

**Minutes**  
**Indiana University**  
**BLOOMINGTON FACULTY COUNCIL**  
**October 17, 2006**  
**Ballantine 008**  
**3:30 P.M. - 5:30 P.M.**

**Attendance**

**MEMBERS PRESENT:** George Alter, Moya Andrews, Eric Arnold, Lisa Bingham, Julie Bobay, Maria Bucur-Deckard, James Capshew, John Carini, Luis Davila, Robert Eno, Dennis Groth, Robert Hatten, Laura M. Jezewski, Elizabeth Johnson, Christina Kuzmych, Andrew Lauck, David MacKay, Eric MacPhail, Terrence Mason, Bryan McCormick, Murray McGibbon, Michael McRobbie, Theodore Miller, Sara Pryor, Amy Reynolds, Paul Rohwer, Elyce Rotella, Jeanne Sept, Robert Shakespeare, Sarita Soni, Jerrold Stern, Alex Tanford, Robert Terrill, Neil Theobald, Larry Thibos, David Waterman, Maxine Watson, William Wheeler, James Wimbush

**MEMBERS ABSENT WITH ALTERNATES PRESENT:** Bryan McCormick for Barbara Hawkins, Erik Bucy for Herbert Terry

**MEMBERS ABSENT:** Marilynne Boyle-Baise, Katy Borner, Richard Carr, Keith Clay, Shawn Conner, Angela Courtney, Les Coyne, Aurelian Craiutu, Paul Elliott, Patrick Harbison, Betsy Henke, Amy Holtzworth-Munroe, Kevin Hunt, Owen V. Johnson, Grant McFann, Lisa Pratt, Cara Wellman

**GUESTS:** Sue Talbot (IU Trustee), Brad Wheeler (Dean of IT-IUB), Chris Freiberg (IDS), Randy Arnold, Eric Arnold, Steve Martin, Robin Murphey (Faculty Council), Beth Cate

**Agenda**

1. Approval of Minutes  
October 3, 2006  
<http://www.indiana.edu/~bfc/docs/AY07/minutes/10.03.06.htm>
2. Memorial Resolution  
Professor Emeritus Edward W. Najam  
<http://www.indiana.edu/~bfc/docs/AY07/circulars/B7-2007.htm>
3. Agenda Committee Business (5 minutes)  
(Professor Theodore Miller)
4. Presiding Officer's Business (5 minutes)  
(Interim Provost Michael A. McRobbie)
5. Question / Comment Period\* (10 minutes)

(Interim Provost Michael A. McRobbie and Professor Theodore Miller)

6. Indiana University Presidential Search [Discussion] (45 minutes)  
(Professor Theodore Miller, Member of Presidential Search Committee)

7. Policy on Intellectual Property [FIRST READING] (45 minutes)  
(Professors Randy Arnold and George Alter, Co-Chairs, BFC Research Affairs Committee)  
<http://www.indiana.edu/~ufc/docs/AY07/circulars/U5-2007.doc>

8. Standing Committee Reports

9. Old Business

10. New Business

\*Faculty who are not members of the Faculty Council and who wish to address questions to Interim Provost McRobbie or Professor Miller should submit their questions to the Faculty Council Office. Our documents are available at: <http://www.indiana.edu/~bfc/>. To send e-mail to the Faculty Council Office: [bfcoff@indiana.edu](mailto:bfcoff@indiana.edu)

#### **AGENDA ITEM #1: APPROVAL OF MINUTES**

**MCROBBIE:** Ready to start. Welcome to the meeting today, October 17. I know that we have with us Trustee Sue Talbot. Sue is here for Agenda Item #6 and I know that she has to leave in about 45 minutes, so in order to maximize her time while she is here, we will try to get through items 1 to 5 expeditiously. Firstly under Agenda Item #1 can I ask for a motion to approve the minutes please?

**MCCORMICK:** So moved..

**MCROBBIE:** Second? All in favor? [aye] Against? That's carried.

#### **AGENDA ITEM #2: MEMORIAL RESOLUTION**

**MCROBBIE:** We now have a memorial resolution. Jeanne Sept would you like to speak to this.

**SEPT:** Thank you Michael. I refer you all to the complete resolution, which is on the minutes of the meeting and I prepared some excerpts here for you today.

Edward W. Najam, Professor of French, died on May 9, 2005. Professor Najam was born in Danbury Connecticut on October 28, 1916. He received the A.B. degree with honors in 1938 from Bowdoin, where he deepened his knowledge of the languages he had acquired in early childhood and added others. He first worked until 1942 in Boston's business community and later taught German, French and Latin at private schools in Groton and Marion, Massachusetts. The year after his marriage in 1946 to Agnes Parker, a native of North Carolina, he moved to Duke University where he earned the M.A. degree in 1950 and then to the University of North Carolina where in 1953 he granted the Ph.D. degree in Romance Languages. He taught at the

two universities as a graduate student and as an instructor, in French at Duke and in French and Spanish at North Carolina, until he came to Indiana University in 1954.

As early as his first year of teaching at Duke, his classes in multi-section courses emerged at the head of the rankings when comparative statistics were published. When Duke Undergraduates spontaneously undertook for the first time in that university's history an independent survey of the student body on the quality of teaching, he was rated seventh out of some 250 professors.

Professor Najam's reputation preceded him to Indiana, for he was asked to teach courses for superior students nearly from the start and to give demonstration classes in Ballantine Hall from the time the building was occupied in 1959. These continued for fifteen years. In room 105, AIs and others were encouraged to watch master teachers through one-way mirrors from an adjoining room. His classes always headed our lists and repeated teacher ratings sponsored by student government over the years placed him among the strongest in the university.

Professor Najam took an early lead in advancing foreign language study nationwide in the early sixties, carrying on the program in the national interest begun by the late Distinguished Professor William Riley Parker. He edited two volumes on the then newest methods of teaching foreign language and in 1961 directed the first and highly successful national conference on foreign language teaching, held at Indiana University. He later submitted a proposal to the United States Office of Education for an Experienced Teacher Fellowship Program to retrain high school teachers of French and Spanish. About one hundred alumni of the program are now master teachers in the United States, seven of them in Indiana.

His great success in the classroom was not limited to any one level. Outstanding testimonials to his high-quality teaching on the first-and second-year levels were matched by those from his advanced grammar and composition students. On the advanced literature level, he taught a course in French classical tragedy and a stimulating two-semester survey of French literature from the Middle Ages to the twentieth century.

For more than thirty years he was active in the honors program as teacher and adviser. He served simultaneously on as many as eleven committees – university, state and national – including Rhodes Scholarship and Woodrow Wilson Fellowship selection committees. He also served as internal and external fellowship examiner for the Peace Corps and for Fulbright, Danforth and Edwards candidates planning to work in francophonic countries. He was our foreign language liaison with and consultant to the Educational Testing Service; he established a graduate examination procedure for the principal foreign language; and served as graduate examiner in French since 1954 and consistently stressed foreign languages as a part of the cultural makeup of graduate students rather than as tool skills.

From 1958 to 1963 he was assistant dean in the College of Arts and Sciences, where he also served briefly as acting dean. During this five-year period, he became chairman of the Committee on Retiring Faculty, a post he held for twenty-five years. In 1965 he was a visiting professor at Duke.

Professor Najam was the only two-term president of the Indiana State chapter of the American Association of Teachers of French, was a member of the executive committee of the Indiana Foreign Language Teachers Association and was one of the leaders in two of the main national associations in his field. In addition, he served with several programs dealing with teaching here and abroad.

For seven years he was executive secretary of the University Committee on International Affairs under the chairmanship of Chancellor Herman B Wells. During that period he helped establish the new Graduate University of Islamabad, Pakistan. He arranged four-month appointments with distinguished professors from the western world – from the United States, France, Germany and the United Kingdom, some of them Nobel laureates, and arranged for their salaries and travel, all in order to help the fledging university off the ground. He ordered and shipped thousands of volumes to create a nucleus library in the four fields in which Pakistan felt the most urgent need: the Graduate Institute of Chemistry, Physics, Mathematics and Economics.

Active first as secretary-treasurer for seven years and then nationally in 1966-67 as president of the Indiana University Chapter of Phi Beta Kappa, he later chaired the Triennial Council Meeting of the United Chapters held here in September 1970.

Ed served not only the University but Bloomington as well. From 1962 through 1986 he and Agnes, always a partner in his efforts, arranged private exchanges between children of Bloomington and those of leading French families from Paris and the provinces. For this, he was honored in 1983 at a dinner given by the French students of Bloomington's high schools. So much did he dedicate his life to the advancement of French culture in the United States that in 1972 he was honored by the French government with the designation "Chevalier dans l'Ordre des Palmes Académiques", an award made to few.

In the community he was one the three volunteers who in the 1950s began teaching French in the elementary grades. He also served as president of the PTA and worked with the Boy Scouts and with the YMCA/ YWCA freshman camps. He was a member of the Bloomington Rotary Club Board of Directors and secretary of the advisory committee to the Bloomington Hospital Board.

Probably no one else was more clearly identified with the Department of French and Italian than Professor Najam. He served selflessly and with distinction. Through his contributions this campus was enriched and the department grew in stature as one dedicated to high-quality training in foreign language.

Indiana University lost one of its great representatives when Ed Najam passed away, but the great thing about being the kind of teacher Ed was is that his legacy and influence live on not just in his family but in the large number of former students who continue the legacy of learning, integrity and love this fine teacher impressed on them.

For this reason, be it resolved that this memorial resolution be presented to a meeting of the Bloomington Faculty Council, that a copy be filed in the University archives and that copies be sent to Ed's wife, Agnes and to his son, Ted.

Emanuel J. Mickel  
Professor of French  
Department of French & Italian

**MCROBBIE:** Thank you, Jean. Colleagues, can I ask if we could just stand for a minute in respect to Professor Najam? Thank you.

### **AGENDA ITEM #3: AGENDA COMMITTEE BUSINESS**

**MCROBBIE:** Agenda Item #3, Ted.

**MILLER:** Thank you, Michael. Just a few things. One you will note that Herb Terry is not with us today, our Secretary. The Bylaws of the Council are that in such that when the Secretary is absent the Parliamentarian serves in that position. So Julie today is our Secretary and Kelly has become the Parliamentarian for today, sort of, I guess. So that accounts for the rearrangement of our table here today for those who are puzzled with the reason why we are sitting in the order that we are sitting. Well, this is the explanation.

Just one item that I would like to bring to your attention, having to do with the General Education program that you approved two weeks ago. First of all, I would like to say that many of the university officials are very pleased with your action. At the same time, however—this is the main point that I want to make – one of the things that was put into the draft in which we approved-- and this was something that was not in there for very long it was one of the recent additions, although I think it is a reflection of something that we all recognized that we needed to have in there-- this was the implementation date of this program. What we said was that the Gen Ed program would be implemented in 2011, at the same time basically that the new admission requirements that the Council approved last year would be implemented. As you know there are various linkages between the Admissions Policy and the Gen Ed program. This is an aspect of our action that I don't think has been fully accepted in all quarters so one of my missions over the next couple of weeks is going to be to try to persuade people that this is the most reasonable way to proceed in doing this. But I just wanted to let you know that there is an issue surrounding that particular point that people have questions about it. As I say this is not something that was in there for very long and I don't think its well understood exactly why this happened. It is one of things I am going to be working on over the next few weeks.

I mentioned the Chancellor Review Policy last time. We will have one more meeting of the BFC prior to the next Trustees meeting. I think October 31 is our next meeting. Please note that the meeting schedule for this part of the fall semester is a bit on the unusual side. For those of you who are accustomed to our traditional schedule, first Tuesday, third Tuesday, that is not what we are doing this month. We are going to have a third meeting in October, the final Tuesday of October, October 31 will be a meeting of the BFC and then there will just be one meeting in November and then a final one in December. Please review your schedule because it is a little different from what we have historically done here in the Council. In any event at that October 31 meeting, just prior to the next Trustees meeting, I will bring the current draft of the

Chancellor Review Policy and we can have a brief discussion on that. We will do a little bit with this at the UFC next week. As I mentioned last time the focus right now is on the idea of confidentiality and just how confidential can the materials that are gathered during this review process actually be and what should our policy say about such matters or not that is really the issue that we are talking about right now. Thank you.

#### **AGENDA ITEM #4: PRESIDING OFFICER'S BUSINESS**

**MCROBBIE:** Thanks, Ted. Under Agenda Item #4, I just want to comment just picking on where Ted started that the Gen Ed resolution was passed last time requires that a Gen Ed committee be setup and my office has the responsibility for doing that. Various names have got to come in from the schools and those have started to come in and I have to choose a couple of co-chairs; I have one person identified and I was away last week so I still need to talk to the second person who I am hoping will accept this job. By the time we meet next, I should be able to announce the members of the full Gen Ed Committee which is quite a large committee which you all know. So that is all that I wanted to comment on there.

#### **AGENDA ITEM #5: QUESTION/COMMENT PERIOD**

**MCROBBIE:** Agenda Item #5, Questions and Comment Period, bearing in mind Sue Talbot's schedule. Any burning questions from anybody?

**DAVILA:** It's not exactly burning but Ted if I may, could you give us a general idea of why there is a snag in this tandem Admissions and then the implementing of General Education, anything that you can share?

**MILLER:** One way to think about it is that in the Gen Ed program that we approved, in the document that we approved, we didn't really seek to explain why the implementation date would be 2011. In other words, it doesn't say that "this is why we are doing this is because it has to do with the Admissions Policy and things related to that". I just think that we've got these two separate actions that we have taken here. We, I think, all understand the connection between them, but people outside of those who have really been involved in this don't think see the connection between them. I think it is more a question of connecting up the dots a little bit.

**DAVILA:** So it's just a matter of exposition.

**MILLER:** I hope that's what it is, yes.

**MCROBBIE:** There being no questions let's turn to Agenda Item #6. Ted you might want to start this.

#### **AGENDA ITEM #6: INDIANA UNIVERSITY PRESIDENTIAL SEARCH**

**MILLER:** I believe it was at the June meeting of the Trustees where an initial discussion of the Presidential Search was held. The Trustees invited a very distinguished person, Stanley Ikenberry, who was President of the University of Illinois and was I think President of the ACE, American Council of Education, also. Anyway the Trustees invited him to come and talk to them about presidential searches and I was there as he was saying what he said. I was really struck by the very first thing that came out of his mouth, which was basically that he encouraged the Trustees, and indirectly others who might be interested in this search, to really try to focus on what you would like the next President of Indiana University to do. Then, once having ideas about that in mind, you can turn to what are the qualities of the person required to do that kind of stuff. I thought that was a very clear message and it struck me as being quite sensible.

Now as you know, last week, later on last week, we sent an email to each of you trying to solicit your ideas of what you would like to have the next President do. We were not overwhelmed with responses. I will start there. We were not overwhelmed with responses. We had a handful, maybe a handful and a half of responses or something like that. It may be roughly the same kind of return rate that we have on most surveys, I am not sure. I will start by just saying a couple things about what I saw in those responses. I am not trying to summarize everything that was in them, but there were a couple things that kind of jumped off the page, that perhaps would be a good starting point here for our discussion. Those of who submitted comments and don't recognize some of your ideas in what I say, please feel free to – I am sure you will let us know how they should be elaborated.

One of the things, there are really two things that I would like to say. One of them, if you go back to the actions of the Council last year at the early part of the year, we approved a resolution that was titled "Upgrading the Flagship". You will recall that the content of that particular resolution was really focused on the student profile issue, but really to me, reading the few remarks that we did get to me many of them fall into this general category of Upgrading the Flagship not so much focused on the students but more generally. On a bunch of different dimensions: the resources of the university, the reputation of the university, the buildings of the university, a bunch of things basically saying really what we need on this campus is to really kind of upgrade from many, many points of view. That clearly is one of the things that was in a number of these comments that came through.

The second one focuses on the relationship of Indiana University, and the Bloomington campus in particular, with the state of Indiana. A number of comments could be interpreted to say that this relationship is really not what we need it to be and the next President is going to have to work to build that relationship in very significant ways. Perhaps it's not only with the state government, we also know that some of our sister institutions in the state are also having leadership changes. Purdue is going to have a new president. Ivy Tech is going to have a new president. This really does present Indiana University with an opportunity to structure relationships with these institutions and that may be another dimension of this in terms of building these relationships with external constituencies. When I think about this particular aspect of it, one of the things that seems to me to be kind of at the core of it is that Indiana University, and in particular the Bloomington campus, these are ideas that we have visited just recently as we talked about this general education program. The Bloomington campus has a particular sort of structure to it. It is not a typical, big research university structure. It has a

different structure, quite a unique structure in terms of many of what we may think of as our peer institutions. It is not so clear in this world of – this very pragmatic world that we seem to live in-- it is not clear that the kind of university that is here in Bloomington is much appreciated in places where we would hope it would be appreciated. The liberal arts and sciences, the humanities, which is really kind of the heart of this campus, it's not clear just how well appreciated that focus is in Indianapolis. So when I think about building relationships with the state, one of the things that I really thing that we need the next president to do is we need someone who can really articulate what value this particular campus has to the state of Indiana. My own view is that it has extraordinary value, but I don't think it is a kind of thing that where you can go up to somebody and kind of hit them beside the head and demonstrate that value. It is a deeper kind of thing and I think we just really have got to work on that because that is what we are.

**MCROBBIE:** Discussion? Sue would you like to say anything or are you really just here to listen?

**TALBOT:** We are having about 40 open forums across the state with lots of constituencies and we are amassing a great deal of information, much like Ted solicited from you. All of you probably also received from our office a letter soliciting or email soliciting comments. We've had a lot of response. It has been substantive and we have been very pleased with the kinds of information that has come to us. We are compiling all of that to use as we go forward with this search process. During our forums, and Ted I am sure promoted this in his message to this also, we really asking people to consider and just be very candid with us about four things. We are asking them to think about leadership, what kind of leadership we need, what characterizes that, and the profile, qualifications of the next president, and the opportunities and challenges of Indiana University and also the priorities, that he has just commented on, of the next president. All of these things have been stated in many ways and somebody said are you hearing the same thing repeated always. I said no. We hear the same theme but it always has a different twist depending on the group that we are talking with. We do hear different things every time we talk with a group so my mission is to listen. I would be very happy for Ted to conduct any conversation about this and if you can address any of the four qualities or what Ted has proposed to you also that would be very helpful to us. If you in fact have names that you would like to forward to us, I would appreciate if you would forward that to me by email or by calling. I am readily available and all the information is on the Trustee website and I am happy to talk with you or correspond with you in anyway. So Ted, I will hand it back to you.

**MILLER:** Michael?

**MCROBBIE:** Discussion? Any comments or questions for either Ted or Trustee Talbot? Bob?

**ENO:** I have a couple of questions and I probably should know the answers-- they are probably already known-- but I don't. One is simple. What is the anticipated target date is for making a decision? How long does the search committee expect to be in session? Second is, in the last stage of this search, will there be an open process among finalists or will it be closed all the way through as the last was?

**TALBOT:** Let me address the target date first—we don't have one. As you know, having served on the last search, you have an open search and you keep it open until you find the best fit, the best candidate for this institution. And as you know the current President has suggested he would be here until 2008 so if it takes that long, we will search until 2008 so I cannot give you a target date. The second question, will it be an open process, no. It will be strictly confidential all the way down to the very end.

**MCROBBIE:** Other questions or comments?

**DAVILA:** If I may, I think that something that the search committee and all of us should consider as features or facets of a future president is something that the ACLS, the American Council of Learned Societies, in conjunction with the AAU, the American Association of Universities, has an agenda at least. There is a full report of all the doings in terms – I come from the humanities – so there was a convocation on humanistic future for universities and also what we should look for in presidential leaders. Being that Bloomington is not least in its humanistic and humanities research, if I may just for the record, just very quickly give what were the topics for this two-day discussion or so. The first was a question of humanistic learning and citizenship in a global society, the whole business—the Freedman idea of the flattening of the world. Reading and knowing in an information age, what will our future president address and respond and know what to do about this per say? The third item for the agenda of this joint convocation was the public sphere of the humanities, very much so what we also need to project to our citizenry and to our CIC companions on the journey. The next item was presidential and scholarly leadership in the humanities. I think we certainly need that examined as to what the candidates might have as ideas. The next item was making the humanities count. It's inescapable that we have to be ready for this information age that has been long in being. There were roundtables and what not but it's all on the web and I think it bears inquiring and looking at the report that we can all get from the ACLS; a very respected institution that is the flagship for research, teaching and service in the humanities.

**TALBOT:** Thank you, we just received that documentation today in our office of all of that.

**DAVILA:** Wonderful.

**TALBOT:** So I do appreciate you bringing it to our attention again.

**TANFORD:** To follow-up on Bob's question about the open and closed process, and while I realize that is a done deal and you are not going to change, I do wish to express some concern about the closed nature of the end of the process. Following the announcement of the selection of President Herbert last time a number of members of the faculty got phone calls from faculty that we knew at other universities with which he had been associated who said given the nature of your university, we thought we had some concerns about the appointment because of his administrative style they were familiar with and they were concerned, and we were concerned that information that might have been valuable to the search committee that would have come through normal faculty-to-faculty contacts at other universities with which the candidates are associated was not getting to the search committee.

If the process is going to be closed all the way to the end, so that there is no opportunity for faculty to faculty information to get to the search committee, I would urge the search committee to do everything it can to find ways within its closed structure of facilitating that. That is, the ordinary-faculty-to-ordinary-faculty communication with people that we know and trust at the institutions from which the candidates come could be valuable to the committee. I fear that the selection process may be lacking information that would have been important if it keeps it completely closed.

**TALBOT:** You make a very good point and thank you for addressing that in this setting. One of the reasons we have a Faculty Advisory Committee is to look at that very issue and ask those of you in this room or others on the advisory to help us advert the candidate through your disciplines, given that the candidate will come with a given discipline. Thank you.

**LAUCK:** My name is Andrew Lauck, I'm from IUSA. I'd like to echo the exact same concern from the students' perspective. I think that exact same, exactly what you expressed about faculty-to-faculty conversations for a prospective, needs to be done on a student to student basis. My question for you, and you know where the students in Bloomington stand on the issue and we've talked about it numerous times is what is the search committee falling back on to guarantee this—you said that the Faculty Advisory Committee just then for the faculty concern. What is the search committee falling back on to address the student perspective?

**TALBOT:** You have a student representative on the committee and that's your conduit for information Andrew. We've discussed this many times. I'm sorry I don't have a better answer that you want to hear today.

**LAUCK:** No, but I also want to express support for the statement that was made because I think it needs to be considered as much for the students.

**TALBOT:** I understand. The student rep will be representing you all and if we need to vet it through some student organization we will have him do that with you.

**MCGIBBON:** What is the rationale for keeping the procedure confidential right through to the end?

**TALBOT:** A confidential search allows people that may be in a very secure position at present time to remain in that position until they in fact are a finalist in the interview process without jeopardizing their job. Many of you in this room have been in those positions and you understand that, I'm sure, that you certainly don't want to close the door on one job that you already have for an opportunity that may not come through.

**MCROBBIE:** Other comments?

**BUCY:** Just a question about the flagship idea. Is there any thinking about whether the next president should primarily reside or associate with Bloomington? Also, in terms of administrative restructuring, is there anything else left in flux with regard to administrative

reporting lines or significant positions that may kind of evolve or solidify over that time period? How would that maybe impact the search or the type of candidate that we're looking for?

**TALBOT:** Is there anything in flux? You know that we have gone through restructuring as of last January and that stands right now and the new president will be coming into that kind of administrative setting right now. As far as where the office will be, the main office—is that what you were asking me? Whether it would be in Bloomington or Indianapolis?

**BUCY:** Yes.

**TALBOT:** The restructuring demands that the president be in Bloomington, at the present time.

**MILLER:** Let me just say something about this particular topic. The President is the Chief Executive Officer of the Bloomington campus and as such has significant responsibilities for Bloomington. With regard to the restructuring, my sense is that this is an ongoing process. I think there are still some things in flux but I do believe that there is a principle that Adam Herbert has in mind and I believe the Trustees also have in mind as we go forward with this restructuring. The principle basically, I think, is to try to create a situation for the Bloomington campus that is similar—let me say that to create a situation for the Bloomington campus where basically the campus is in control of its own destiny, so that the administration of the campus is basically in a position to take the important decisions that need to be made regarding the future of the Bloomington campus. What that means, I think, is that with regard to the university administration, the way I see this principle anyway, is that the university administration is going to be focused on things that really are university-level issues. We all know that the past ten, fifteen to twenty years, who knows how long, the university administration and the Bloomington campus have been very intertwined with one another. The way I see what has been happening over the last several months and the direction that we're going forward with is that this is going to be disentangled and the Bloomington campus, the president, the provost, the other administrators of the Bloomington campus, will basically be in charge of the campus and will be able to do things that they think need to be done without having to ask permission from somebody off there as a different set of priorities.

**MCROBBIE:** Other comments, anybody else? Yes.

**BUCUR-DECKARD:** I sent a message earlier today but I don't know if Kelly passed it on so that there are a few thoughts that I present in there. I wanted to add one more in there which pertains to one of the four categories that Sue Talbot brought up: opportunities and challenges. One thing that—maybe I'm wrong and maybe I just went too quickly to the website that describes all the kind of interesting opportunities for the person applying in IU-- that I didn't see there is the kind of spectacular strength that we have in international programs. Not just the student body. That is mentioned actually in the website, but actually our almost second to none, I believe there's only one other university, University of Wisconsin that has more international resource centers funded by Title VI program, which makes us a very interesting and unique institution. Not just on the Bloomington campus, because I believe there are two in Indianapolis? Or one? That I think is something that—for instance, the relationship to the Indiana State Legislature, it would be an important strength for the president to understand and to be able to

represent. It's also a challenge because we are in Indiana and not in New York. But I think it is an opportunity and a wonderful unique feature.

**TALBOT:** Thank you. We felt that we handled that very thoroughly but I will go back and read it over again and we'll pay appropriate attention to it. Thank you very much.

**MCROBBIE:** I think there was someone... yes?

**ROHWER:** To attract the next president, are we willing to pay them, for example, as much as the men's basketball coach makes?

**TALBOT:** I'm so glad I don't have to make that decision until it comes down to making a decision. We will be competitive with presidential searches and certainly competitive with the Big Ten and AAU universities.

**MCROBBIE:** Any other questions?

**BINGHAM:** The discussion that Ted mentioned regarding what it is we want the next president to do...I understand that the forty forums around the state are partly geared towards answering that question. But I do think it's particularly important not just to talk about leadership style and how things get done but to set measurable target goals. Coming out of SPEA and being, although I'm still learning but being taught by colleagues like Ted, if you don't measure it, it doesn't happen. Rankings are of course artificially constructed and arbitrary to some degree, but they also have an impact on what students decide to apply to our institution. When you think about some of the important rankings that matter to Bloomington, we have a number of programs, graduate programs that are elite top ten or top twenty graduate programs. But the university as whole, as a research 100 university, it's my understanding that we dropped in rankings of the research 100 over a period of time, in a substantial fashion. So I wondered to what degree, and underlying all of this is my view that academic excellence has to be the number one thing that the new president focuses on rather than something like athletics? Has there been discussion regarding measurable goals and targets and activities that could be communicated to our new leader?

**TALBOT:** Yes we are in a metrics kind of accountability right now that we're working on very hard with the Board and we are setting some measurable outcomes to look at and for in the future. As you know with a candidate, and you've all been in search processes for your departments, you have to look at a past history of that candidate coming to you. So that's the kind of thing we're looking at with background and dossiers and then matching it up with what our metrics looks for the university. We're establishing it, yes. Good point.

**MCROBBIE:** There was someone...

**CAPSHAW:** I'm wondering if the Trustees have thought about environmental sustainability as an issue that we might need to think about having a president who is interested in it and pursuing that, not only in terms of the pedagogy of the environmental sustainability that SPEA has a lot of leadership in that, but also on the operations, energy management and other waste streams and

things like that. It seems like in tandem with the international focus that is already here, we could be in a leadership position with a few more resources and more attention paid to that area. Of course that's something that's a global concern. Students are really interested in having a green campus and we do have a green campus but it's not very deep green yet. So I just wanted to bring that up as a possible priority.

**TALBOT:** Excellent Jim and of course we have Ted sitting on our search committee, so Ted make sure that is on your agenda of questions.

**MCROBBIE:** Any other questions or comments?

**TALBOT:** Well thank you very much for your time and I am assuming that things that weren't said and you think of – I call those “in the shower in the morning thoughts” – you will get them to me. Thank you. Sorry I have to leave.

### **AGENDA ITEM #7: POLICY ON INTELLECTUAL PROPERTY**

**MCROBBIE:** Okay, Agenda Item #7, which one of the two co-chairs is going to cover it.

**MILLER:** I'd just like to start off with a comment about this item. I want to just remind you that this particular item, the Intellectual Property Policy, has been under development now, this is the third year that this particular item is under consideration. The first year was spent with a Task Force that made an initial draft of the policy. The second year, last year, the Faculty Council committees here, Indianapolis, elsewhere, at the university-level had a go at this policy. They made various changes to it along the way and then at the end of last year, the University Faculty Council was very close to voting on this policy, whether it would have been approved or not, I don't know. It was close to voting on it and then there was a substantial sort of focus on the way software was treated in that draft of the policy. This basically took us out of last year as a time when we could approve this. There have been some revisions in the policy the draft you are looking at here today has incorporated those revisions with regard to software. The basic point that I am trying to make here is I don't think that we really have a lot more time to spend on this and I am hoping that we are close to moving this off the agenda of the Faculty Council.

**MCROBBIE:** As much as I could editorialize from the chair, can I just endorse Ted's comments. I really think if this one could be finished soon that would be a great accomplishment.

**ARNOLD:** Thank you. No one would be happier with me if we could move forward with this. Ted actually did a good job of actually introducing some of what has already been done to work on this policy so I will skip over the first page of my comments and address a few other things that will hopefully provide helpful introduction.

Before I address the specifics about the policy, I want to spend a brief moment describing my personal interactions with IURTC. I think this will be helpful to those of you have possibly not worked with them. I have had two main interactions with IURTC over the past three years. The first involved a piece of software, ironically, that I wanted to distribute as open-source code, but I wanted to know who was using the software so I didn't want to just post it online where people

could download it anonymously. So, in cooperation with IURTC, we set up an individual license agreement that licensees submit to IURTC, after which they notify me and I distribute the software.

My second interaction, which is still ongoing, that also involves software. This time it is potentially patentable. The IP is still being evaluated and marketed to potential licensees and commercial partners. IURTC has taken the lead in initiating a preliminary patent for the IP and is working with me and the other co-authors to find commercial partners. Basically, IURTC is doing the things that I and my co-creators have neither the expertise nor the time to do very efficiently. In doing so, IURTC adds value to the work of the university. I believe that the policy you have before you today will strengthen IURTC and make it a more effective unit to assist faculty and other creators of IP in bringing that IP that is produced at IU to the marketplace. So just keep that in mind that this is basically sort of the document that allows us to interact with IURTC and hopefully you will sort of agree with me that they can actually be an asset to us. In the past it may have been the case that they seemed more of an obstacle, but hopefully this will enable them to be more of an asset.

Just a brief description, the 18-page document before you consists of a short, [End Side 1 of Tape 1] 7-paragraph introduction that provides a narrative explanation of many of the principles in the policy. A number of our colleagues have pointed out that this introduction is not necessary. This is true, as the policy that follows it does stand alone as a complete document. However, it is the opinion of many that this introduction does provide valuable information for those who are less familiar with intellectual property in a brief manner and should be retained with the policy.

The policy itself is divided into sections that provide: First, definitions of key terms such as “creators,” “traditional works of scholarship,” “university works,” and “exceptional university support”, etc, etc; second, a delineation of policy governing patentable intellectual property; third, a delineation of policy governing copyrightable intellectual property; fourth, a delineation of policy for revenue distribution; finally, additional sections on protection of academic freedom, management of conflicts of interest, and considerations for implementation.

In general, the policy covers Intellectual Property that is either patentable or copyrightable. Consistent with past IU policy, patentable Intellectual Property produced by creators using university resources is owned by the university. Also consistent with past IU policy and practice, traditional works of scholarship (such as scholarly articles and books) continue to belong to the creator; the university does not assert a right to ownership over this kind of intellectual property.

The university does assert a right to ownership over any copyrightable material that falls within the definition of University Works, i.e., those that are externally funded, are university commissioned, or have received exceptional university support. Those details are all spelled out in the document.

Let me just take a moment to talk about software. Software can be difficult to describe in terms of copyright versus patent protection at least in some cases. All software is copyrightable by the definition of copyright, and most is treated as a “traditional work of scholarship.” However, in

some cases software is patentable. Anyone who creates software that is potentially patentable has an obligation at least by this policy to disclose it to the University for IURTC to evaluate. To a very large degree the ability to determine whether any potentially patentable IP software otherwise has commercial value actually rests with the creator. In the case of software, this determination of commercially valuable versus academically valuable or potentially patentable versus open source may be less obvious, and so creators are encouraged to disclose to IURTC any potentially valuable Intellectual Property. As computer scientist Dennis Gannon argues, it is not hard to file a disclosure, which is basically an on-line form used to tell IURTC what the creator intends to do with the software, whether that involves commercializing it or releasing it to the university community and possibly to the public as open source software and IURTC in this policy is asked to make a determination within 30 days if an item is patentable.

It should be noted that the distribution of revenue to faculty that is generated by the transfer or commercialization of patented intellectual property is more generous in the proposed policy than in the university's existing 1997 Intellectual Property Policy and, as we understand it, more generous than the norm for peer institutions. The breakdown is 35% of revenue goes to creators, 15% to creators' lab that is constant throughout all the revenue generated, 20% goes to the campus, 5% goes to university, 25% goes to IURTC as incentive to get Intellectual Property to market.

In the course of discussing Intellectual Property Policy over this year and years past, it has become apparent that questions may arise that pertain to the legal context and economic factors driving the policy so accordingly, I have asked Beth Cate, who just stepped in the door, from University Counsel and Steve Martin from Sponsored Research to help me answer any questions you might have regarding the current draft and IP policy in general.

One other thing that I want to state, I guess before we open it up for questions, is that it is very likely that the policy from the form that you have it will be redrafted and that comes to me from the University Counsel's office just to make it more consistent and easy to implement but what, I think, we should be mostly concerned with today is not the specifics of how its worded but with the principles that are outlined in the policy. I would encourage you to direct your questions to the principles in the policy and we will make sure that those principles are represented in whatever the final policy ends up looking like. So with that I will open with questions.

**MCROBBIE:** Let me welcome Beth and Steve. Questions, John?

**CARINI:** So I have a colleague who kind of ran into apparent limbo with respect to a patentable discovery. So he did the disclosure went through the Technology Transfer Office, they decided that they were not interested. What do you do then with it? Right, if you do any further development on it you have to go back and say well I have made these improvements here is another shot or do you take it to an outside company and say – no one is going to want to touch it as long as it is in this legal limbo.

**ARNOLD:** Right.

**CARINI:** The University grabbing hold of any incremental improvements.

**ARNOLD:** That's a good question and I guess it may depend on how incremental the changes are. I think clearly if there is a change made that then adds value then that change is significant enough to warrant another disclosure to IURTC. If its negligible then it probably doesn't add value and so the creator could do whatever...

**CARINI:** Obviously he disagreed. Potentially other people will disagree but are they going to put their money and efforts into developing this...

**ARNOLD:** Once IURTC and the university decides that they are not going to pursue patent protection for it then it goes back to the creator. Now how much the creator can then improve upon that and still keep it as their own still is not really clear. I honestly don't know who makes that determination, and I don't know if there is anyway to clarify that in a policy even if you wanted to.

**CARINI:** Well sometimes these things never go anywhere though they could potentially.

**ARNOLD:** Right.

**CARINI:** So 2.D.2, what does "negotiate an option to license" mean exactly? Page 5.

**ARNOLD:** My understanding when I read that is that that would be an option to license to an entity outside of the university to contribute to the further development. So you could almost develop a technology, find some company that is interested in that, but feels that it is not ready and in general is not ready to be patented at the point but if it was furthered developed could be patented, so you could set up an agreement with commercial entity that would be willing to provide support for that further development and at that point and also possibly support funding for the patent and so on down the road from there

**CARINI:** So that would be a way out of this?

**ARNOLD:** Right.

**MCROBBIE:** Bob?

**ENO:** It seems to me there are a couple issues that relate to this. One is the university to try to provide, through IURTC or independently, provide gap funding essentially to allow the inventor or creator the opportunity to improve the work using university resources in which case it would move back to IURTC in a later stage because it would have been sponsored as a University Work with university funding. The creator can seek external funding not using IU resources in which case the creator is moving free and clear of IU. The question is always going to come up whether you need a new patent for the improvements, or if the improvements themselves you're talking about are patentable, but I think that probably the way to discriminate that, and I refer to Beth and Steve on this, is with the source of funding and venue in which the improvements are made.

**TANFORD:** I have a two-part question that's partly legal so Beth if you listen as well. It has to do with – since I am a lawyer, I am always concerned with what happens if things go wrong and people start getting lawyers involved – and I noticed with respect to Copyrightable Intellectual Property there is a lengthy section on dispute resolution that sets up first a panel and then appeal to the grievance committee. Now my first question – and this is mostly for Beth – whether this is intended to be an exhaustion of administrative remedies, a mandatory procedure that a faculty member must go through before filing an independent lawsuit? If so, it doesn't say that it is mandatory or optional on the part of the faculty. The second part of it is when I switch over to Patentable Intellectual Property there is absolutely no provision parallel to this one on resolving disputes over ownership or control and was wondering why there is NO procedure provided for Patentable Intellectual Property where there is an extensive procedure provided for Copyrightable Intellectual Property?

**CATE:** I will take your questions in the order that you asked them. Your first question, as I understand it, is this supposed to be an administrative remedy that must be exhausted before someone files a lawsuit?

**TANFORD:** It says for example, it says, "Creators who are dissatisfied with the outcome of mediation *may* appeal through the normal grievance channels." And if it meant that they were supposed to use that process before going to outside litigation, it doesn't say so.

**CATE:** Well, we can't really ever prevent anyone from turning around and filing a suit if they don't go through internal remedies to begin with. Anyone can go out and file a lawsuit in the first instinct. Then they will face questions from the court whether or not they have exhausted whatever administrative remedies are available to them. Whether the committee drafting was intending for this to always be the case, I am not sure we could impose it and say you must go through this before you file a lawsuit for the reasons I just mentioned. I don't know if that was the intent, Bob?

**ENO:** It was the intent.

**CATE:** In terms of patent versus copyright, again, I would probably have to refer that to the drafting committee although I will say this, my understanding on how things currently work is with respect to patent ownership, in other words whether Patentable Intellectual Property is owned by the university under the principles of the IP policy because of use of university resources or federal funds or whatever or it is something an individual created without the use of university resources. Right now, IURTC does that review, does sort of an exhaustive sit down and talk with you during the process, what did you use, when did you use it, and so on, and makes that determination but whether there should be a mechanism for appealing a decision if someone disagrees with the fact-finding or interpretation of the policy and its not here but this...

**TANFORD:** Then the question, I guess is to the committee, whether it was intentional that there was a dispute resolution for copyright but no dispute resolution process for patent—accidental or what?

**ENO:** They were not parallel situations. In case of patent, patents apply to any work that is created using university resources. The university owns the patents and the rights to dispose of the various...

**TANFORD:** But that does not eliminate the possibility of a dispute. For example, over whether in fact university resources were used.

**ENO:** That's correct and that's not in this document. We did not consider that. We considered the issue when it came to copyright because the issue had to do with whether or not it qualified under "traditional works of scholarship" or "university works", but there is no comparable divide within the university structure. The question is whether it is within the university structure or outside the university structure.

**TANFORD:** Then I guess, I would urge the committee to put in some kind of appeal or grievance process for patent similar to what they did for copyright. As a lawyer, I can imagine an equal number of disputes could evolve over either issue. You have gone through a great deal of trouble to provide definitions of what is within and without the scope of the patentable provision.

**ENO:** Presumably you are talking about undisclosed intellectual property because if it is disclosed presumably it disclosed.

**TANFORD:** I am just talking about a dispute resolution process. I don't know exactly what will come before it. There just isn't one right now and I think there should be.

**MCROBBIE:** We'll take that as noted. Yes?

**BINGHAM:** A question for Beth or the drafters regarding the definition of Exceptional University Support, page 3 under F 1 and 2. And the question is do endowed chairs constitute Exceptional University Support because, if they do, then that would suggest that when we go back to the definition of scholarship everyone in endowed chair falls through the loophole for Exceptional University Support? Is my question clear?

**CATE:** Your question is clear. I am not sure it's actually directed to me so much as the academic community that can judge if that is exceptional support or not, but I understand your point.

**ENO:** It never entered anybody's head.

**BINGHAM:** Because there are other references to "exceptional support" about things like being given leave from teaching in order to develop something and endowed chairs come with course releases and they come with research funds that other people don't have and they come with summer salary so basically you have created a big loophole for a whole bunch of folks such that everything that they do is no longer a Traditional Work of Scholarship.

**ENO:** I see what your point is. I think it never occurred to the committee that the type of support we were talking about the support for research projects would be covered by types of support that are types of support for general research needs.

**BINGHAM:** But endowed chairs typically conduct research projects.

**ENO:** We all do. I mean everybody's resources support, ordinary resources, support university projects. Certain types of appointments come with different types of ordinary resources. If it were necessary, I can't see any problem with adding "support that is entailed with an endowed chair appointment", under F2. It would be a minimal thing. I can't imagine it would have any objection at any Council level.

**MILLER:** I think Kelly has already done it.

**ARNOLD:** Those are very important things for us though to catch at this point though because we want to have this represent our understanding of what this policy should be. So those are exactly the kinds of things that we need to find at this point, things that have just through the process thus far not been found. Thank you.

**MCROBBIE:** Larry?

**THIBOS:** I have a couple of comments about the preamble. I think it is a good idea to retain it when you do the rewrite because it presents a more plain English description of some of the rationale. In that regard, I would like to make a comment about the 2<sup>nd</sup> paragraph where it talks about the rationale for the policy saying that the primary goal is to "further encourage and strengthen the creation of intellectual property at Indiana University, and ensure that faculty, students, and staff see engagement in creative work as a rewarding focus of their membership in the University community". It basically says that the work is its own reward and I would agree with that. I think there is also a second purpose in generating IP that is more outward looking and that is that it benefits the citizens of Indiana and the world. I think outward role in statement like that would perhaps the new president articulate the value of Indiana University to the state. Now that was one comment.

The second or perhaps more substantive question I have is 4<sup>th</sup> paragraph in the last sentence. It says that "Stipulations concerning intellectual property ownership specified in contracts and grants are determinative, and supersede other considerations." Now I would complete that sentence, in the absence of any other wording, to say "including this policy." And that was really the intent of the committee that any negotiated contract and grant could be permitted in contradiction of the policy. Was that the intent?

**ARNOLD:** I think so yes. Bob?

**ENO:** I think it makes clear that stipulations in contracts and grants are determinative. That's been at every stage of the policy.

**THIBOS:** I just wanted to make sure that I understood the language because that's kind of an

overarching principle which at least to me is very important that everybody understand.

**ENO:** When the Office of Contracts and Grants approves a contract or grant the acceptability of the conditions of the contract are supposed to be considered at that point.

**THIBOS:** Which comes first I guess? But I made my point. I should also comment, while we are on that topic, on page five, Part D i. it says that “Creators shall assign ownership of all patentable inventions or discoveries to the University.” That leaves the impression that the university owns all intellectual properties discovered at the university. It is my understanding that common practice here at the university is that the university does retain the right to reassign ownership to external sponsors as stipulated in grants and contracts. And if that’s correct then a statement to that effect might help clarify where that ownership lies.

**ARNOLD:** I believe that this is correct that actually most external grants actually does specify that ownership does lie with the university for intellectual property unless there are some words that it is an exception. But that, actually, I think is the general rule, for externally sponsored projects the university is the owner of that intellectual property that is...

**MCROBBIE:** That’s the Dole-Bayh law basically.

**THIBOS:** But it’s also the university.

**MARTIN:** There are some exceptions where sometimes we’ll be involved with a contact for a specific deliverable maybe owned by a sponsor, as an example a clinical trial, which of course Optometry has routinely. It’s not uncommon for a lens company to retain ownership of intellectual property developed that applies immediately to that lens and the university won’t try to claim ownership simply for the reason they have invested probably millions of dollars to that invention and it will protect other IP.

**MCROBBIE:** Other comments, Brad?

**BRAD WHEELER:** This is in the spirit of a very narrow possible reading of something that I’ll ask the committee, this is on page 10, paragraph (f) in the major section about Online Instructional Materials the first question would be if a student turns in an essay and the faculty wants to make use of Turnitin, how would that apply with this paragraph? So if we read this somewhat carefully the restriction it says that the ownership of that essay would still reside with the student if we believe that an essay is an online instructional material, which we may or may not. But the concern I have is that the way Turnitin works, as you know, it compares the writing of an assignment that comes in to other writing that’s in the database and that comparison is beyond the course. So that work is being compared outside of the course and contributing outside of the course and it is a commercial service we pay for. It may be that, if we believe this is a concern, maybe we do not, the striking of the word “utilize” might be enough to take care of it because we’re not redistributing it, it’s not going anywhere. Our arrangement with Turnitin does not allow Indiana essays and works to be part of their database for comparison; ours are separate and we just compare among ourselves. That was part of our stipulation. So that is a possible concern. My understanding right now is that we are not obtaining written permission from

students to have their essays run through Turnitin; they do not have an opt out option. So I think finely rewording this may keep us out of trouble there later and given that I think many of us do value that service.

**ARNOLD:** So your change would be to strike the word “utilize”?

**BRAD WHEELER:** I’ve read it through four times and, of course, Beth writes words better than I do, but my thinking is that if we remove the word “utilize” that could get us out of conflict with how I read the policy—we’re not redistributing it but we are utilizing it beyond the boundaries of the course itself. So if we decide we want the boundary not to be the course itself but there’s a lot of reasons that makes sense to keep, I think.

**CATE:** The only thing I will comment on that actually I wonder if you can read, if you are concerned about this falling under online instructional materials, that the purposes of the course would include making sure that it is original work and so that is still allowing you to utilize it for that purpose so that might be another answer.

**BRAD WHEELER:** I am sure there are various wordings the committee could choose that could resolve the situation; I just think there might be a slight ambiguity there that could...in the way that it’s currently stated.

**MCROBBIE:** We can take that one as noted too for attention. Other comments?

**CAPSHAW:** The Distributed Education Committee has been working on commenting on this for several years but I am a new chair of that committee so I have not been involved with these discussions. But a few things that the committee wanted to suggest I would like to bring up. That first paragraph really, we’re setting up a distinction between the University and the Creator and it seems like we might want to put in that last sentence something like “we respect the intellectual property rights of the Creators” because...

**ENO:** Where are you in the top?

**CAPSHAW:** That first paragraph, the last sentence. In the Preamble. That’s just a suggestion. We are bringing up this distinction between the University and the Creators and so to make it parallel that would be a good idea. One thing on page 11 and 12, the draft talks a lot about “faculty creators” was that put in by design or by chance? That section really talks about “faculty creators” rather than creators in general.

**ENO:** Faculty creators were the real focus of the committees’ attention. Are you thinking about staff creators or student creators?

**CAPSHAW:** I would say more staff creators but I mean why are faculty creators distinguished?

**ENO:** The distinction between faculty and staff largely hinges on the Traditional Works category which is a carve-out. The normal traditional scholarship that we do is not claimed by the university because there is a tradition of not claiming it which is such an established history that

it would sustain a university claim. That is characteristic of works done by faculty where the university has made the claim; works done by staff are generally regarded as works for hire as dependent on the appointment to the job and thus there is no carve-out to the job. And thus there's no carve-out that's parallel.

**CAPSHAW:** It seems like there might be a situation where faculty and staff are creators within the University Courseware area.

**TANFORD:** They are both defined as such in I. A on page 2. There is a definition of Creators on page 2 that is different from faculty creators in the section you referred to earlier.

**ENO:** Can you say that once again please?

**TANFORD:** Yes, the very first definition on page 2, it defines creators as being faculty, visitors, staff, or students. And then over here it creates a policy where apparently only the faculty creators and not the staff and student creators.

**ENO:** That's correct. That's because the relevant distinction between materials the university will not claim ownership to, Traditional Works of Scholarship, except in the faculty instance.

**CAPSHAW:** Ok but it seems like there might be a mixed case that might not be covered by that.

**ENO:** If you are picturing a staff member and faculty member working together to create courseware, which may or may not be University Courseware, in the case of the faculty member the courseware is considered a University Work because there was no Exceptional Support provided. The question is whether or not the staff member can claim equal ownership or similar ownership to the faculty member and the default outcome that the policy points towards is that the staff member is envisioned of having pursued it in the course of the staff members' appointed work. And therefore the staff members' contribution or the staff members' rights to the product belong to the university.

**CAPSHAW:** And then the last question that the DEC had was if you could explain more the rationale for the allocation of the revenue stream?

**ENO:** The new revenue adds several different categories—what it intends to do—compared to the old distribution—shift percent of revenue towards the direction of the creators. I have to confess that I cannot recall right now whether the current percent for creators is 30 or 35 [35 percent] 35, so the same for the creators but there is an additional incentive because the creator keeps control of 15 percent in terms of having it reassigned to the creators laboratory or laboratory-equivalent. The unit closest to the creator gets an increased incremental amount of the revenue. The University revenue, which is the most distant from the creator, is trumped to a very small amount. And of course we put the OTT on a completely different financial basis by making it self-sustaining and assigning it revenues and trying to provide an incentive to the OTT to improve performance.

**CAPSHEW:** And so if a faculty member creates a DE course without a whole lot of departmental support or lab support, where would the lab portion go?

**ENO:** If there is no Exceptional Support than it belongs to the creator. So only a University Work, if there is Exceptional Support that is provided.

**CAPSHEW:** No, what I'm saying is that the lab is 15 percent, right? If there is no lab where does that go?

**ENO:** You know this has gone through several redraftings since I had a hand in this so I'm not sure where it sits in here but we had that issue arise in a prior DE committee and we responded to it by coming up with language that should point toward laboratory-equivalents. At the time that was satisfactory to the DE committee but I can't tell you where it is in the document.

**ARNOLD:** I think it's on page 13 in i.(b). It does say that if there is no such entity in terms of a research group that portion would be assigned to the administrative unit of the creator, so the department.

**CAPSHEW:** So the department has 35 percent.

**ENO:** No, 35 percent goes to the creator and then the department would have an extra increment of 15 percent.

**CAPSHEW:** Plus the 20 percent.

**ENO:** Yes, plus the 20 percent.

**SEPT:** The entire administrative component.

**BUCUR-DECKARD:** It seems to me that if there is a research account that is supported by the creator and supervised by the department and so actually the creator retains that 15 percent it just goes through the unit but the creator decides what happens to it.

**ENO:** The Creator is supposed to maintain control while appointed at the university over that revenue stream.

**CAPSHEW:** And then in terms of, I think you mentioned that other universities have different kind of allocations and ours is fairly generous for the creators.

**ARNOLD:** I don't have any data to support that.

**ENO:** It's more generous, from a faculty point of view, than our existing policy and it is in fact comparatively quite generous to the Big Ten schools.

**CAPSHEW:** Is it the highest?

**ENO:** I don't know what it is now but I think two years ago it was the highest when we drafted this policy in its original form.

**CAPSEW:** Well it seems like if we're trying to encourage creativity than we might want to think about increasing that.

**MCROBBIE:** David you've been waiting patiently.

**WATERMAN:** Yes, a software question, I'm sorry if I missed something and I know you said this was something you addressed but the original concerns about the first draft of this from people in my department and some others was that software wasn't mentioned as an example of Traditional Works of Scholarship. And then in here the first time it appears on page 3 the definition of Copyrightable Intellectual Property includes software. And then if you go over to page 5 where it discusses Copyrightable Intellectual Property and it says the University shall assert no claims on Traditional Works of Scholarship but it never mentions software. And notwithstanding the legal issue may be slight, I'm trying to say what should I say to my colleagues who look at this again and say that software still isn't under Traditional intellectual property and there's still nothing in this document that says the university won't grab my video games or websites or other artistic works that are created and are definitely software?

**ARNOLD:** Well, there may be two distinctions there. One is something that is created outside of the university which the university has no claim to. If you work on something at home...

**WATERMAN:** I'm talking about things that are created...

**ARNOLD:** Well things created within the university, I think that the trouble with defining software as a Traditional Work of Scholarship it depends on how you categorize the word Traditional. So if you say that in 1970, was that a work of scholarship, well maybe it wasn't, and if you go back further—but almost everything else is considered a Traditional Work of Scholarship at that point in time and those haven't changed. So we would be adding something to the Traditional Works of Scholarship if we put software in that category. And I think at this point we just weren't quite ready to do that.

**WATERMAN:** I understand that. But it says you're not going to grab somebody's books but it doesn't say you're not going to grab their software and so that's what got a lot of people excited.

**ENO:** George, why don't you take a crack at it.

**ALTER:** My understanding is that the distinction is between Copyrightable and Patentable. Software is unusual because it can be in either of those categories. But if the creator determines that the software is not patentable then it falls under copyrightable and becomes a Traditional Work of Scholarship.

**WATERMAN:** Well it just isn't that clear from the document. My understanding, the sort of software I am talking about, for example the creation of video games or things involving the web or this sort of thing, will never be patentable under any circumstances.

**ALTER:** Then it falls under copyrightable.

**WATERMAN:** It's just not clear. And it's not that I feel that the university is being grabby I'm just trying to figure out...

**ALTER:** Well my understanding of the history of this document is that there was originally a distinction of that sort and as the document evolved it was decided that it was actually better for software not to mention software explicitly and to make this copyright-patent distinction and that leaves it up, to a large extent, to the creator to determine when it falls outside that. But software is always copyrightable, which puts it under the copyright rules.

**MCROBBIE:** Bob?

**ENO:** The term "Traditional Work of Scholarship" is not created by this policy. The policy appeals to the notion of what Traditional Work of Scholarship is and the original committee understood that this definition had been established in case law. Universities not having made claims of ownership over a certain body of scholarship over a long period of time, that claim is no longer assertable, it's not clear that software cannot be asserted to be a university-held property. It is not clear that software falls under Traditional Works of Scholarship because there is no long history that establishes that type of precedent. Under those circumstances, we were not trying to innovate with the term Traditional Work of Scholarship and so what you have here is an artful attempt to have software treated like other Traditional Works of Scholarship but not to assert a claim that could be refuted or rejected by the Trustees that this is a false definition of software under a concept that was inappropriate.

**WATERMAN:** That sounds very interesting. So if somebody did create, for example, a video game which some people in our department do, you are saying that since that isn't a Traditional Work of Scholarship that it might fall under the definition of products that, even if it was created by a faculty member, that the university can decide that it had a share of revenues that arose from the creation of that product.

**ENO:** If we asserted it was Traditional Work of Scholarship we might be wrong in making that assertion. So we cannot make the assertion.

**MCROBBIE:** We had 45 minutes allocated to this I want to cut this off. Can we try to wind it up? Erik?

**BUCY:** I was just going to say briefly this, I mean I think we need to appreciate the past and the heritage of what is traditional scholarship but at the same time look forward so we don't have to revisit the policy every few years and digital media is here and increasingly people in our department and maybe a few other departments are going to get tenure and be recognized nationally as scholars and creative innovators on the basis of digital creations so maybe if there's another way to phrase it I think, if the committee will just consider that, it might be helpful. But we're going to have an interesting discussion when we take this back to Telecomm and the bulletin board is going to light up again.

**MCROBBIE:** Other comments?

**TANFORD:** Just a procedural question, at the beginning, you had said that this was going to go through another draft but you seemed to suggest that you weren't going to be doing that next draft? So my question is for some of these there are some things in here that are some specific drafting, ambiguous language, suggestions that don't affect the substance but ought to be considered in a redraft to make it clearer. To whom do we address those without wasting our time?

**ARNOLD:** Send all that to Kelly and she can forward it to those of us that are drafting. And we do still want input. If there are issues that come up after this but sometime before two hours before the next time we visit this body please send those along to us because we do want to get this to a state where everybody can be slightly unhappy with but satisfies most of us.

**MCROBBIE:** Yes?

**THIBOS:** One more question. I have a question about protection of academic freedom on page 15, section 5 C where it says that "the free dissemination of information shall not be constrained by the sponsor." It sounds like it doesn't have any wiggle-room at all, there's no qualifiers like "unreasonable constraint" or anything like that. But the sentence continues on to say "except as stipulated by other University policies." So it sounds like there is an escape clause. There may be sometimes when the free dissemination of information might be constrained and I was wondering if that was a hypothetical statement or do those other university documents actually exist?

**MCROBBIE:** Steve?

**MARTIN:** Well, we do have university-wide policy on publication that does require that we conduct research that can only be published. I think what this addresses specifically are delays for review of patentability that we're not disclosing anything publicly without filing some kind of patent application. But we do have a university-wide policy that requires that research be conducting that you are basically free to publish, other than delays for review of patentable material or reviews for proprietary information, information that was given to us. I think that's a policy that is under separate review right now.

**THIBOS:** Thank you.

**MCROBBIE:** Let's take one last question to wind this up. Was there a hand over here somewhere? No, any other comments? Ok, when can we expect to see another draft, or the draft that you reference? When will that come back?

**ARNOLD:** I believe in speaking with Ted that we are not talking about the next meeting of the BFC but the following meeting. Sometimes in November.

**MILLER:** Well my hope is that if there are some things that we really do need to modify I

would prefer to do that sooner rather than later. Although the next time this document is scheduled to be reviewed is next week, one week from today at the University Faculty Council meeting. And so there will be some more discussion there so maybe it won't be possible to do anything, maybe we shouldn't do anything with this document until we get there and hear this broader range of comments. So I suppose what we're talking about is beginning after next week Tuesday and redrafting and the next time this is scheduled to be on our agenda here is November 14. And hopefully we will vote on this policy on November 14<sup>th</sup> and the UFC meets in the final week of November and hopefully there will be a vote there. So the redrafting has to be done in time for our next meeting on November 14<sup>th</sup>. The Indianapolis Faculty Council meets roughly at that same time period and they are going to have to be looking at whatever the final draft is as well.

**MCROBBIE:** Ok, are there any standing committee reports? Any Old Business? Any New Business? We stand adjourned.

Meeting adjourned at 5:06pm.