Faculty Assembly Minutes 2700 Posvar Hall September 9, 2014

Topic/Discussion	Action
Call to Order	The meeting
The meeting was called to order by President Michael Spring at 3:03 PM.	commenced at 3:01 PM
Approval of the Minutes	The minutes were
President Spring asked for approval of the minutes of the Faculty Assembly meeting of June 3, 2014	approved as written.
Introduction of Items of New Business	
Two motions are new today from the Tenure and Academic Freedom Committee. They have been provided at the meeting.	
Report of Senate President, Michael Spring	
It has been a busy summer. With some regret, my report has grown longer than I might have wanted. Let me tell you a little about what has happened:	
1. The presidency of the Senate is a team effort. While I am frequently called to speak for the senate, the executive committee provides a structure within which we can look at issues and set agendas. To that end, I want to acknowledge Dr. Tom Smitherman and Professor Irene Frieze who continue to encourage and advise me as only past presidents can do. Irene has a passion and work ethic that put me to shame. Her work on the Ad hoc Committee on Non-tenure Stream Faculty has been a spectacular success. Of course she is supported by a very large group of hard working and dedicated individuals. Tom continues to offer his sage advice and his unique policy perspective. Professor Susan Skledar is the new Secretary with a long history of involvement in the Senate and we welcome her fresh perspective on the issues. Finally, nothing would be possible without Lori Molinaro. It is hard to imagine that we as faculty could do this job without someone like her to manage the myriad details. My thanks to the members of the team and the many of you who have offered advice and suggestions.	
2. We have made a variety of appointments to University committees. These include:	
 a. UPBC – Kathleen (DeWalt) Musante replacing William Harbert (3 yr. term) b. The URB – Cindy Tananis (Ed.), Tony Bledsoe (Biology) and Bob Daley (C.S.) were reappointed, new appointees are: Michael Goodhart (Political Sci.) and J. Patrick Card (Neuroscience, A&S) (2 yr. terms) 	
3. We have made recommendations for appointments to Trustee committees.	
 a. Academic Affairs/Libraries: Elizabeth Mahoney, Information Sciences b. Affirmative Action: Valire Carr Copeland, Social Work and Denise Chisholm, SHRS 	
c. Athletics: James (Jay) Irrgang, Medicine and Kevin McLaughlin, Educationd. Budget: Catherine (Cait) Lamberton, Business and Frank Wilson, Admin. of Justice, UPG	
e. Institutional Advancement: Debora Miller, SHRS	

- f. Investment: Frederik Schlingemann, Business
- g. Risk and Compliance: Prakash Mirchandani, Business
- h. Student Affairs: Anthony Bledsoe, Biological Sciences, A&S
- 4. Another word of thanks to Chancellor-Emeritus Nordenberg. In his own quiet way, he continued his work over the summer as a collegial chancellor who listens. When asked by the University Times what I thought about the salary pool increase and the split between cost of living and merit, I gave a rather long answer, but my main points were three fold. First, I was amazed that we managed to find enough money for a 2.5% increase. Second, my personal perspective was that how it would be split was a matter of little consequence. Third, and most importantly, I expressed a concern about the real costs of living and the impact on faculty and staff at the lowest ends of the pay scale where the increases would likely not cover the actual increases in non-discretionary costs. I spoke from the bully pulpit with little expectation that people would pay much attention. I was delighted when I read the chancellor's "Final Update" and saw the following as the last sentence in the paragraph on the increases: "In making awards, I urge decision-makers to be especially attentive to the needs of our lower-paid employees." That is typical of our former chancellor and a part of what made him such a great leader.
- 5. As you are probably aware, ULS Director Rush Miller has announced that he will step down in December. At the request of Provost Beeson, we initiated a process over the summer to fill three faculty slots on the search committee. Electronic balloting began on August 26 and will end tomorrow, September 10. Voting is being done through the University Portal (my.pitt.edu).
- 6. We continue to work on our web presence. We are working to fill out several pages that provide historical data and a sense of what we are all about. I encourage you to take a look at two things in particular. At the bottom of the pages, there are four pictures with links to information. One of them is "References and Archives". In that folder are two documents, one on the "Early History of the Senate" that tries to highlight the things that led the Trustees to create the Senate. The second document is a ten page document by Phil Wion and Mark Ginsburg that trace the history of collective action by faculty in the US with a focus on what happened at Pitt. It is a fascinating read.

There is also a link at the bottom of the page called initiatives. Here is where we will store documents related to issues we are trying to address. Pertinent to today's discussion is a page which brings together many of the documents that provide background for the IPR issues we will discuss later.

Finally, one of the ways we want to try to get broader faculty input is to solicit it via the web. We have a poll up right now on the website asking what the most important issues are. While you have an opportunity to air your opinions here, you might remind your colleagues that we are monitoring any input that they provide via email and the website.

they are examined again.

7. One ongoing goal this year will continue to facilitate better communication among faculty as it relates to the Senate and shared governance. There are lots of ways this gets accomplished from Senate Matters columns to reports of Assembly and Standing Committee actions in the University Times to information we can make available via our web presence.

Let me mention that as a part of our efforts to better coordinate the work of the executive committee, we will be meeting the Wednesday or Thursday before each Faculty Assembly meeting. We decided to hold the meeting in the College Room of University Club between 11:45 and 1:00. While we should always have a few items to discuss, we would welcome input and observations from all of you and any of our colleagues who happen to be there at that time.

- 8. The Fall Plenary will take place on October 23rd. We are very excited about the topic which will be "Research Data Management". I want to thank Rush Miller, Barbara Epstein, Jinx Walton, and Mark Redfern for their support and encouragement. I especially want to thank Aaron Brenner, Chris Keslar and Melissa Ratajeski who have been doing the heavy lifting related to planning the plenary.
- 9. **I can report to you** that it was my pleasure to open the Freshman Convocation on August 20st and to greet new faculty on August 21nd. Today I had the opportunity to meet with new members of Assembly.

10. There are several matters arising which will deserve our attention this year.

Several of you have written or called about the new policies and procedures on visitors to our labs and departments. Related to these policies are federal regulations that pertain to export controls. The senior administration is working hard on these issues. The new policies and procedures will, in some cases, require additional actions by faculty and we need to make sure that everyone is on the same page about what is required, desired and appropriate. The provost has heard your questions and there will be modifications made to some of the policies after further

There is also a new form on the assignment of intellectual property that you are being required to sign as a condition of employment. I have been doing some research on this and while I personally feel that the policy and requirement is clear, flexible and reasonable, I asked for further clarification, and have received a response from the Provost. These are all now posted on the IP initiatives page. There are several folks from the Provost's Office with us today who will speak to the issue when TAFC presents a motion related to the IPR agreement.

consideration. Most of the new visitor and speaker policies will be suspended until

It is also likely that we will continue to face new challenges and opportunities in moving the University forward in reputation, funding and outreach. One part of the

challenge will be balancing research costs with research revenues. We already have seen indications of this pressure in units that are heavily supported by extramural funds. I believe it will be important to be prepared for the possibility that selected units and budgets may contract and that may mean salary reductions.

11. Finally, Jim Becker and others, noted that new rules are being considered related to NCAA governance and certain conferences, including the ACC. I have spoken with Professors James Irrgang and Kevin McLaughlin, co-chairs of the Senate Athletic Committee who are well aware of these developments and asked them to have the Senate Athletic Committee examine how these changes might impact Pitt.

Announcements

The Chancellor will be hosting a reception for all members of Faculty Assembly (FA) and Senate Council on Wed. Sept. 17 in 2501 Posvar after the Senate Council meeting. You do not have to attend the Senate Council meeting to attend the reception. The reception will begin at approximately 4 p.m.

Frieze: Irene Frieze noted that if there are questions about the Visitor Policy, they should be directed to Carey Balaban.

Reports by and Announcements of the Special and Standing Committees of the Senate

<u>Tenure and Academic Freedom</u>

Issue #1)

Resolution for Faculty Assembly to Clarify the Previous Resolution Creating an Ad Hoc Committee to Review Current Guidelines for Evaluating Tenured Faculty and Associated Salary Decisions

- Issue #1) Resolution passed as amended.
- Kovacs: Resolution approved last meeting for members of the *Ad Hoc Committee* should be from three standing committees (Bylaws, BPC, and TAFC). That resolution was passed by Assembly at a prior meeting (April 2014). I was directed to go ahead and put the Committee together right after the meeting by Nick Bircher when I asked him. Within weeks, there was a difference of opinion and interpretation of the intent of the resolution with the Senate President Spring. Spring thought it was him and the Executive Committee to decide members of *Ad Hoc Committee*. He also broadened the task of the committee to have non-tenure stream faculty and other issues. Today, the TAFC is asking for a vote of confidence in the resolution for today's Faculty Assembly meeting to clarify that the *Ad Hoc* Committee should be members of the three standing committees and be responsible to Assembly versus a single person.
- President Spring turned over meeting Chair responsibilities for this issue to Irene Frieze at this time. Spring called on by Frieze to make his comments. Spring reported on the facts as he sees them. He reported on membership of Ad Hoc Committee. The motion states membership of committee be constituted of representatives from the three Committees of the Senate as noted above. This is the focus of the questions of today. Section 2 of the bylaws states that unless the membership is clearly specified by the forming board, specification of the membership falls to the Executive Committee. It was my sense that the membership was not specified. My interpretation of the discussion at last FA was there was concern about universal agreement to move forward with the motion. There was universal agreement to look at this issue. There was disagreement of how to move forward. There was a suggestion to table this and bring back in June, amend it, or vote on it as written. We

voted on it and I called it. The vote was 20 in favor, 10 opposed; 2 abstentions. On 5/20, shortly after FA meeting, Spring sent a memo to FA and Committees and Senior Administration to solicit additional membership. On the same day, Gold reported the Co-Chairs were near a final Committee membership roster. Spring felt that the Ad Hoc Committee members should be comprised by Executive Committee, from his interpretation of the bylaws. Through June, several memos went back and forth. Spring contacted several interested faculty. Spring noted that the primary goal was to make sure the Committee was balanced in membership between the Health Sciences and the Provost's areas. Spring met with the Standing Committee Chairs on 6/18. It was a 2.5 hour meeting. No consensus was reached. On 6/25, Baker, Bircher, Gold, and Kovacs submitted a letter to the Provost for the Senate Office to endorse, which was a positive letter about working with the University Senate. On 6/26, I informed them that I still felt it important that I meet with the Executive Committee who is responsible for approving this, but that would not happen until July. On 7/1, the Executive Committee met, and in our own fashion, reached no conclusion. On 7/20, Executive Committee agreed via email to supplement the original membership from Gold, Kovacs, Bircher, and Baker with suggested additions of 4 members (Savinov, Lyon, Gaddy, and Spring). On 7/24, Spring forwards endorsement to Provost, asking her to endorse membership. On 7/25, membership memo rejected, and Gold, Baker, Bircher, and Kovacs request to bring the issue back to FA. On 7/26, Spring rescinds memorandum to Provost.

- Frieze asked if TAFC chairs agree w/the history.
- Gold: TAFC chairs agree with timeline. He is not sure if discussions reflect what we went though. There was an initial attempt by Spring to change the direction of the group to include more non-tenured faculty. We rejected that. TAFC also solicited membership beyond School of Medicine (SOM) to broaden the Committee. We asked Spring if he would approve this and that never happened. We wrote a letter on 6/25 to Spring to deliver to the Provost through the FA. It was a very positive letter. Spring was happy with the letter. That letter never got delivered in August. We started to question if we were going to be empowered to carry out this resolution, or be impeded, based on timeframe.
- Frieze: Point of clarification, when you were seeking additional people to be on the Committee, were you broadening this beyond Medicine, to include Provost's area?
- Gold: We were including Law School, CAS, people outside of health sciences.
- Frieze: This was one of the concerns of the Executive Committee.
- Gold: The names we proposed demonstrated this was the case. There was overlap
 with Spring's list. We had already asked these people. It was very embarrassing. The
 goal is to get this clarified so we can get on with the business at hand and not
 squabble about this.
- Frieze: There is a question here I am not hearing exactly. Is there issue with mission of Ad Hoc Committee?
- Kovacs: I think the issue is one of control. That to me is the bottom line. There was no question of mission statement (it was in the resolution). Kovacs read the resolution aloud as written in the resolution. We know there are fiscal issues facing the university, and decisions have to be made about balancing the budget. There may be tenured faculty who are not contributing how they should. We thought that if there are policies on this, they should be transparent to the faculty. For some reason, we were perceived as disruptive to the University. We said in our letter to Provost said we would like to work with Council of Deans to design current evaluation policies with faculty, as former Provost Maher directed 10 years ago. It was a decent letter. They asked for meeting with the Provost; they did not get a

- meeting. That is why we want your vote of confidence to go ahead and do this job. We would like to be empowered by FA to do this job in a fair and transparent fashion.
- Bircher: According to bylaws, four agencies (FA, Exec Committee, Senate operating in Plenary, and Senate Council) can create membership of Ad Hoc committees in. In the new resolution today, it states that the membership will be decided by co-chairs of TAFC, in consultation with Bylaws and BPC Committee chairs, or should it be constituted by the Executive Committee. That is the basic operational question today for FA.
- Spring: Very little disagreement exists here. Everything Barry and Marika said is true. We have different views on what a balanced committee is. As Nick said, the issue before FA today is the constitution of the Ad Hoc Committee. I am stringently interpreting the bylaws enforcing how the Committee can be constructed. Any of those four mechanisms can be used, they can specify membership. In this case, FA is forming the committee. You are being asked to delegate that right. I believe the bylaws state if you do not state membership, membership falls to the Executive Committee. TAFC and Bylaws Committee are asking you to delegate it back to them.
- Nelson: Bylaws do not say you have to specify who is on the Committee (a roster). It says you have to have a mechanism in place to define membership. Spring reading may be inaccurate. Spring reading is stricter.
- Labrinidis: How members were proposed originally? There were 4 more proposed. What was the initial pool? Was it another 4, or 10 already?
- Spring: The membership was unspecified.
- Labrinidis: The original list—how many did that have?
- Kovacs: The original list proposed several additional ones. On our list, we had Medicine (2), Pharmacy (1), Dental (1), Political Science (1), and also wanted Law School (1).
- Frieze: The majority are in the Health Sciences. The balance of Health Sciences versus the Provost's area is the issue. Original list was more health sciences.
- Kovacs: Issue was one of control. We said we wanted to include others. Our suggestion was ignored.
- Labrinidis: Today was my first orientation to FA. There is a specific formula for FA
 membership. If main issue is what is a representative sample, one way to look would
 be to look at that percentage for FA and scale to 10 to have same representation on
 the Ad Hoc Committee. I am fresh from orientation this morning.
- Gold: We asked a few people who said they would, and then we stopped when we
 realized there was a problem. The goal was to broaden the Committee as we
 understood this is a university-wide problem. It turns out that chairs of these
 committees are all from Health Sciences. We would recruit beyond Health Sciences.
- Spring: This is the section that is in debate. It depends on our interpretation. FA has
 every right to take over determining membership. I suspect it is within our power to
 delegate to someone else. If FA does not decide, Executive Committee will do it. At a
 personal level, we want an Ad Hoc Committee that has the maximum chance to work
 with Senior Administration, and then back through FA as a motion, then Senate
 Council and then back to Provost and Chancellor.
- Weiss: In the Spring, I voted against the resolution. Didn't FA pass the resolution?
 (yes) Why is it being revisited and why are we starting from scratch?
- Spring: It is the membership of the *Ad Hoc* Committee that is the contention point. Not whether the Committee should be formed.
- John Lyon: The language looks very clear that the Committee members are constituted, but it is ambiguous as to who will be the members. The matter is open

- and has to be decided by the FA. It is still ambiguous.
- Bircher: The operational details remain on the table. In the resolution, it is clearly labeled that FA creates the Ad Hoc Committee. TAFC's resolution suggests that they (Co-Chairs) will put the committee together and chair the committee. That goes to clarification brought forward today. Two basic choices today are either co-chairs of TAFC, or Executive Committee, will select the Ad Hoc Committee membership. FA can say how this will work. No amendment to the original resolution. This is a new resolution to clarify this detail. It is FA jurisdiction to say how this will work.
- Munro: This is a committee of FA that has been proposed by TAFC. It is a matter of control. TAFC relinquished control once the motion passed. The constitution of the Committee membership should be by FA. Michael on his slides had some names. TAFC proposed a membership and Executive Committee added some names. Is that how it worked?
- Spring: When I sent a letter soliciting interest, I learned that Committee chairs had already sought membership and had a membership group based on the FA motion that they were allowed to constitute.
- Munro: Could we see the names of the *Ad Hoc* Committee, and come up with a compromise? It is FA responsibility to see the names and determine this to come up with a compromise. Can FA come up with a list? TAFC will no longer have control of this committee once it is formed. It will be an independent body of the FA.
- Gaddy: Original resolution was shown. This FA body agreed that the Ad Hoc
 Committee be constituted of representatives of the following standing committees:
 TAFC, Bylaws, and BPC. Didn't we pass this already then? What is the ambiguity?
- Frieze: I think that is the debate we are having exactly how this is interpreted. Just saying it again does not explain anything.
- Munro: Which specific people is not clear. Who chooses the members? Where they come from is stated.
- Frieze: Michael is reminding me that we have another motion to discuss as well. We need to make a decision here. It seems fairly straight forward.
- Kovacs: OK. I would like to summarize this in two sentences. TAFC has worked for over 1.5 years to bring this resolution to FA. I think you trusted us with previous work. We are simply asking you to trust us again. Five months have passed and we were not able to do anything at all. We were ready to act at the end of May. I started working on this the same day the resolution was passed. We want to be able to finish membership for it to be representative and report back to you. I would like to call a vote on this.
- Miller: At looking at this, we as a body vote to pass this resolution that constituted this committee, so we have already voted that membership comes from those three standing committees. But Section 2 of the bylaws says that we (FA) should be making decisions about which members of those Committees should be on the Ad Hoc Committee. It might be beneficial that those names put forth to FA to approve the membership, if unstated. Could the names be put forth to FA for us to approve membership? It says we are to do that. If not, Executive Committee will decide. What are those names? We have a list of who is on those Committees, and we might, as a body, decide to add a different committee member, as was in the resolution that we passed.
- Goodhart: We are losing the forest through the trees. We need to specify forward
 membership clearly with new committees. We did not do this in the past. We are
 voting on this Committee as to who is going to determine membership. We are not
 voting on the bylaws or making any larger determination. We should vote on it.
- Frieze: We have had several amendments proposed to the resolution. One is a list of

- potential names. There was another.
- Goodhart: I did not understand those as formal amendments. Those were suggestions of what we should do or what should have done differently.
- Baker: I have been hesitant to chime in as I was involved in both meetings. I am in between two views. In the past, FA never specified membership. The Committee did it themselves in consultation with Executive Committee. I feel what Michael was trying to do was balance the Ad Hoc Committee to bring in Provost Area members. I personally did not mind that. TAFC and the other chairs also are allowed to propose members. The total # of members by Spring and Committee chairs was 10, which isn't that great. We can have a compromise. I think there should be balance. TAFC chairs could do this, if the FA authorizes them to bring in others. It is up to FA to decide who has final control of membership, is it TAFC Chairs (what resolution calls for), or Executive Committee, or FA itself, it wants to do it.
- Frieze: So are we ready?
- Savinov: I am trying to be creative with an idea (that no one will like). I do not think it is agreeable to find a compromise. I hope we have a procedure for terminating this Ad Hoc Committee. Then, whomever wanted to form this, could come up with a new resolution that specifies specifically membership determination or better specify how membership should be formed. I am happy to make a motion on this.
- Novy: I would like to propose an amendment accepting the basic resolution, that
 adds on to select members of the core Ad Hoc Committee with a majority of 1 from
 the non-health sciences.
- Gold: That is not correct. The committee we were putting together has eight people originally, 4 Health Sciences and 4 Non-Health Sciences.
- Frieze: I was counting when you listed before, and there were more Health Sciences noted.
- Gold: There were even numbers.
- Novy: We should have a majority of one in favor of non-Health Sciences.
- Frieze: So we have a number of proposed amendments.
- Bircher: If I may, we have one modification proposed as an amendment to this motion that is on the table. Our current issue is to add to the present resolution that there will be a majority of 1 outside of health sciences.
- Frieze: I heard another proposed amendment to terminate the Committee.
- Bircher: In a technical sense, it was a motion to reconsider the original resolution.
- Savinov: I am making motion to terminate the Committee.
- Bircher: In all candor, I do not see how terminating the Committee can fit into current resolution as an amendment.
- Goodhart: Do you regard that as a friendly amendment? (by Marianne) Yes (by Gold). If so, I call to question on the motion as amended.
- Bircher: That is technically correct. If the framers of the resolution accept it as a
 friendly amendment, then we can vote on this resolution in its amended form. If
 there are no objections to calling the question, the local tradition is to vote.
- Nelson: I need one point of clarification, Michael, in your strictest interpretation, do
 you think a vote on this amendment violates the bylaws as written? We cannot vote
 to violate the bylaws.
- Spring: My interpretation is yes it violates the bylaws. You and Nick are Co-Chairs. Your interpretation holds some strength. I am not a bylaws specialist. This was supposed to be relatively simple and done 25 minutes ago. My forest through the trees is that I view my responsibility to FA and Senate Council is to maximize the chance that the work of a standing committee or Ad Hoc Committee goes forward in a positive way to implementation by the Administration. I viewed it as essential that

knowledgeable people related to Arts and Sciences be brought to bear in terms of flushing out this committee. We have obviously disagreed on that. There is no disagreement about the need to look at these issues. There was no intent to delay. But I did, at Barry's request rescind the memo to Provost, so the Committee does not exist as yet, until this is resolved. To me, the most important thing is for FA to constitute an Ad Hoc Committee that will honorably, thoroughly, faithfully, and with the confidence of all of those involved in shared governance, move this issue forward.

- Nelson: I defer to Nick on this. With regard to my expertise on bylaws, the
 administrative details of forming this Committee traditionally should be left to
 standing Committee chairs. In the original amendment, the due diligence was done
 to specify a mechanism, and at some point, we have to leave it to the integrity of our
 colleagues, which we have elected to these offices, to administer these details in the
 best interest of the University as a whole. That is just my own personal
 interpretation. Nick if you want to add to that.
- Bircher: In my reading of the bylaws, voting for this resolution does not violate the
 bylaws, specifically because FA in the original resolution, is the body that created this
 Committee. Michael's concern that Committee be balanced is addressed by the
 amendment made that the majority not be from Health Sciences. I go back to calling
 the question and urge for voting the resolution as amended.
- Goodhart: It says in the resolution, that the Ad Hoc committee can recruit additional members to the committee as they want. If membership can be increased to majority of 1 lower campus, still hold?
- Frieze: Yes.
- Kovacs: Can I second your motion?
- Bircher: We have a parliamentary motion to call to question that is still on the table. I suggest that we take a hand vote on calling the question (no more debate).
- Frieze: All in favor of calling the question (yes). Opposed (none)
- Bircher: Next step is voting on the resolution as amended.
- Smitherman: Should we put in specified language of Marianne's amendment.
- Nelson: Absolutely, because it not clear to me about making a majority of members on area versus another.
- Smitherman: Once possibility is to include a clause after the last paragraph that the core with final composition, etc. We need to know the wording.
- Bircher: Marianne, if you could you write down your words and we can a vote.
- Frieze: Since there seems to be disagreement on the amendment, should we vote on the amendment.
- Novy: I'll add this sentence at the end: "The Ad Hoc Committee as finally
 constituted, will have a majority of its members by at least one outside of the Health
 Sciences to represent the range of faculty across the University."
- Miller: My reason for voting not to call the question is that I don't like the
 amendment. Are we in violation of the bylaws -- the last sentence of resolution as
 written addresses that the creating body is specified. I am not comfortable with
 specifying a number for any department. If it has to be amended, it should reflect
 constitution representative of the university faculty.
- Frieze: You are speaking against the amendment. Many of the body do not see this as a friendly amendment.
- Gold: We accept this as a friendly amendment. We are trying to do something for the University. If you do not trust us, what is the sense of this? This is why we got involved in this. We have spent a tremendous amount of time trying to resolve a critical issue as it goes forward. We are bickering if people from other schools will act

in the same way in terms of what is good for the University. I would like to see the question called. I see a friendly amendment. I could care less about the membership of the committee as long as we have good people who will work hard. As long as we work hard, I don't care of the membership.

- Bircher: The question was called. The amendment was accepted as friendly. Let's move to a vote.
- Frieze: All in favor of the amended proposal. You do have to be a member of FA to vote. Lori counted: In favor = 32; opposed = 6; abstention = 6. The motion carries.
- Kovacs: Thank you.
- Spring: Thank you very much. I know this was difficult. Barry and Marika: thank you
 for bringing it. I remain concerned about the bylaws precedent we have set. FA has
 spoken and that is fine with me.

<u>Issue #2):</u>

Resolution for Faculty Assembly Regarding the Recent Intellectual Property Rights
Assignment Agreement of The University of Pittsburgh

- Gold: I need to give history as this has moved quite fast. In August, TAFC was contacted by a faculty member about an IP agreement coming out of the Vice Provost's office via the Dean's. I did not know about this as I had not received it. We got to see the memo from the Vice Provost and the agreement. As a result, Maria Kovacs and I wrote to Vice Provost Balaban about its purpose and clarification on 8/20. I spoke to him on 9/2 at an informal meeting. On 9/3, we got a response from the Vice Provost with a list of websites from NSF and NIH. We went 2 weeks with response of websites. On 9/4, I received an email from Spring including his concerns and a document not to share. He was also concerned about this and he implied that he knew of issue since summer and was in the works. We have had several people contact us. On 9/5, we (TAFC) voted on a resolution to stop the 9/16 deadline that is a requirement to work here, do research here. TAFC was unanimous w/the content of the resolution before you today. Today on 9/8, I received a memo saying if this agreement is not signed, there will be no submission of grants or if grants will be accepted. The PI has to sign. The main thing we are trying to do is to slow this steamroller down, to give FA a chance to look at what is a major change in policy, very severe if one does not sign, and wait six months so FA can put together a group that can look at this and work with the Vice Provost's office to see what this is about and how we can go about this.
- Balaban: Thanks for this opportunity. Let me set the record straight. First, the policy itself has not changed from 2005. What has changed, because of a court case (Stanford v. Roche), is the way we are required to implement it. Instead of before, where you just had the policy, you now that have an explicit statement of acknowledging the policy, which is the simple form that was sent out. This assignment agreement is required by NIH/funding agencies now. When we speak of our own IP policy, the Provost has communicated with President Spring about it is time to relook at IP policy from 2005, and the Provost will discuss with the President ways to go forward. If we look at need for these agreements, these kinds of agreements are required by the federal agencies. That is the purpose behind this. No change in policy, no change in rights, it is simply a change in how we implement it. There is not a statement that faculty will be terminated if they do not sign this.
- Gold: The word "continued employment" is threatening, if I am not mistaken. I am not sure why this is in there.

Issue #2)
Resolution passed
as written.

- Balaban: The statement is a condition of employment for being granted access to University of Pittsburgh resources, and this is for purposes of research for grant money.
- Bircher: The debate is not about whether we need the agreement. The debate is about the language of the agreement. The use of the term "Condition of employment" is threatening and is bolded on the agreement. The freestanding term "all intellectual property" (I am not an attorney) is sufficient to raise questions even among us ordinarily citizens about loosely amended clauses really providing any meaningful legal link to policy limitations. The faculty question is not the need for the agreement, but whether or not the language offers protection to the faculty which were reflected in the original policy. It will take time to read the document and talk to attorneys/colleagues at law school, to see if phraseology confers protection of if it means all intellectual property.
- Spring: Excuse me Nick. The document says "subject to the terms of the policies."
- Bircher: Right. It is scary language.
- Spring: I went through and read the policies. The policies are as they have been for 15 years, revised 10 years ago. The only thing ambiguous is regarding software. Artwork, etc, has not changed. I think, when I first called Provost Beeson, first words out of my mouth were the exact ones out of your mouth "are you going to fire me if I don't sign it"? I don't have a problem after I read the policies. The current policies are posted for all to read on the website. The assignment clause is appropriate. There is question about how we interpret this. Stanford v. Roche complicated the process. I think that "condition of employment" (we cannot process grants unless you sign old language) is a new phrase and unfortunate choice of words. We are in a litigious society, so this term is concerning. I understand the emotional tone. I do not believe there is a change. The policy is the same. Anyone at our intellectual level who reads this document and reads the policy, that believes we are assigning to university, is being naïve. I don't want to overreact to this. I wrote to the Committee about my concern. A vote of elected members brought a motion before FA that is somewhat confrontational in nature. There is no need for it to be confrontational.
- Gaddy: On the website, there is one AAUP statement approved in 6/14. The AAUP has another statement in IP in June 2014 (Committee A) also. It is not on the website. The statement on intellectual property, fourth paragraph, says that some universities have sought to make ownership of faculty patent rights a condition of employment citing the use of university facilities as a justification for asserting ownership. Some also specify that externally funded research contracts specify the University will manage all resulting IP. These strategies are preferred but there is little to support that this advances university interests. The 2011 Stanford ruling to affirm that non-voluntary confiscation of IP rights is unfounded.
- Smitherman: I found your earlier discussion very helpful. For the benefit of FA
 members, if developed further, it helped me understand the groundwork that
 necessitated the language revision. Stanford v. Roche is very important. It should be
 developed further. It helps understand the nature of the change.
- Kovacs: We wanted to bring this resolution to FA as we feel additional discussion is warranted. The language got us very concerned. The agreement states that you prospectively and retroactively assign everything you have done. The future work assignment is concerning and should be discussed. I am not a lawyer, but this is something we should discuss. The memo that came from Office of Research yesterday specifically said you cannot submit grant applications for next 10/3 deadline unless you sign the agreement. In many places, it keeps talking about conditions of employment and access to resources. We really felt that this should

have come to FA to talk about this before 9/16 deadline. Right now, we are being threatened with no grant applications if we do not sign. We wanted to slow down this express train.

- Spring: Asked Mark, Vice Provost for Research, to address questions
- Redfern: I am not a lawyer. My understanding is that intent of the document is to reinforce that policies are in place for IP at the University. These came into being as we need a statement to get federal funding. Again I am not a lawyer. The NIH has been contacted and more due diligence. The other thing is that in the memo that came out, it stated that proposals go forward from your department and school would be submitted if PI signature on the agreement. It meant if you have a problem, contact Mark and we can figure out what we can do. If there is a reason it cannot be signed, contact Mark and let's work through that.
- Kovacs: The letter says the Office of Research will not process grants if they do not have on file my signature on the IP agreement. I would like to think about this and discuss at FA. I am very upset about being threatened that I will lose access to resources. This feels fascist Italy as I am trying to speak up for something morally right and I am being crushed. Am I completely understanding this?
- Redfern: I think you are misunderstanding this. There is no intent to come down with a hammer. We are trying to get the grant proposals in under the guidelines from NSF and NIH that require this to take the grant proposals.
- Kovacs: I went to those websites and I did not see anything that says I have to sign something retroactively and proactively or I can lose my job. It says there has to be a policy in place.
- Redfern: There is language in there about a written signature. We can talk later.
- Karen Norris: I think it is a misstatement that it is a requirement of the federal agencies as in this memo for us to sign it. That is false and it is detailed clearly in the AAUP document. They have studied this extensively. This memo was not provided to the entire university faculty; it cannot be a condition of employment or resources use. It has not been addressed of the reason for the urgency of 9/16. This is not correct to say this is not changing university policy. The current policy does not provide for present assignment of future IP rights. It provides for the assignment on a case-by –case basis when an investigator submits an invention disclosure. That language, the assignment of that IP, is present in the disclosure. This document is asking us to make this a blanket assignment, which most don't object to, but it not a requirement of the federal government to receive funds. Typically it is a present assignment of future rights. This document says all IP past and future. Why the urgency? Why all past IP? Why the misconception is a requirement of federal agencies? This has not been brought to all faculty and we are a week away of the date. It is not clear that if the faculty member has a problem, it is not clear what to do.
- Spring: I find it difficult given my own due diligence, to hear a statement, that I hereby irrevocably assign and transfer, leaving off "subject to the terms of policies." Policies state that the faculty member owns copyright. There is a patent policy too. I am not a lawyer. Those policies are very clear. I have read 100 pages on Stanford v. Roche. We had a discussion in the Executive Committee, Bayh-Dole was to increase the amount of commercialization of IP. You do not give the university everything; it is a 30/30/20 negotiable split. 1985 was first patent policy (signed by Posvar). We have to read what is in place; all of the documents are on the website. We have had a formal policy for 25 yrs. I just ask, when you say I don't want to irrevocably assign in the future, please do not leave off "subject to the terms of the policies." It is not giving up my poetry, my pet, etc, it is relatively constrained.

- Novy: Karen Norris has good points. I have read the AAUP statements. They have serious reservations on this present assignment of future inventions. This is a complicated issue and we need more time to look at it. Proposal from TAFC is saying this. We need to look into this further and the rushing of the signature is a mistake on the part of the University.
- Smitherman: I sometimes enjoy reading about Supreme Court findings. As per the famous Wikipedia, it was Stanford's failure to negotiate a tight assignment agreement with its researchers and scientists. Simple solution have existing employees agree to a new, more explicit, more effective agreement and have all new employees sign it. It is fair for us to say that the university is responding in a responsible way to the new Stanford v. Roche language. More communication is better. As I understand it, all the University is doing is to respond to change the language so we can get the grants.
- Novy: I do not think it is diabolical for the faculty to ask for more time. I don't find language confrontational. All that is being asked is more time to get acquainted with language.
- Slimick: At end of first piece, the University may weigh ownership after review. I hate to tell people this, but the University can be slow on this. After 5 yrs, if the university does not exploit it, it is an automatic. I would hate for the state of someone to be told that the University it not interested in your "improved Colt revolver."
- Bircher: It is clear from all of the documents, going downstream from Stanford v. Roche, there needs to be some form of agreement. The central question for the faculty (who are not attorneys) is whether or not the clause "subject to university policies" is enforceable, or the alternative reading which in my view is quite scary, the middle of the sentence is unconstrained by first clause and last clause. For us non-lawyers, particularly the clinical faculty in the SOM who were handed a boiler plate master slave contract to sign in 1999, we need time to review and understand this. It is only fair we get that time, as that letter was issues with a very short timeframe and we did not as a Senate have the opportunity to review it. We understand the policy. We understand the court case, and the real question is how the legal language works.
- Kearns: Is it the Provost's opinion and perhaps more importantly of the General Counsel that October cycle research grants would be seriously jeopardized without the signatures on this letter? Is there a real material cost to delaying six months while we have discussion? Can you provide more background?
- Redfern: I can tell you that is the concern, driven by Provost and General Counsel, so we can get our grants in and get funded. That is the only reason we are pushing this so hard. Yes.
- Weinberg: One question for Balaban and Redfern. Faculty in my school are confused about who exactly has to sign this? If you read Balaban 8/4 document, it states all faculty and non-clerical staff must sign. A month later Redfern article 9/4 says all faculty and technical staff and talks about grant submitters needing federal funding. Who has to sign this thing? We have non-clerical staff that have nothing to do with this. We have gotten different answers.
- Balaban: The language and terms were taken directly out of CFR document. Faculty
 and non-clerical staff, or faculty and technical staff means anyone involved in
 generation of IP under grants.
- Nelson: A technical question: In my experience, when I sit on study sections, we
 consider grant applications that are missing one or two administrative documents.
 Only when funding decisions are made and checks are issued that all of those details
 need to be addressed. Is administration sure that October grants without the

- agreement will not be reviewed to any degree? Or, if viewed favorably, will funding be delayed/not available, if that form does not accompany grant. If former, there is a window where we could consider and talk about it.
- Redfern: As I understand, it was recommended by NIH to get these done before
 grants submitted. I do not know from any other standpoint how far we could push
 this. (study section, funding) I don't know. We were recommended to get those in
 before grants were submitted.
- Smitherman: I am speaking on both sides of this. This decision was rendered June 2011. Why the sudden 2014 rush? NIH documents?
- Balaban: Part of it has been changes in leadership in different offices and revising the document from before into a simple statement. We worked on this for about a year.
- Gold: Once again, we get down to "will a grant be reviewed by NIH or NSF without this signature?" If that is the case, there is not a problem delaying this implementation and having a discussion. Unless I hear otherwise, I will assume that there isn't. I don't know why you have to sign when you don't have the grant money at the time. The other thing is this rush. Some people did not get this email because they don't read email or their Chairs have not given it to them. I find it strange that discussions all summer that no one brought this new policy into the open. It makes me nervous. There is this incredible pressure sign it or else. That is not the way we normally deal with our colleagues.
- Spring: How many emails (from faculty) did you get on this?
- Gold: Three emails. All of the members of the committee feel this needs to go slow and we need to talk about. This has potential significance and it needs due diligence.
- Spring: I got one email. It causes you to go and look. That is when I wrote to you.
 Committee members know that I expressed concern on wording and voting process.
 I did not know the motion was coming nor did Provost Office. That is just a fact.
- Gold: We did not know the IP agreement was coming. Our rapid action TAFC did a
 vote via email on this to try to get this open to FA before 9/16 deadline. We have a
 memo now saying that our grants will not get processed. The goal was to get the
 resolution to you today to slow process down and not force faculty to sign away
 rights. Give us time to study it.
- Gaddy: Can we call the question?
- Frieze: I would like to propose perhaps a friendly amendment. I understand the need to think about this. I am concerned of 2nd paragraph of your whereas's where you talk about the agreement requires irrevocable assignment and transfer. That is simply wrong and not true at all within Policy 2.2 It is misleading and generates anxiety. It is not needed can we take that away? I can support this. This is only for patents, not IP. IP is handled under policy 11.02.02. It does not say anything like that.
- Gold: This is confusing then, Paragraph two uses that language. IP is stated and does not talk about patents. This is what we are being asked to sign.
- Spring: What are the policies listed up top? 01 and 02.
- Gold: It says all IP. That is what I have to sign, because I am not sure what it means or what am I signing. There is confusion about what is being signed. It should be rewritten if poorly worded.
- Spring: Required IP agreement, 1st paragraph says, as outlined in policy 11.02.01 (patent rights) and 11.02.02 (copyrights), hereafter the policies. I am reading the first line of the agreement. I asked three times if you understand both policies are impacted below.
- Labrinidis: You can see 02 as subject to terms and policies as what I do. Or, you can see that because of this policy, I give the rights according to the policies. There are two ways to parse this sentence.

- Bircher: That is a point made earlier. We are not attorneys so it is hard to understand
 that the policy language constraints are enforceable to the rest of the sentence.
 Having sat through contract negotiations, you can get a multiplicity of legal opinions
 as to what this legal language means. It is appropriate that the faculty examine the
 sentence to understand it.
- Nelson: It is irrelevant how accurate the document is. The fact that the faculty express concern about interpreting the document suggests it needs more discussion. If the university would be negligent and cannot process grants without the agreement, we would all be upset about that. Is the 9/16 deadline real? I am not a lawyer either. I don't want my grants not funded due to lack of signature. I would like to satisfy myself that I interpret this as consistent with existing policy, end of story. My opinion. I think it needs to be clarified for faculty and grant sake.
- Balaban: I can clarify that assignment is subject to terms of our current agreement. This agreement is acknowledgement of current policy which has not changed.
- Kovacs/Gold: Can you just change the language to say I acknowledge the current policy, instead of the 2nd line?
- Gold: Right. No one has a problem with the current policy. The language in here was not put in by mistake. Not sure why 2nd line was added.
- Redfern: My understanding is when they put this together, policies of other
 universities were used to model this, who are doing the exact same thing. That is my
 understanding.
- Kovacs: Much of this is a matter of interpretation. You said General Counsel and Provost believe this; it is a matter of interpretation.
- Redfern: I think that it is this University's interpretation that we have to do this, with our due diligence in this area.
- Kovacs: I understand. It still leaves the issue was passed in 2010, and none of this was required in last four years, so why do we have to do this in 2 weeks?
- Balaban: A point of clarification—we were told today that the NIH has confirmed this to the University that we need to get these assignments in this way.
- Kovacs: I would like to see this. I contacted the NIH and my program officer, and she did not know anything about this.
- Karen Norris: I think the concern that is raised that our grants starting in the October cycle will not get funded by NIH unless we produce assignments to the university is inaccurate and incorrect. As Dr. Kovacs said, I would like to see that statement because I have been in communication with the NIH, and I have talked to attorneys and they have informed me that is it not correct that the NIH will not fund or support your grants without these assignments. What they have said is that all requirements for funding of your grant are written in your Notice of Grant Award in the terms and conditions. It was stated to me that there is nothing in those terms and conditions that deals in any way with IP and IP assignment of rights. I refer to the AAU document from the AAUP Subcommittee and there is no requirement by the federal government of written assignment of IP rights as a condition of funding. If you have the document, and talk to the NIH, and I just got an NIH notice of grand award, and they said there is no stipulation whatsoever for this. Only stipulations are written in the Notice of Grant Award.
- Redfern: Perhaps what we need is a clarification or some documentation from those
 who have determined this on the University side who talked to outside counsel and
 NIH on this. This could be sent to you Michael and distributed. The university is not
 trying to do anything negative.
- Spring: Is this the NIH policy? (reads the NIH policy) Section 8.2.4 Inventions and Patents. We put up NSF, NIH, and specific pointers to IP, as it related to federal

requirements. I agree that we need to get the facts on the table. What I am thoroughly impressed with is that after a hot week on this we don't have all of the facts read. This is why two weeks ago we began to build on the Senate website a history of all of the documents so people could find them.

- Bircher: How many attorneys are here today?
- Nancy Burkoff: I know nothing of IP and will not advise in IP and I am sympathetic to your concerns.
- Bircher: The one attorney among us points out correctly that non-attorneys will have questions that are natural. I strongly encourage voting for the proposal and ask that we need more time and answers, and call to question.
- Spring: Could I ask originators of the resolution to review under resolved what will happen if vote is in favor?
- Gold: Well, what we would like to do is to find out the significance of document we must sign, is it required, if language reasonable, and do it in conjunction with administration. We want to work with them. Definitely get law school to help us.
- Spring: My question is that as I read the first sentence ("strongly urge"), I keep seeing the plea in the court of A Few Good Men, we strongly urge the Provost to consider delaying it.
- Nelson: Carey just said that we will not get grant funded. What are we agreeing to here? What if he is right?
- Gold: Grants will not go in 9/16. That deadline is not absolute.
- Labrinidis: There are other grants beside NIH. There are other deadlines.
- Gold: Is this really true will agencies not accept grants from University of Pittsburgh if this is not signed? I find that hard to believe.
- Redfern: All I can tell you is that the University in its due diligence has come down on this that we have to do this to meeting the requirements of the NIH.
- Gold: No one is arguing the policy... and that the faculty have to sign it. Does it have to happen by 9/16? That is the question.
- Spring: Can I ask Dave DeYoung? Have I signed this before?
- DeJong: You want me to comment on your signing and when?
- Spring: I have signed IP documents before. Two or three over the years.
- Norris: You have signed them if you submitted an invention disclosure to the Office
 of Technology Management. That assignment statement is at the bottom of IDS
 statements. Each individual invention you have signed your rights. Difference here is
 all past and all future IP, not on a case-by-case basis. Those are the two differences.
- Labrinidis: There are two competing problems. It will take us 6 months. It goes into place in 2 weeks. Can we meet in the middle? Do we really need 6 months to figure this out?
- Gaddy: Can we call the guestion?
- Weinberg: How quickly would it take to make a new document stating we abide by the current policies that exist, and remove the harsh language? You'd get it back in no time at all.
- Balaban: There are certain requirements for contractual language in Stanford v.
 Roche that say we have to use the words we used. I defer to the experts on that.
- Bircher: In the reading provided, the language in our agreement we are asked to sign appears nowhere. If there is a specific federal requirement for all IP, we would like to see where that really comes from. In the AAUP article, there is a spectrum of interpretations across institutions in the US, some requiring tight and less tight construction, a spectrum. They all meet federal requirements.
- Spring: Your motion requests that the Provost delays signing of the letter, until you

- (the Committee) determine, no later than in 6 months, what all of these A's, B's, and C's are
- Gold: We want to work with administration to do this, shared governance, as the
 administration has to enact a policy that the faculty will sign. It is not control, so this
 is a document everyone understands when they sign it almost at gunpoint to sign it.
 The timeframe pushed on us, based on bolded threats across the memo, is the
 problem. It might not take 6 months.
- Spring: Who is offering to do what? The response to my 9/2 from the Provost: The letter says please note that we have been getting signed IP agreements from new staff. Your started questions are related to broader IP issues. My document to her is up on the website. The most relevant website is at OTM. Your suggestion that we review our IP policy is a good one. It would be a good idea to discuss this at our Senate lunch next week.
- Spring: My question is most collegial way to proceed: Is it the sense of this group that the Provost delay the decision without a motion and have discussion? Or, do you want to pass the motion (somewhat inflammatory) as written? Motion before you, we barely have a quorum now, is motion from TAFC via electronically ballot not with full committee full committee was not informed (they are now). You are asked to vote on this as a motion from TAFC. Beverly is asking me to call the question now. Nick: what do I say?
- Bircher: Your question is to call the question.
- Spring (continued): Who wants to call to question? (all but 2) opposed 2; abstain 2.
- Bircher: Now: vote on resolution as written.
- Spring: Now we vote as written on the green sheet: All in favor =18; opposed = 11; abstain =0.
- Spring: So, the motion passes. The Provost is urged to consider it.
- Baker: That's right. Our group is advisory. The Provost is urged to consider this; they do not have to accept it.
- Spring: Thank you. I promise this will not happen again this year.

Unfinished Business and/or New Business	None
Announcements	None
<u>Adjournment</u>	
Meeting was adjourned at 5:09 pm.	
Meeting was adjourned at 5:09 pm.	

Respectfully Submitted,

Susan Skledar, RPh, MPH, FASHP Senate Secretary Associate Professor of Pharmacy Department of Pharmacy and Therapeutics

Members attending:

Alarcon, Baker, Bircher, Burkoff, Cauley, Clark, Costantino, Dahm, Dewar, Donihi, Erickson, Evans, Folan, Fort, Frank, Frieze, Gaddy, Gold, Goodhart, Groark, Horvath, Hughes, A. Jones, Kaufman, Kaynar, Kear, Kearns, Kovacs, Labrinidis, Leers, McKinney, Miller, Molinaro, Morel, Munro, Nelson, Novy, Ramsey, Savinov, Savoia, Scott, Shafiq, Skledar, Slimick, Spring, Stoner, Tananis, Triulzi, Weinberg, Weiss, Wilson, Withers

Members not attending:

Cohen, Gibson, Gleason, Helbig, Irrgang, R. Jones, Lewicka, Lin, McLaughlin, Mulcahy, Nisnevich, Rougeux, Schmidhofer, Smolinski, Sukits

*Excused attendance:

Ataai, Beck, Buchanich, Caldwell, Flynn, Fusco, Hravnak, Karp, Mauk, Poloyac, Riccelli, Vieira

Others attending/guests:

Balaban, Barlow, Becker, DeJong, Fedele, Gronenborn, Lyon, Norris, Redfern, Schackner

^{*}Notified Senate Office