Ten. They are considered NCAA officials and are among the few individuals on campus who can access NCAA databases. Professor Nicole Grosland from the College of Engineering also serves as a UI FAR. Our FAR's have a heavy workload, tracking the academic progress of each student athlete on campus and attending multiple athletics-related meetings, including meetings of the Presidential Committee on Athletics, on which they serve as ex-officio members. Professor Drake stressed that the FAR's report to the University President, not to the Athletics Director.

Past President Dove asked Professor Drake to comment on how well the UI Athletics Department is taking care of the academic lives of our student athletes. Professor Drake expressed the opinion that the Big Ten is one of the best athletics conferences in the country for academics; within that conference, UI is one of the best institutions for academics. In the two years that he has been serving as a FAR, Professor Drake has been impressed with the emphasis that the leadership of the UI Athletics Department places on academics. UI coaches share this focus. Professor Drake reminded the group of Athletic Director Gary Barta's motto, "Win, Graduate, Do It Right." Past President Dove asked if there was a system of checks and balances to prevent an academic scandal, such as the one that occurred at the University of North Carolina, from ever happening here. While Professor Drake could not guarantee that such a scandal would never happen at UI, he expressed the opinion that it was unlikely. He mentioned two Athletics officials, Liz Tovar, Associate Athletic Director for Student-Athlete Academic Services, and Lyla Clerry, Associate Athletic Director for Compliance, who are extremely vigilant in their oversight of academic matters. They are in immediate contact with the FAR's whenever concerns arise, as the FAR's are with them. The FAR's meet weekly with Athletic Director Gary Barta and can meet with President Harreld if they feel their concerns are not being addressed by the Athletics Department.

Noting that the handout that Professor Drake distributed indicated that only those faculty who hold *the tenured rank of professor or associate professor* are eligible for service as a FAR, Professor Thomas asked if this position might be open to a professor on the clinical track at some point in the future. Professor Drake responded that the Faculty Senate would need to advocate for this change, if so desired. Professor Drake then shared two recommendations with the group. The first was that the FAR's be invited to speak more often with the Faculty Council and the Faculty Senate. The second was for the Senate to invite the chair of the Presidential Committee on Athletics to speak with the Senate in the near future.

- *Intellectual Property Policy Revision (Richard Hichwa, Senior Associate Vice President for Research and Adwin Hesseltine, Deputy Counsel)*

Senior Associate Vice President Hichwa indicated that the university's intellectual property policy had last been updated in 2005. Since 2005, much has happened at the federal level regarding how intellectual property is processed; revised language in the new version of the policy reflects those changes. Additional revisions seek to bring the policy in line with current university circumstances as well as to anticipate future changes in the intellectual property landscape. Senior Associate Vice President Hichwa then gave a brief overview of U.S. intellectual property history, noting that prior to 1980, the federal government owned any invention created using federal grant funds. However, the government licensed very few of these patents. The Bayh-Dole Act of 1980 allowed universities to elect title to inventions created using federal funding. Universities could then pursue licenses to their inventions, thereby moving those inventions into the public domain where they could be used for the betterment of society. In order to assist with these efforts, many universities created technology transfer offices. The University of Iowa Research Foundation (UIRF), our technology transfer office, works with faculty on patents and licenses.

Turning to the UI intellectual property policy, Senior Associate Vice President Hichwa commented that the purpose of the policy is *to enable the public to use and benefit from inventions originating at the University*. The policy covers faculty from all disciplines. Senior Associate Vice President Hichwa stressed that faculty are not compelled, but are rather encouraged, to commercialize their intellectual property. The policy applies to *qualifying inventions*, i.e., inventions created by employees in the course of their work or enabled by significant use of university resources. Disclosure of the creation of a qualifying invention to the UIRF is required as a condition of UI employment.

Mr. Hesseltine explained that the 2011 Supreme Court case *Stanford vs. Roche* impacted how universities operate under the Bayh-Dole Act. The case involved a research fellow at Stanford University who was conducting NIH-funded research on HIV measurement processes. At Stanford he had signed a typical copyright/patent agreement in which he agreed to assign his intellectual property rights to the university's technology transfer office, so that Stanford could help commercialize his invention. The research fellow also collaborated with a company called Cetus (later Roche) to further develop his technology. Cetus also required him to sign an agreement. This agreement had similar language, but with the significant difference that he *did assign* his intellectual property rights to Cetus at the time of signing, rather than that he *agreed to assign* (at some point in the future) those rights (as the Stanford agreement stated). Roche later commercialized the invention. Stanford then sued Roche for patent infringement. The Supreme Court interpreted the Bayh-Dole Act such that, even though universities have the right to elect to retain title to intellectual property rights, the research fellow had not actually assigned his rights to Stanford, but had, perhaps unknowingly, actually assigned his rights to Cetus/Roche. This case caused universities to look more closely at their assignment processes for intellectual property. A major component of the revision of the UI policy is to rectify this issue in our policy wording.

Senior Associate Vice President Hichwa summarized the review and consultation process for the policy. The policy had been revised by the Intellectual Property Strategy Implementation Team. Consultation had been sought from the Research Council, the Intellectual Property Council, Staff Council, and the Faculty Senate's Faculty Policies and Compensation Committee (which had voted to approve the revised policy). At this phase of the two-part revision, the focus is on updating the policy language, as indicated earlier. The next phase will involve a reconsideration of how income generated by university inventions is distributed, beginning with an examination of the income distribution policies of peer institutions. The UIRF relies on this income for its existence. Internal funding for research and scholarship is also dependent on the income that flows into the university from commercialized inventions.

Mr. Hesselstine noted that the intellectual property policy includes both a patent policy and a copyright policy. No substantive revisions have been made to the copyright policy. He added that the mechanisms for capturing the present assignment of rights will vary depending on employment status. Secretary Gillan observed that, as indicated on the presenters' slides, students will assign during the course registration process. He asked what the consequences would be if a student refused to do this. Mr. Hesselstine responded that the policy does not specify consequences for refusal to assign. That determination would be made by central administration. Senior Associate Vice President Hichwa added that the policy would usually only become relevant to students when they are working with a faculty member in a research or scholarship endeavor. Professor Thomas observed that current employees will assign through the eCOI system. He asked if efforts will be made to inform faculty members about this update to the cCOI system; otherwise, they may simply check boxes without reading the "fine print." Mr. Hesselstine indicated that a communication plan is in the works. Professor Thomas questioned the placement of this rights assignment in eCOI, to which it does not seem to be related. Mr. Hesselstine noted that, in the *Stanford vs. Roche* case, it was the consulting relationship with Cetus that created the issue between the two entities. The consulting relationship created a conflict of interest. At UI, this conflict of interest would be managed after disclosure.

Turning to the copyright section of the policy and noting that she had been involved in the writing of this policy earlier, Professor Tachau commented that *intellectual property* and *invention* are not synonyms. Faculty members and students in the arts, humanities, and social sciences are constantly engaged in the creation of copyright. She pointed out a passage in the *Intellectual Property Policy Statement* (30.1) at the beginning of the policy that appeared to presuppose a parallel that doesn't exist between patent and copyright law, specifically, changing the text to refer to *copyrightable works* from *copyright-protected works*. She asked if that was actually a legal term in copyright law. It was her impression that in American law, nothing is copyrightable until the moment when it is set in whatever concrete form is appropriate for that discipline, at which point it becomes *copyright*. There is no *potentially* copyright phase. Mr. Hesselstine, who advises on copyright law in the Office of the General Counsel, said that it was an appropriate term. Professor Tachau speculated that the university would not claim interest in any copyright other than those that are potentially connected to inventions, such as computer code. Senior Associate Vice President Hichwa commented that if federal funds were used to create code, then the university would copyright that code along with the author(s). The

university would not, however, copyright books, manuscripts, artwork, choreography, etc., copyrighted by faculty members. President Vaughn commented that the Senate officers had suggested to Vice President Reed that the policies for patent and copyright be separated. It is possible that this will be done at a later time.

Professor Tachau next drew the group's attention to section 30.4 b. (2) (a), in which a sentence in the previous version of the policy had been eliminated in this version, *The University claims no ownership of copyright in any work created outside the scope of any employment within the University*. She indicated that this sentence had been put in very deliberately and deemed the removal of this sentence a substantive change to the policy. She noted that the university could try to claim all copyright, which the policy authors were trying to prevent, since historically, members of a community of scholars individually own copyright. It would also be expensive for the university to defend the copyright. Mr. Hesselstine responded that, if this sentence were left in, the university would be barred from claiming copyright to work, such as software, created by a visiting scholar.

Turning to some other revisions of the policy, Mr. Hesselstine noted that the terms *invention* and *visiting scientist/scholar* have now been defined. Clarification has been added regarding how personal consulting arrangements should be carried out, with the policy providing for the possibility of joint rights to any intellectual property generated. Also, in the current version of the policy, if the UIRF decides that it does not want to file a patent application for an invention, the UIRF has the option of assigning the rights to that invention back to the inventor. Some potential investors, however, have wanted to see a clean paper trail from the UIRF to the inventor. The new version of the policy calls for the UIRF to issue a license to the inventor for the invention. Such licenses would include a "bonanza clause," whereby the university would receive royalties from those rare extremely profitable inventions. In response to a question from Vice President Snyder, Senior Associate Vice President Hichwa indicated that such practices were consistent with those of many of our peer institutions. He added that junior faculty members these days are very cognizant of the issues surrounding intellectual property. Professor Tachau asked if there were any plans to develop a trademark policy. Mr. Hesselstine responded that trademark issues are generally handled by the Athletics Department or the Office of the General Counsel and that there does not seem to be a need for a comprehensive trademark policy at this time.

Professor Marshall moved and Professor Ganim seconded that the revised Intellectual Property Policy be approved. The motion carried unanimously.

- *AAUP Sanction Update (Sandy Daack-Hirsch, Chair, Ad Hoc AAUP Sanction Removal Committee)*

Professor Daack-Hirsch reported that she and Professor Tachau, President of the UI Chapter of the AAUP, had spoken recently with Hans-Joerg Tiede, Senior Program Officer in the Department of Academic Freedom, Tenure, & Governance of the national American Association of University Professors, regarding the ten best practice points that the committee is developing. Dr. Tiede was supportive and encouraged the committee to remain focused on the issues specifically mentioned in the sanction report. Professor Daack-Hirsch indicated that the

committee would like to engage with the Board of Regents, State of Iowa, or at least with the executive director, prior to drafting a report document.

- *President's Report (Tom Vaughn)*

President Vaughn reported that he and Professor Jerry Anthony, chair of the Faculty Senate Governmental Relations Committee, attended the reception in Des Moines held the evening before the annual Hawkeye Caucus Day event, while Vice President Snyder, along with Governmental Relations Committee member Professor Rachel Williams, attended the Hawkeye Caucus Day event at the State Capitol. The Governmental Relations Committee has since discussed formulating a systematic plan for engaging with state legislators.

Regarding the Academic Organizational Structure Study, the Senate officers recently met with Interim Provost Curry and Associate Provost for Faculty Kregel. The administrators reiterated former Provost Butler's point that the purpose of the study is to find ways for the university to be more effective in carrying out its missions. While there may be financial implications to this effort, that is not the focus of the study. Following up on the Working at Iowa survey results, President Vaughn reported that the Office of the Provost and University Human Resources plan to work together to create faculty focus groups to begin addressing some of the issues revealed in the survey. Concluding his remarks, President Vaughn commented that the Faculty Senate Committee on Rules and Bylaws will continue its work on the revision of the Senate constitution into next year. Vice President Snyder announced that the theme of this summer's Faculty Council/Administrative Retreat will be interdisciplinary teaching, research, and scholarship. He requested that Councilors send him suggestions and thoughts on this topic.

IV. Approvals

- B. Faculty Council Minutes (March 7, 2017) – Professor Ganim moved and Professor Daack-Hirsch seconded that the minutes be approved. The motion carried unanimously.
- C. Draft Faculty Senate Agenda (April 25, 2017) – Professor Daack-Hirsch moved and Professor Marshall seconded that the draft agenda be approved. The motion carried unanimously.
- D. Faculty Senate and Council Election Results (Tom Vaughn) – Professor Tachau moved and Professor Ganim seconded that the election results be approved. The motion carried unanimously. President Vaughn thanked the departing Councilors still present for their service.
- E. 2017-18 Committee Recommendations (Pete Snyder, Chair, Committee on Committees) – Professor Ganim moved and Professor Marshall seconded that the recommendations be approved. The motion carried unanimously.

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

VI. Announcements

- The next Faculty Senate meeting will be Tuesday, April 25, 3:30-5:15 pm, Senate Chamber, Old Capitol. Election of officers will take place.

VII. Executive Session – Professor Marshall moved and Professor Daack-Hirsch seconded that the Council move into Executive Session. The motion carried unanimously.

President Vaughn announced the winners of the Regents Award for Faculty Excellence and the Michael J. Brody Award for Excellence in Service to the University and the State of Iowa.

Professor Plakans moved and Professor Marshall seconded that the Council move out of closed session. The motion carried unanimously.

VIII. Adjournment – Professor Tachau moved and Professor Marshall seconded that the meeting be adjourned. The motion carried unanimously. President Vaughn adjourned the meeting at 5:35 pm.