

Regular Meeting of the University Senate

October 7, 2004

IPJ, Room C

Attendance

Arts & Sciences: Dobkin, Chair; Branch; Lewis; Nadkarni; Nelson; Otto; Pachence; Pierson; Sullivan; Walsh; Williams

Business: Barkacs; Gin; Schubert

Education: None

Law: Kelly; Lazerow

Nursing: None

Ex-Officio: Donnellan; Gump

Guest: Herrinton

Dobkin opened the meeting at 12:20 p.m.

1. Announcements

a) Update on Enrollment Management Committee representation. LeeAnn Otto has been appointed as a Senate member of the committee; Donnellan announced that Jim Mazzo, a USD trustee, has been appointed to the committee.

b) Mission and Vision Committee of the Board: Lewis announced that Jubran has expressed a strong interest in being the Senate representative of the Mission and Vision Committee. Lewis said she would resign from the committee should Jubran be appointed and should his appointment be confirmed by the Senate.

c) Bereavement Policy changes. Lyons has accepted the Senate's amendments to the Bereavement Policy, noting that she made one additional change in adding the phrase "in observation of" before the listing of paid holidays.

d) Provost search. The Search Committee is conducting preliminary airport interviews of semifinalist candidates on Oct. 10 and 11. Finalists will be selected within two weeks. Campus interviews with finalists will begin after Thanksgiving. The committee expects an offer to be extended before the end of the year. Lyons has been supportive of the committee's work.

2. Approval of the September 23, 2004 minutes

Motion by Kelly, seconded by Gin, to: APPROVE THE MINUTES OF SEPTEMBER 23, 2004 WITH THE FOLLOWING CHANGES: add "Branch" to Attendance; p.2, third full paragraph, line 5, change "larger" to "smaller" to read: "This strategy has created a bipolar situation with a smaller proportion of students who are admitted falling into a middle grouping..."

Vote: 13 – Approve; 0 – Oppose; 2 – Abstain. The motion passed.

3. Old business

Motion to Amend the University Policy on the Protection of Human Subjects. The full policy with updated amendments and rationale are included in the meeting agenda. The Executive Committee has moved to accept the following six proposed amendments as revised:

1) Move to amend Part Two, Section I.C. to read:

"The project involves human subjects taking part in biomedical or clinical research, or in behavioral research where the research activities reasonably could be expected to place participants at risk of physical or psychological harm. The determination of risk lies with each individual researcher."

Rationale for the inclusion of behavioral research and the limitation of the scope of IRB jurisdiction over behavioral research: This amendment utilizes the American Psychological Association definition and terminology in both scope and the placement of risk assessment with the individual researcher. The concept for this version of the amendment originated with Dr. Jane Georges, IRB chair, and was unanimously approved by the IRB at its Sept. 9, 2004 meeting.

- 2) Move to amend Part Two, Section I.D. to read:
The project includes members of vulnerable populations who are relatively or absolutely incapable of protecting their interests. These populations include: 1) children; 2) individuals with questionable capacity to consent; 3) prisoners; 4) fetuses and pregnant women; 5) the terminally ill; 6) students and employees of USD; and 7) comatose patients.

Rationale: This list is taken directly from the NIH website.

- 3) Move to create a new Part Two, Section I.E. (relettering the current E and F) to read:
The project targets (not simply includes) a particular religious, racial, ethnic, or sexual-orientation population. (This criterion is included to ensure the equitable distribution of the benefits and burdens of research according to the justice principle of the *Belmont Report*.)

Rationale: This section was Section I.D.6 in the current version. I have separated it from the others because the reasons for placing a research project that includes members of vulnerable populations under IRB jurisdiction are different than the reasons for doing so for the particular populations.

- 4) Move to amend the title of Part Two to read: Projects subject to IRB Oversight.

Rationale: Projects requiring IRB review is an ambiguous phrase that the IRB interpreted literally as meaning all of these research projects must come before the IRB. Since only projects that require full review come before the IRB, this would mean that all research projects must have a full review even if federal regulations would allow for exempt status or expedited review for the project. The proposed wording eliminates this interpretation.

- 5) Move to amend the second sentence in the second paragraph of Part One to replace “Individual University academic units, departments, and programs (collectively ‘University Units’)” with “Individual University units (the Schools and the College being the units for the academic areas, and Vice Presidential areas being the units for the non-academic areas)”.

Rationale: The *Belmont Report* and the federal definition of research were written with biomedical and behavioral research in mind, and thus some modifications are appropriate in order to make the ethical principals contained therein more applicable to a given discipline. This adaptation should be done at the School and College level rather than the department or program level. A set of ethical principles could be written that would cover all of the human subjects research in an academic unit. For example, research projects in marketing, accounting, and finance are sufficiently similar that a single set of ethical principles for human subjects research in the School of Business Administration would suffice rather than having each of these areas write their own set. Moreover, problems may emerge both with consistency of the principles and with ensuring that persons are following them if there are too many different sets of principles. Also, the current wording does not allow non-academic units to adapt the *Belmont Report* to their areas.

- 6) Move to amend Part Two, Section II.A. (IRB Composition): Add the Director of the Office of Sponsored Programs as an ex officio and non-voting member of the IRB, and change “the Associate Provost” to “an Assistant Provost.”

Rationale: The Director of OSP is necessarily knowledgeable in the federal regulations governing grants and contracts, and hence he/she will be helpful to the IRB in interpreting and in staying up to date with them. The title change reflects the recent reorganization of the Provost's office.

Lewis asked for clarification regarding the statement in the policy that researchers are expected to be familiar with the Belmont Report and the methods by which researchers may demonstrate their familiarity with the report. Herrinton explained that the Senate passed the amendment a year ago. The scope of the policy has been changed to limit the kinds of research that must be submitted to the IRB. Further, researcher training is not required. Research will be conducted that won't come before the IRB, but researchers will need training in human subjects research. The training requirement is included because the reduction of the policy's scope places the responsibility for ensuring compliance in the hands of the researcher.

Vote: 14 – Approve; 0 – Oppose; 1 – Abstain. The motion passed.

Georges, IRB chair, thanked Dobkin and Herrinton for their roles in facilitating the amended PHS policy.

4. New business

a) Motion to Approve Policy 2.5.9, Illegal, Dishonest, or Fraudulent Conduct

Motion by Kelly, seconded by Schubert, to: AMEND THE USD INTELLECTUAL CREATIVITY POLICY AS RECOMMENDED BY THE EXECUTIVE COMMITTEE.

Herrinton provided background information. The proposed policy is new; it originated with Finance and Administration to deal with misappropriation of, misuse of, or fraudulent expenditure of University funds. It came to the Senate in spring 2004, and the Senate had substantive objections to it. Herrinton reworked the policy with Ms. Kalfayan and the University attorney. Another policy exists for misuse of university property but has no provisions for violations of the policy.

Senators discussed the policy and had the following concerns and recommendations:

- The scope of the policy is broad, general, and vague. It casts a wide net in terms of how it can be used (e.g., it could apply to employees who are ticketed for speeding). It was recommended that the clause “when conducting University business” be added.
- There are no specific definitions for illegal, dishonest, or fraudulent conduct
- The VP for Finance & Administration has powers that no court would uphold even if it is in the policy, such as discharging an employee for unpaid USD parking tickets.
- The Law School's Rank & Tenure policy invokes a procedure from the day an allegation of misconduct is made. To have the VP for Finance conduct an investigation and then turn it over to the law school is a violation of Law School procedures.
- The policy doesn't speak of punishments, appropriate punishments, or how penalties might vary; the only penalty noted explicitly is dismissal.
- If a complaint is true, but is found to be frivolous, the complainant can be charged with being dishonest.
- The statement that the University doesn't tolerate illegal, dishonest, or fraudulent conduct of any nature is an absolute statement. It should state that the University doesn't tolerate serious actions that adversely affect the operation of the University.
- Under the proposed policy, employees are encouraged to immediately report possible illegal, dishonest, or fraudulent conduct. Some clarification and qualification of this expectation would be helpful.

Motion by Pachence, seconded by Lewis, to: POSTPONE THE DISCUSSION UNTIL BISSONNETTE AND THE AUTHOR OF THE PROPOSED POLICY CAN ATTEND A SENATE MEETING AND CLARIFY THESE ISSUES.

Dobkin said other policies coming forward to the Senate will generate similar questions. The Senate may want to take up all such proposed policies at one Senate meeting.

Vote: 15 – Approve; 1 – Oppose; 0 – Abstain. The motion to postpone discussion passed.

b) Amendment to the USD Intellectual Creativity Policy

INTELLECTUAL CREATIVITY POLICY STATEMENT

1. The University of San Diego strongly encourages the intellectual creative efforts of all its employees.
 - a. The intellectual creative efforts of University employees include the creation of such diverse products as books, compilations and collections, articles, sound recordings, audio-visual materials, works of art and music, computer programs, and dramatic interpretations. Typically these efforts require only routine support on the part of the University and its other employees. In some instances, however, these efforts require substantial University support.
 - b. For purposes of this Statement, University employees are those who may engage in intellectual creative efforts in the course of their employment with the University. They include not only employees who are University faculty members, but also non-faculty employees such as those of the Copley Library, the Legal Research Center, the Media Center, Academic Computing, and the Print Shop.
2. In addition to its interests in encouraging its employees to engage in intellectual creative efforts, the University expresses the following interests in those efforts and their products:
 - a. Acknowledgment: The University expects that an employee who produces intellectual creations will suitably acknowledge the general and/or specific support provided to him or her by or through the University or other University employees.
 - b. Routine support: The University expects that employees' intellectual creative efforts and products will require routine support by the University, including but not limited to use of secretarial time, University property (such as computers, office space, supplies, etc.) and non-substantial intellectual support from other University employees. Aside from its general interests in encouragement and acknowledgment, the University asserts no interest in its employees' creations produced with such routine University support.
 - c. Reimbursement: The University asserts a reimbursement interest where non-faculty employees of its library, Media Center, Academic Computing, and Print Shop units participate in a substantial manner with regard to their time in the production of other employees' works of intellectual creativity. These University units will define "substantial manner with regard to time" and describe the University's interest in reimbursement as pertains to them, and will publish these matters to the University community. When the University has identified a reimbursement interest as set forth in the published statements of these units, it may expect funding to be arranged in advance to permit the replacement of the work hours of the employees of these units who are involved in a substantial manner, with regard to time, in the intellectual creative efforts of other University employees.

- d. Pecuniary and/or participation interest: In certain situations involving substantial non-faculty employee time and effort, the University may wish to share in pecuniary gains or losses deriving from the intellectual creative efforts of its employees. Normally, the University will identify these situations in advance of the intellectual creative effort undertaken by the employee or employees. Units of the University may be of assistance to its employees in identifying, clarifying, and developing pecuniary gain possibilities with respect to employees' intellectual creative efforts. All arrangements in which the University expresses a pecuniary or participation interest in the intellectual creative work of its employee or employees will be identified in advance of the University's assertion of its interest. Each such arrangement will be made on an ad hoc basis with the University and its employee or employees.

3. Arrangements for the control and patenting, licensing, and royalties of inventions that result from projects funded by federal agencies will be consistent with the requirements of the Bayh-Dole Act, 25 U.S.C. §§ 201 et seq., as amended ("the Act"), as well as with other contractual obligations specific to the granting agency.

- a. **If the University as contractor in such a project has provided only routine or reimbursable support to its employee(s) or to the project as defined in sections 2(b) and (c) of this policy, then it will take steps permitted by the Act to settle invention rights in the employee(s) who qualify as inventors for purposes of obtaining such rights.**
- b. **If the University as contractor in such a project has provided the support sufficient to give it pecuniary and/or participation interest as defined in section 2(d) of this policy, and if the University chooses to pursue a patent on an invention covered by the Act, then the University will negotiate ownership and licensing details with the employee(s) who qualify as inventors for purposes of obtaining such rights.**

The amendment, written by Paul Horton in consultation with Herrinton and Office of Sponsored Programs Director Bill O'Neil, consists of the new No. 3. Herrinton explained that the language in 3.a.b. is meant to parallel what is in No. 2; it isn't meant to change the philosophy of the policy. If a professor receives University assistance beyond what is considered routine support for a normal faculty member, then USD would have an interest in work resulting from that support.

Lazerow said that, at the end of 3.b., where it is stated that "the University will negotiate ownership and licensing details with the employee(s)," it is not clear when they will negotiate or what happens if agreement isn't reached. He recommended specifying that mandatory arbitration be used if an agreement can't be reached. Kelly said the policy states they will negotiate but doesn't say they will agree. In effect, their rights are whatever their rights would be in the absence of an agreement.

Herrinton asked whether the language in 2.d. speaks to those concerns. Lazerow responded affirmatively and asked whether 3.b. would therefore be redundant. Herrinton said 3.b. refers to funding from federal agencies. The Senate can adopt some of the language in 2.d. and put it in 3.b. because they are meant to parallel each other.

Motion to amend by Nelson, seconded by Sullivan, to: ADD TO 3.b., END OF FOURTH LINE, THE FOLLOWING PHRASE " , FOLLOWING THE PROCEDURES IN 2.d." TO READ: "...and if the University chooses to pursue a patent on an invention covered by the Act, then the University, following the procedures in 2.d., will negotiate ownership and licensing details with the employee(s)... ."

Vote: 8 – Approve; 3 – Oppose; 5 – Abstain. The motion passed.

Vote on 3.a.b. as amended: 14 – Approve; 0 – Oppose; 2 – Abstain. The motion passed.

Motion to amend by Lazerow, seconded by Pachence, to: STRIKE FROM 2.d., LINE 10, “THE UNIVERSITY’S ASSERTION OF ITS INTEREST” AND INSERT “THE PROVISION OF THE UNIVERSITY’S SUPPORT” to read: “All arrangements in which the University expresses a pecuniary or participation interest in the intellectual creative work of its employee or employees will be identified in advance of the provision of the University’s support.”

Kelly noted an inconsistency between the amendment and the timing provisions of 2.d., line 3. The University won’t know whether it will have or want to pursue an interest until it sees the result of the work. Herrinton responded that when an employee asks for extra support the University has a right to assert its interest.

Donnellan said that when academic excellence funds are awarded the University must assert its rights in the interest of the project. If the University provides extraordinary support, the Provost will know that funds are being used for the project support. Donnellan explained that universities provide release time to develop a course or special project and that could be considered extra support.

Vote on motion to amend: 8 – Approve; 3 – Oppose; 5 – Abstain. The motion passed.

c) Senate Benefits Committee Action Items A and B

Pachence said Gwendolyn Lytle reported that Action Item A was added by Dr. Hayes before she left USD and Lytle doesn’t know where Action Item B came from. They are in the *Manual*, but the Senate hasn’t seen them

Motion by Williams, seconded by Lewis, to: POSTPONE DISCUSSION UNTIL THE NEXT MEETING AND ADJOURN.

Passed by voice vote.

The meeting adjourned at 1:43 p.m.

Submitted by,

David Sullivan
Secretary

Peggy Agerton
Recording Secretary