

**MINUTES
FACULTY SENATE
THE UNIVERSITY OF ARIZONA®
April 5, 2004**

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1. CALL TO ORDER

The meeting was called to order by Vice Chair Howell at 3:06 p.m. in the College of Law, Room 146.

Present: Senators Baughman, Benedict, Bixby, Burd, Chapman, Christenson, Conway, D. Davis, G. Davis, Green, Hancock, Howell, Jenkins, Jones, Kiefer, Likins, Mitchell, Pintozzi, Pitt, Powell, Radebaugh, Silverman, Songer, Spece, Strittmatter, Tatman, Tomanek, Warburton, Willerton, Witte, Wysocki, and Zwolinski. Robert Sankey served as Parliamentarian.

Absent: Senators Arabyan, Borden, Chandler, Cusanovich, Dahlgran, Diaz, Erickson, Garrett, Gruener, Hildebrand, Impey, Joens, Kim, Larson, Lynch, Miesfeld, Rainer, Schlager, Swanson, Timmermann, Vierling, Weinand, Wright, and Zizza.

2. OPEN SESSION

There were no speakers for the Open Session.

3. REPORTS

3A. ASUA President J. P. Benedict

ASUA President J. P. Benedict reported that ASUA is conducting a student referendum to consider adding a student activity fee of \$15. If this measure passes, ASUA will then ask the Board of Regents to consider implementing it. This is Spring Fling weekend and numbers may be down because of the Easter holiday so ASUA has adjusted its expectations. There are openings for a number of directorships in ASUA and faculty senators are urged to encourage undergraduate students to apply for these positions. President Benedict introduced Senator Alistair Chapman, the ASUA President-elect for 2004-05. Mr. Chapman said he has worked with J. P. Benedict all year and is looking forward to being proactive and collaborating with the Senate.

3B. GPSC President Jani Radebaugh

GPSC President Jani Radebaugh reported that the Graduate Students Appreciation Week was more successful and had a greater turnout than in previous years. Events included a barbeque, a movie night, and a social, as well as the awards banquet at which faculty mentors were honored along with awards for best thesis. GPSC is conducting elections for college representatives and the number of petitions is down and faculty senators are urged to encourage graduate students to run for GPSC.

3C. Secretary of the Faculty Robert Mitchell

No report.

3D. Vice Chair of the Faculty Wanda Howell

Vice Chair Howell reminded the Senate of the Special Session on April 19, 2004 at 3:00 PM in Law 146 to consider the report and recommendation from the School of Planning Reorganization Advisory Committee. The Senate's role in this process is to consider the report and to vote to support the recommendation or not, and perhaps to offer some document of its own, but not to edit or change the Committee's report. Senators will be receiving and should read thoroughly the background information and the committee's report and recommendation prior to April 19th. The Senate will be electing new members to a number of committees at the May meeting, including the Committee on Conciliation, the University Committee on Ethics and Commitment, and the University Hearing Board, as well as Faculty Senate representative to the Senate Executive Committee and two Faculty Senate representatives to the Shared Governance Review Committee. Vice Chair Howell called for nominations or self-nominations for these last two committees. The General Faculty Runoff Election for the Committee of Eleven and the College of Architecture Senator ends tomorrow (April 6) at 5pm Senators are urged to vote.

3E. Chair of the Faculty Jory Hancock

Faculty Chair Hancock reported that no Reorganization Advisory Committee for the Humanities Program would be necessary because all of the tenured faculty have been relocated. The Reorganization Advisory Committee for the School of Planning has met several times and elected Nancy Huber as its Chair and J. Hancock as Co-Chair. The members have agreed to conduct interviews with all of the faculty, staff and several students in the School of Planning as well as with several potential receiving units including the Department of Geography, the College of Social and Behavioral Sciences, the College of Public Health and the Graduate Interdisciplinary Programs. Chair Huber will be presenting this committee's report and recommendation to the Senate on April 19th, and if necessary, again on May 3rd, and to SPBAC on May 5th. For General Faculty Standing Committee appointments, Chair Hancock has appointed Doug Jones to serve on the University Committee on Corporate Relations, and Mal Zwolinski to serve on the University Fees Committee.

3F. Provost George Davis

Provost Davis addressed how the offering of minor degrees can be subject to departmental decisions when resources are scarce. This issue is related to the issue of limiting the number of majors and has been exacerbated by the recent years' budget cuts. If a student enrolls in a major that requires a minor, the University has a contractual obligation to offer that minor. He has asked the Council of Deans to work with him to create a protocol to eliminate surprises and to determine how many minors, majors, and Gen Ed courses can be offered effectively. General Education (Gen Ed) is launching a review process that should help to relate the program's quality as it relates to mission. The review may serve to transform Gen Ed in ways that reflect UA's cross-disciplinary priorities. For the past few years, the Board of Regents has been endorsing differential "program fees" for certain programs, mostly at the graduate or professional level, such as in Law or Business. These fees really amount to differential tuition, which the Board of Regents has acknowledged on its website. There are a number of complications involved in the programs with differential tuition fees, for example, if a student enrolled in one of these differential tuition programs takes all of his/her classes outside of that program for a term, which college or unit should receive the differential tuition revenue? Similarly, which college should bear the cost of the financial aid for students enrolled in those colleges/programs with differential tuition? President Likins has asked the Provost and others to consider what institutions are the UA's aspirational peers and what measures might be used to identify them. These measures might include total sponsored projects, colleges of medicine and agriculture, entering SAT scores, or faculty salaries. The UA is widely variable in these areas, but much can be learned from other institutions' best practices that have resulted in sustained success in areas that are important to the UA, such as the relationship between the fundamental research enterprise and interdisciplinary activities, imbedding research into the undergraduate experience, economic development through tech transfer, and retention and diversity in both academic and student affairs. In anticipation of today's agenda item on Five-Year Reviews of Deans and Department Heads, Provost Davis described how he conducts such reviews of Deans. After charging the committees, he works closely with them at the end of the review stage and then he reports publicly to the colleges at an open meeting those issues which are not confidential that have been learned from the Five-year Review. He perceives his role as ensuring that the process is carried out properly and working with the review committee to understand the input so that the committees know they have been heard, and to assure faculty and staff that they can be certain that the input has been delivered and received and will have an impact on the lives of deans and academic affairs. He suggested that the very best informed feedback occurs when the reviewed personnel have an open discussion with the faculty about what s/he heard and learned and hopes to change or address.

3G. President Peter Likins

President Likins announced that no budgetary counter-proposals have come forward yet from the House of Representatives, but he does expect one to emerge. The governor's budget is more generous toward higher education than anything that may come from the legislature. Her budget includes salary increases and the possibility of covering some fringe benefits for all state employees, as well as "key personnel retention" funds for the UA. As the state's economy is recovering, the University's income from the Proposition 301 sales tax will increase and things will slowly get better. The President's Cabinet recently spent a retreat discussing aspirational peers and contemplating focused excellence strategies. It is particularly difficult to allocate funds with restricted resources when there isn't widespread agreement/endorsement of focused excellence. The full implications of the Regents' "Changing Directions" and the focused excellence may not be known for another year, but President Likins believes that profound changes have already come about, but that they are largely invisible to the campus community, who probably see focused excellence as a struggle to allocate limited resources.

4. QUESTION AND ANSWER PERIOD FOR AGENDA ITEM 3

Senator Willerton asked how the Provost's Office assesses the rights of majors versus the rights of the minors and others regarding access to courses. Provost Davis noted that the issue of minors is longstanding, has been exacerbated by the budget cuts, and is in the same family as limiting the enrollment of majors, as in the Eller College, for example. What is also at issue is the rights of the departments versus the colleges versus the Provost's Office. It is important to be clear about the University's contractual agreement with new and transferring students if they have been admitted and expect an opportunity or are given a

requirement for a minor. The fundamental distribution of mission responsibilities must be determined by each department, and the Provost will engage the deans and department heads as well as the Faculty Senate in this question.

Senator Strittmatter asked the President about the Governor's remarks about tying tuition increases to inflation. President Likins commented that the University is not, in any rational sense, connected to the Consumer Price Index. In the University world, the relevant inflation is the inflation associated with the cost of higher education. The Regents' goal in recent tuition increases has been to move the Arizona Universities from the bottom of public institutions to the top of the bottom third, and it is probable that UA's tuition will probably never be higher than the bottom half.

5. **APPROVAL OF THE MINUTES OF March 1, 2004**

The minutes of March 1, 2004 were approved.

6. **FOURTH READING AND DISCUSSION: INTELLECTUAL PROPERTY POLICY FORWARDED FROM THE POLICY COMMITTEE (attachments)**

Research Policy Committee Chair Pintozzi presented the first reading of the new Intellectual Property Policy which comes as a seconded motion [Motion 2003/04-47] from the Research Policy Committee. This policy is extremely complex and is intended to replace the Interim policy that has been in effect since 2002. In drafting this policy, the RPC consulted with the Vice President for Research, Lois Eisenstein of the University Attorneys Office, and Patrick Jones of the Office of Technology Transfer. Because the University's policy must comply with ABOR's, the RPC identified a possible legal conflict inherent in the ABOR Intellectual Property Policy concerning the blanket release to the creator of most of the copyrightable, traditional, intellectual property such as scholarly publications, textbooks, course notes, or artistic works. A similar clause in another institution's policy was recently challenged and the district court ruled that the clause was insufficient to transfer copyright ownership; a written release is necessary to transfer ownership. The Senate may wish to bring this case to ABOR via the Arizona Faculties Council. The RPC has also worked out a way to link the Intellectual Property Committee and the Research Policy Committee by having the Chair of the Faculty appoint a member of the RPC to sit on the IPC. Senators' questions and comments included: 1) The RPC could benefit by looking at the Committee of Eleven-produced Forum on Intellectual Property for the Millennium which presented the extreme views of ownership of intellectual property, the legal, ethical, moral, and academic reasons for those extremes, and scenarios about who owns the property ranging from students and graduate students to faculty and administrators. 2) What does ABOR's policy release? The court ruled that the blanket release is insufficient and that an itemized list is necessary for release of copyright. 3) Is software a special category? Software can be both copyrightable and patentable and each case must be examined individually. 4) What is academic software? An online course could be academic software, and so could a software game, if the course was studying gameware. 5) The committee should try to address issues such as collaborations across different legal entities such as state, private or foreign countries, or course software developed at an institution being retained by that institution. 6) Is there a provision regarding the contractual obligation for a graduate student employed by a corporation but working on an intellectual property project at the UA? 7) Section D, 3 and D, 4 discusses students employed on sponsored projects. 8) The committee might consider adding a strong mission-like statement describing the fundamental responsibility of the public land grant institution and conveying the urgency of moving intellectual property into the applications in society. 9) How has the Interim Policy served us? The Committee hasn't heard anything specific but know there have been some problems reported. 10) Does the institution have a responsibility to the true stakeholders, which are state, the legislature and the public? 11) While the general discussion is interesting, specific comments or suggestions about changes to the policy are the most helpful to the Committee.

7. **FIRST READING AND DISCUSSION: PRE-EMPLOYMENT SCREENING POLICY FROM THE ACADEMIC PERSONNEL POLICY COMMITTEE (attachment)**

Academic Personnel Policy Committee Chair Kiefer presented the Senate with the first reading of a proposed pre-employment screening policy, which comes as a seconded motion [Motion 2003/04-48] from the Academic Personnel Policy Committee. Human Resources and Risk Management personnel authored the policy, which promotes responsible hiring and seeks to regularize the University's hiring practices. Chair Kiefer recognized Cathy Nicholson from Human Resources and Steve Holland from Risk Management who are in attendance today for questions. The policy requires the hiring authority to conduct reference checks and to verify educational or professional credentials or licenses and employment histories, and motor vehicle records where applicable. In the case of security-sensitive positions such as those dealing with specific "select agents" (which are biohazardous materials that constitute a very serious health threat such as Ebola, Anthrax, or Valley Fever) as defined by the US Patriot Act, the policy requires the hiring authority to obtain information on a finalist's criminal history and identity. Passing this policy may help the University to head off House Bills 2359 and 2369, which requires new and current university employees to obtain fingerprint clearance cards and gives the President the authority to automatically terminate university employees and officers for specified felony offenses. Senators' questions and comments included: 1) Criminal history record information should never be released to any party. The institution is not a law enforcement agency and such a release could make the University liable and at risk for a lawsuit. C. Nicholson responded that this language has recently been changed to read: "only be released consistent with applicable law." If a law mandates such a release, then the University would have to comply. 2) In footnote number 2, What does "notifying and justifying" mean? 3) Under the heading of "Security Sensitive Position Designation,"

"select agents" needs to be defined more clearly. Inserting the word biohazardous might make it more understandable. 4) The concept of "select agents" is not clearly understood. A number of such microbes and toxins are in use on campus, but the University has been approved for use of these agents below a quantity threshold. 5) Researchers who work with these "select agents" would prefer not to have Human Resources dictating who can be hired to work in such labs. C. Nicholson responded that the FBI manages the process that is mandated by the Center Disease Control, which includes background checks and fingerprinting, and inspections. The CDC then would make the decision. But that is only for "select agents" above that quantity threshold, which is not made clear in the policy. It might be important to involve people who have a more detailed understanding of how to apply or interpret such things. Senator Songer, who has a more detailed understanding of this concept and who sits on the University's Biohazards Committee, offered to work with Human Resources and the attorneys to draft more specific language. 6) Under the heading of "Security Sensitive Position Designation," Number 4 refers to access to resident hall rooms. Does this mean the Faculty Fellows would need to undergo background checks? Does this mean all students? C. Nicholson clarified that their concern is with "employees' unrestricted access," and she will revise the language. It also does not mean student employees. 7) Who pays for background checks and do background checks apply to current employees? C. Nicholson responded that the policy refers to all new hires and current employee transfers for security sensitive positions. The hiring department will pay, and the cost runs about \$80 for a complete background check which includes degree checks and criminal histories, but a motor vehicle check for driving records would only cost about \$25. 8) What is a "felony want" which is referred to in the first footnote? C. Nicholson responded that this is legal language that the attorneys added, and it basically means the same thing as a felony warrant. The policy was returned to committee and Human Resources to incorporate the revisions suggested by the Senate to clarify portions of the document. Chair Kiefer thanked C. Nicholson and S. Holland for attending today's session.

8. **SECOND READING AND POSSIBLE ACTION: PROPOSED REVISIONS TO THE UNIVERSITY HANDBOOK FOR APPOINTED PERSONNEL 5.09 "GUIDELINES FOR FIVE-YEAR REVIEWS OF DEANS AND DEPARTMENT HEADS" FROM THE ACADEMIC PERSONNEL POLICY COMMITTEE (attachment)**

Academic Personnel Policy Committee Chair Kiefer presented the Senate with the second reading and possible action on the proposed revisions to UHAP 5.09 Guidelines for Five-Year Reviews of Deans and Department Heads, which comes as a seconded motion [Motion 2003/04-49] from the Academic Personnel Policy Committee. Chair Kiefer began by acknowledging that most faculty believe the process of five-year reviews are wreathed in secrecy, although total confidentiality is stipulated by UHAP. Furthermore, these reviews are mandated by the Board of Regents, although most faculty may believe that five-year reviews do not really have much impact in changing the behaviors of deans and department heads. Chair Kiefer has relayed these concerns to Academic Affairs Vice Provost Juan Garcia, who seems receptive to working toward a resolution. Chair Kiefer advised the Senate however, that neither of these concerns is addressed in the proposed revisions before it today. A minor revision to the policy primarily defines and specifies "general faculty," wherever that term appears in the document. The only substantive revision specifies the composition of the review committee to more correctly reflect what is already in practice, that is, "to appoint others from the following groups: students, classified staff, professionals or community representatives." Senator Silverman moved motion [Motion 2003/04-50] to add the modifier, "general" right before the word "faculty" in 5.09.04, 1, and 5.09.04, 2 in the third and second sentences of those sections respectively, to read, ". . . up to three additional general faculty members drawn from . . ." Motion was seconded and passed unanimously. Senators' comments and questions included: 1) In the proposed revised text of section 5/09.04, 2, which reads "and to appoint others from the following groups: . . ." how many "others" might be appointed, do they have voting privileges, and who are they? Provost Davis responded that in his experience, when a Five-Year Review Committee is composed, more than half of the members are general faculty and that the majority of those faculty are selected by shared governance processes. More than half of the faculty must come from a list provided by that unit's shared governance body. President Likins moved [Motion 2003/04-51] to amend the final sentences of Sections 5.09.04, 1 and 2, to read ". . . together constituting less than half of the membership." Motion was seconded and passed unanimously. The Senators then turned to discussing ways in which the results of such reviews might be made more credible and transparent, without violating anyone's confidentiality. Comments and questions included: 1) The major issue is credibility. When the review survey comments range from congratulatory to incendiary, what comes back to the entire group has to be taken on faith that the results of the review will have any impact whatsoever and there is very clear evidence that this is the case. 2) Something should be done to make the results of the process have some impact. 3) How does one earn credibility without divulging confidentiality of individual instances? 4) There ought to be some way to pass along to the those concerned that their comments have been used to improve performance. 5) If an individual stops performing in a role but no one says, "This is because of your negative judgment," it may be inappropriate to connect these two things explicitly, but it could also be an outcome that is very transparent. 6) In many instances of five-year reviews, there can be reappointments. 7) The very best example of a transparent disclosure is when the person being reviewed goes to the faculty and describes what s/he has learned. 8) When dealing with the level of deans or above, these are public figures who are accountable to the public and this is the most meaningful review they get. The content of the review should be made public and as long as that is lacking, these reviews will be considered trivial and a waste of time. 9) Perhaps the Senate can try to create a custom stating that those reviewed are encouraged to share with individuals within their unit, the findings for the special focus of constructive criticism and how it should be addressed. Provost Davis remarked that after a review is completed, he has been inviting the faculty, administrators, staff and students to assemble and he comes in to talk about the review process and what was learned. Motion 2003/04-52 was not acted upon. The policy was returned to committee to try to add some "best practices" for sharing the results of the reviews.

INFORMATION ITEM: ATHLETICS REFORM

President Likins, the PAC-10 Division 1 Presidents' representative to the NCAA told the Senate that complicated changes in the way NCAA will compute and compare an institution's academic performance and graduation rates are being formulated but it will be several years before they are implemented. Two reforms adopted by the NCAA this year are concurrent with practices already in place in both ABOR and the PAC-10. The first change is that the NCAA is moving toward the requirement that students must take 16 academic courses in order to enroll and second, academic eligibility must be determined semi-annually instead of just annually. Both of these requirements are already in place at UA. The NCAA is also stepping up the "progress toward degree" standard, because the current academic requirements are not sufficiently stringent to assure graduation. The NCAA is also introducing wholly new measures for computing academic performance. Past measures relied heavily on graduation rates, which were limited to students who enter as freshmen, with transfer students counted as a failure (non-graduate) or left out of the statistic entirely. The new metric includes transfer students. Another new metric allows every student athlete an opportunity to earn two points for his/her team every semester by returning or graduating, and by remaining academically eligible to compete. The new graduation rate metric will allow for a transfer student in good standing to not count against the institution s/he left. Student athletes' graduation rates will also be compared to their own institution's graduation rates because it is recognized that there is enormous variance in institutional patterns of graduation. After data is gathered nationally, a Committee on Academic Performance (CAP) will begin team and perhaps even entire athletic program comparisons in order to determine the standards of performance and then to identify those institutions that are falling short of the national standards. A set of sanctions not yet developed may then be imposed, such as elimination of ineligibility for post-season play, a reduction in the number of student athletes permissible in recruiting, or a financial penalty. Conversely, a set of rewards may be developed for teams with exceptionally high performance in the academic progress rates such as permitting a team to recruit an additional student athlete. Poor performers might also be subject to "contemporaneous penalties" such as, for any student athlete who leaves the team while s/he is academically ineligible, the institution will be denied the opportunity to replace that student athlete for a year. This penalty could be a very severe penalty for small teams. It will probably be several years before the CAP can gather the data, create the database, and begin the comparisons to develop the national standards. These changes represent a fundamental rethinking of the ways the NCAA measures academic success and the ways it rewards or punishes academic institutions for high performance or non-performance. Later this month, the Division I Board of Directors may begin voting on these changes, which are the most significant changes since the 1980's. The national response to these changes has been significant, however, the Knight Commission's criticisms of intercollegiate athletics include 1) the need to improve the lack of incentives and penalties for institutions' academic performance and non-performance; 2) student-athletes' well-being (excessive demands on their time, severe limits on financial aid that cause student athletes to be less well-financed than other students on full scholarships at the same institution, access to financial aid for summer school for the summer prior to enrollment, and health insurance); 3) financing the enterprise such as extraordinary coaches' salaries, extraordinary investments in capital facilities, deficit operations that require substantial investments that could otherwise go toward academic programs; and 4) commercialism. In the past, the NCAA lost a lawsuit when it sought to regulate assistant coaches' salaries. As athletics programs try to rely less on tuition and taxpayers' funding, they are doing more private and corporate fundraising. Corporate fundraising puts an institution at risk for compromising itself in that process. UA's athletics program is one of fewer than 10 in the nation that spends no tuition and no taxpayer dollars, but one of the ways we do this is through television and commercials such as banners in the basketball arena. In this way, commercialism is a sister problem to financing the enterprise, and President Likins concluded that it will be the most difficult to find alternate strategies for the last two of these criticisms because of the law.

10. ADJOURNMENT

There being no further business, the meeting was adjourned at 5:05 p.m.

Robert L. Mitchell, Secretary

Appendix*

1. Draft Intellectual Property Policy (revised March 2004), forwarded from the Research Policy Committee.
2. Interim Intellectual Property Policy, effective August 15, 2002.
3. Arizona Board of Regent Policy Manual section 6-908, "Intellectual Property Policy."
4. Letter from Research Policy Committee, "Issues related to Intellectual Property Policy," dated March 2004.
5. "Pre-employment Screening Policy," dated November 2003.
6. Draft "5.09 Guidelines for Five-Year Reviews of Deans and Department Heads," dated October 30, 2003.

*Copies of material listed in the Appendix are attached to the original minutes and are on file in the Faculty Center.

Motions of the Meeting of April 5, 2004

Motion 2003/04-47 Seconded motion from the Research Policy Committee, to approve the new Intellectual Property Policy. Motion not acted upon.

Motion 2003/04-48 Seconded motion from the Academic Personnel Policy Committee, to approve the proposed Pre-employment screening policy. Motion not acted upon.

Motion 2003/04-49 Seconded motion from the Academic Personnel Policy committee, to approve the proposed revisions to the University Handbook For Appointed Personnel 5.09 "Guidelines For Five-Year Reviews Of Deans And Department Heads" Policy. Motion not acted upon.

Motion 2003/04-50 Motion to add the modifier, "general" right before the word "faculty" in 5.09.04, in the third and second sentences of sections 1 and 2, to read, "... up to three additional general faculty members drawn from" Motion was seconded and passed unanimously.

Motion 2003/04-51 Motion to amend the final sentences of Sections 5.09.04, 1 and 2, to read "... , together constituting less than half of the membership." Motion was seconded and passed unanimously.

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