

## Regular Meeting of the University Senate

December 9, 2004

IPJ, Room A

### Attendance

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

*Business:* Gin; Schubert

*Education:* Quezada

*Law:* Kelly; Lazerow; Player

*Nursing:* Orsi

*Ex-Officio:* Drinan; Rodriguez

*Representative:* Franz

*Guest:* Tom Herrinton, David Todd

Dobkin opened the meeting at 12:25 p.m.

### 1. Announcements

**a) Executive Committee Report, Policy and Procedure Review.** The Executive Committee reviewed the following policies: 2.2.4, Tuition Remission; 2.3.4, Sick Leave; 2.3.8, Family Care and Medical Leave; and 3.0.4, Job Related Injuries and Accidents. The first three policies were changed to accommodate state law extending benefits to domestic partners. The Tuition Remission Policy has a section under Scope that was rewritten to extend benefits to part-time faculty.

Herrinton spoke to Job Related Injuries and Accidents policy and the underlying assumption that employees can no longer use the USD Health Center, which could create a loss of work time for the employee and increased medical costs in the long run from increased use of medical services.

The Executive Committee report stood as approved.

**b) Honorary Degree Candidates.** No objections were submitted for Paul Farmer and Shirin Ebadi. They will be forwarded to the Board of Trustees as recommended nominees.

**c) Update: Presidential actions.** The President has approved the policy on a Smoke-Free Environment, and changes to the Protection of Human Subjects Policy, as well as to the Academic Calendar guidelines. She will send the recommendation for an Investment/Retirement Committee to the President's Executive Council.

**d) Update: Provost.** Donnellan stated that a receptionist will be hired for the Provost's Office to allow Peggy Agerton to devote attention to items passed at the last Senate meeting.

**e) General Education revisions.** Drinan reported that the Academic Assembly finished voting on General Education Review Committee recommendations and passed as submitted. It will come to the Senate in February.

**f) ITS Report.** Todd reported that the bandwidth off campus has been increased. ITS has made good progress with taking down infected PCs. USD is dealing with the same problems as other universities and making good progress with network performance and reliability issues.

### Approval of Minutes of November 18, 2004.

Motion by Kelly, seconded by Walsh, to: APPROVE THE MINUTES OF NOVEMBER 18, 2004 WITH THE FOLLOWING CHANGES:

1) p. 2, third paragraph from bottom, change paragraph to read: "Rodriguez stated that the Law School's nonsubmission of its appointment policy was not accidental. ~~does not infer that~~

~~the Senate doesn't have jurisdiction. No appointment policy will be forthcoming.~~ (Underline denotes addition; strikeout denotes deletion.)

2) p. 2, last paragraph, change Quesada to Quezada.

Vote: passed by acclamation with one abstention.

### 3. New business

#### a) Motion to approve Policy 2.5.8, Conflicts of Interest

Motion to amend by Kelly, seconded by Sullivan, to: STRIKE THE TEXT OF THE SECTION LABELED VIOLATION OF POLICY AND INSERT IT ITS PLACE THE FOLLOWING TEXT:

Employees who fail to disclose in a timely manner their own conflict of interest under this policy may be subject to disciplinary action, up to and including termination from employment. Employees who otherwise fail to comply with this policy may be subject to disciplinary action, up to but not including termination from employment.

Kelly reported that he and Pat Oliver worked on the policy. An edit made at the end of the policy to accommodate his concern made the policy worse, effectively transforming what is a reporting policy into a prohibition of conflict of interest. The section now specifies a penalty for a conflict of interest but indicates no sanction for failure to report a conflict of interest.

Herrinton said that to engage in an activity that constitutes conflict of interest, not merely having a conflict of interest, might subject one to disciplinary action. The motion puts the emphasis on the failure to disclose rather than the actual act that is detrimental to the university. Also, the intent of the policy should say that violations of the policy could result in disciplinary action up to and including termination, with a cross reference made to the termination policy.

Player commented that a potential conflict and an act that constitutes conflict of interest are separate issues.

Williams, seconded by Branch: CALLED THE QUESTION.

Vote on motion to amend: 7 – Approve; 8 – Oppose; 5 – Abstain. The amendment failed.

Lazerow said that 1) a definition is needed for the kind of relationship that the University is concerned with, 2) most of page one is inappropriate for a policy, and 3) some illustrations are too broad.

Motion to amend by Lazerow, seconded by Branch, to: REPLACE PARAGRAPHS 1-3 WITH THE FOLLOWING:

All University employees, whether faculty, administrative, staff or student employees, should make all decisions in performing their work duties based on the best interests of the University.

Employees should avoid actual or potential conflicts of interest.

An actual conflict of interest exists when an employee's work decision or advice provides a financial advantage to the employee or a related person.

Lazerow said the purpose of the amendment is to replace the existing general definition of conflict of interest with the third paragraph (above).

Kelly said the third paragraph could be interpreted to mean that when an employee tells his/her supervisor that he/she deserves a raise, the employee has advised the supervisor to deal with him/her in business. The first page of the proposed policy identifies the kinds of conflicts that can happen.

Dobkin said that the main issue is whether to define conflict of interest as providing financial advantage or to define it a bit more broadly, as the policy is written.

Herrinton said the document needs more work, recommending further discussion of what the policy should accomplish and the appointment of a subcommittee to meet with Oliver.

Lazerow and Branch withdrew the motion.

Motion by Drinan, seconded by Schubert, to: APPOINT AN AD HOC COMMITTEE.

Lazerow, Herrinton, Kelly, and Gin volunteered for and were appointed to the committee.

Senators presented the following concerns for the subcommittee to consider:

- Further define what conflict of interest entails (e.g., financial advantage may or may not be the exclusive issue involved in conflict of interest);

- provide a definition of “relative”;

- reinsert into the policy language that differentiates between potential and actual conflicts;

- sharpen the distinction between reporting a conflict of interest versus activity that constitutes a conflict of interest;

- address the distinction between self-reporting and reporting of others;

- specify what is required of employees in reporting a conflict of interest.

- determine what actions the University may take to discover undisclosed conflicts and when a conflict is reported.

- clarify the penalties for non-disclosure and for actual conflict of interest activity.

- determine how this policy relates to other relevant university policies.

Rodriguez said that non-financial issues are frequently relevant in conflict-of-interest cases, and yet some actions that might be construed as conflicts of interest should warrant a safe harbor.

Lazerow recommended that the policy include safe-harbor rules to cover such cases (e.g., the receipt by instructors of free books and cases in which a professor’s own materials are required for a course).

Vote: 19 – Approve; 0 – Oppose; 0 – Abstain. The motion passed.

The meeting adjourned at 1:45 p.m.

Submitted by,

David Sullivan  
Secretary

Peggy Agerton  
Recording Secretary