

**Faculty Council Meeting**  
**May 26, 2005**  
**3:30 – 5:30 PM**  
**Faculty Club North**

Members Present: Gordon J. Aubrecht, Graeme M. Boone, William A. Brantley, Karen S. Bruns, Mark A. Bullimore, A. Terrence Conlisk, Martha C. Cooper, Steven M. D'Ambrosio, Philip T.K. Daniel, Allen R. Firestone, Susan W. Fisher, Mark D. Fullerton, Jacqueline Gargus, Deborah Yale Georg, Ronald Glaser, Gerald S. Greenberg, David G. Horn, Douglas A. Kniss, Kenneth A. Loper, Karen M. Mancl, Charles W. Massey, Jr., Brian W. McEnnis, Dennis B. McKay, Jeffrey K. McKee, Anthony Mughan, Gene E. Mumy, Berl R. Oakley, John M. Parson, Jack A. Rall, Nancy R. Reynolds, Andrej Rotter, Allan J. Silverman, Harald E.F. Vaessin, Dale D. Vandre, Sharon C. West and Charles E. Wilson

Guests: Robert J. Gustafson, Karen A. Holbook, Barbara Pletz, Andreas von Recum, W. Randy Smith and Barbara R. Snyder

**I. Announcements:**

- A. Professor Allan Silverman has been elected as Chair-elect of Faculty Council and Professor Tony Mughan has been elected Chair of the Senate Steering Committee.
- B. Professor T.K. Daniel moves from Chair-elect to Chair of Faculty Council next year.

**II. Update on proposed rule on faculty financial fraud: Susan Fisher and David Horn**

- A. Two amendments were introduced at the last Senate meeting. One amendment inserted the word 'knowingly' and the other amendment inserted the word 'serious'. At least one of these words was problematic to the Provost. So the faculty Senate leaders have tried to reach a compromise. A version of the fraud rule was sent to the Faculty Council members on 5/20/05. This version of the proposed rule was generated by the faculty leaders after meeting with Provost Snyder. OAA was unhappy with the amendments, the words 'seriously' and 'knowingly' were problematic.
- B. The faculty leaders put together another version of the fraud rule which included a new definition of fraud and attempted to deal with the issues raised by those who proposed the amendments by modifying some of the language in the rule.
  - 1. CAFR and the faculty lawyers were upset with the definition of fraud that was proposed. The hope was to allow for the legal definition of fraud to be used. The paragraph defining fraud was struck from the proposed rule with the default position to use the Ohio Revised Code definition of fraud.
  - 2. CAFR and the faculty lawyers endorsed it but it was opposed by those in Bricker Hall. The complaint was that the legal definition of fraud does not include theft and they want to be able to prohibit theft as well as fraud even though we were only asked to deal with fraud.
  - 3. Under Senate rules, if a proposal in the Senate is modified, it has to go back to the Rules Committee for disposition. Rules looked at four possibilities:
    - a. Endorse the amendments that came forward. Rules did not do this. This latest definition of fraud was perceived to be the least faculty friendly. Rules voted down the amendments.

- b. Endorse the definition that came out late last week (5.20.05). This went nowhere.
- c. Endorse the revision without the definition. Rules wanted the best for the faculty. The worst outcome was to let the matter go to the Board of Trustees. Rules looked at two versions; one with a definition that we did not like and one without a definition.
- d. In the end, what Rules decided to do was to rewrite the definition and to strengthen the requirement for 'deliberate' action. There are two uses of the word deliberate in the definition in part (A) (3). The word 'non-trivial' was inserted in this version. It was passed by the Rules Committee yesterday.

### C. Discussion

- Q. Graeme Boone asked what is the rationale for supporting this revised rule? A. Allen Firestone, Rules Committee member, spoke in support of the rule. He said that in the world we have this is the best rule that we can get. He said the Board of Trustees will make the rule if we don't. We have already achieved some significant concessions in that it is going under the existing 3335-5-04 rule. We were told to make a rule concerning fraud. We were told that this is unacceptable; that the Board of Trustees wanted theft and attempted theft to be addressed.
- C. Jack Rall said that when this first issue came to the faculty Senate leadership committee, stealing from the University was the concern of Board of Trustees.
- C. Berl Oakley said he had objections to this rule. The definition is so broad that it includes everything. He said that he felt there is no real protection with this rule. If there are two people at the University who want you out; a complainer and the Provost, the Provost can terminate you as a faculty member at the University. Tenure is eliminated for all practical purposes.
- C. Allen Firestone agreed but the alternative is a rule from the trustees which would do the same with less due process and opportunity. The current rule is better than letting the Board make the rule.
- C. Jack Rall said that due process is still there. We have heard John Biancamano say there is too much due process. If the Board of Trustees rewrites this rule, then the university lawyers will rewrite it and a lot of the due process will be stripped away.
- C. Ron Glaser asked if there had been any discussion about what would happen if the accuser has shown inappropriate behavior. He said he had had personal experience with an instance like this in the research office where a whistle blower had an agenda. A. Allen Firestone said that the accuser could be charged with gross misconduct.
- C. Sharon West asked if the Rules Committee looked at grave misconduct and if fraud does constitute grave misconduct. A. David Horn said that if you use grave misconduct, which includes anything to do with teaching, research and service would go up to the provost and could result in termination.
- C. Sharon West asked if the real issue was that the whole thing stopped with the dean.
- C. Jack Rall said that the Board feels that anyone who steals from the University should be fired. In the case that triggered this rule, no doubt the dean being a very practical person thought that person should not be fired. This was very upsetting to the Board.
- C. Jack Rall said that the main purpose today is to let everybody know where the proposed rule is right now. This is on the Senate agenda; no doubt there will be further discussion.

- C. Graeme Boone said that CAFR is mandated to protect faculty rights. They think that we should revert to the legal definition of fraud according to the State of Ohio Code.
- C. T.K. Daniel stated that we want to stay within the guidelines of 3335-5-04. He said he assumed that what the Rules Committee did was to come up with a compromise. T.K. said he could live with the latest revision. He said he would rather have the definition eliminated but pushing this envelope a little bit further is going to get an executive driven due process procedure. This will end up in the courts. The challenge will be an internal one. The second challenge is to get the Board of Trustees to agree. Based on experience, this version is the best we are going to get.
- C. Allan Silverman seconded what T.K. had said. He said the Board of Trustees should stay out of making rules.
- C. David Horn said that he felt the other potential damage of forcing a showdown with the trustees is that it would position us as lacking the courage to do what they think we need to do. The damage to the University Senate would be overwhelming.
- C. Jack Rall concluded that he was very happy that due process is still part of the rule. The notion that trivial versus serious has been discussed. The Rules Committee was unanimous with their position about this even though CAFR has conflicts. He said that he can live with this revised rule.

### **III. Proposal for formation of a Department of Biomedical Engineering: Mark Fullerton, Randy Smith**

- A. Randy Smith reiterated that Faculty Council is now included in the review of CAA proposals before they are acted upon.
- B. In early 2004, this proposal came to CAA for review. CAA would like to act on this proposal during one of its summer meetings. What CAA tends to look at is the rationale for the formation of the department that has fewer than ten faculty.
- C. Mark Fullerton reported that a CAA subcommittee looked at the proposal first. A letter of support came from the Dean of the College of Engineering. Randy Smith said there are no more proposals under consideration at this time for fewer than ten faculty members.
- D. Discussion
  - C. Gordon Aubrecht asked about the financial resources of \$2M mentioned in the proposal.
  - C. Jack Rall said that he felt the Dean's letter should address this \$2M. What kind of financial commitment is the dean making?
  - Q. How do you deal with P&T when there is only one professor in the proposed department? A. Andreas von Recum replied that faculty from another department similar to this one would be involved in this process.
  - C. Jack Rall asked who would be the chair of the department. A. Andreas von Recum said that the current director of the center would be the chair.
  - C. Jack Rall said this would not be on the Senate agenda at the June 1 meeting. He said that 'collegiality' appears as a 4<sup>th</sup> criterion in the promotion and tenure document. This is contrary to OAA policy. CAFR should look at the P&T document when the department is formed.
  - C. Allen Firestone said that most of the \$2M dollars is salary. Will all of the faculty positions be filled? Robert Gustafson said that these positions will be filled.

- C. Andreas von Recum said that he was very happy that this group had input in this proposal; he said it would be best to be alerted to problems now rather than later.
  
- I. The meeting was adjourned at 4:30 PM for an informal interaction/party with the President and Provost**