

FACULTY SENATE
January 15, 2014
346 LEON JOHNSON
4:10 PM – 5:00 PM
MONTANA STATE UNIVERSITY – BOZEMAN, MONTANA
Minutes

Members Present: Arnold for Igo (Ag Ed), Babbitt (Physics), Bennett (English), Bolte (Music), Brester (Ag Econ), Cantalupo (Ext), Christopher (HHD), Durham (COB), Gannon (Bio & Chem Eng), Greenwood (Math), Herbeck (Ed), Hostetler (GC), Kohler (Chem & Biochem), Larson (M&IE), Lynch (Psych), McMahon (Ecology), Miller (CE), Moreaux (ARS), Reidy (Hist & Phil), Ricciardelli (Film & Photo), Rossmann (Library), Swinford (Soc/Anthro), Waller (Hist & Phil), Wiedenheft (IMID), Wilmer (Poli Sci), Zabinski (LRES)

Others Present: Larry Carucci, Martha Potvin, Leila Serman, Chris Fastnow, Ron Larsen, Robert Mokwa, David Singel, Gregg Aytes, Durward Sobek, Shelia Bonnard, Eric Oak, Glenn Duff, Brett Walker, Justin Cook, Daniel Adams, Aleks Rebane

Chair Mokwa called the meeting to order at 4:10 pm, and a quorum was present.

Senate Business and Announcements – Chair Mokwa, Chair-elect Reidy

- The minutes from December 4, 2013 were unanimously approved.
- Mokwa pointed Senators to the Legal Counsel website where policies are posted for final review and comment: <http://www.montana.edu/legalcounsel/>
- Administrative Surveys – Administrators will have the opportunity to make a statement of accomplishments to accompany their survey. They will go out at the end of February.
- Courses and Programs
 - Four (4) courses have been approved by CPC; Senators should review them, as posted on the FS web site, and they will be voted on next week.
 - Senators will be voting to accept, via email on Friday, two programs that must go before the BoR by the end of January. Coming from MSU, a name change from Industrial Engineering to Industrial Management Systems Engineering, along with a new minor. The request is faculty driven and addresses increasing student enrollment and program evolution/progression. Gallatin College is requesting a certificate that is driven by needs of community and GC, itself. Federal funding has been granted to offer the course.

Ethics Hotline for Anonymous Reporting of Ethical Violations – Daniel Adams, Justin Cook

- The Ethics Hotline (EH) is anonymous reporting tool, for four MSU campuses, used to report violations of ethical standards which might include Montana Standards of Conduct and Code of Ethics, MSU's policies and procedures, as well as rules related to research. It is geared more towards faculty and staff but may be used by the general public and students.
- It is a service from a third party, Ethics Point, that has been purchased. Certain federal guidelines recommend having this service in place.
- Reports may be submitted online or by telephone.

- Different areas on campus (HR, Athletics, Institutional Equity, e.g.) are headed up by specific individuals for reporting.
- Daniel Adams' office, Institutional Audit & Advisory Services (ISAS), is an independent entity reporting to the president, and their role is to make sure each "area" follows up with the anonymous reports. They also have access to all reports.
- Before utilizing the service, individuals who have concerns are encouraged to first speak with their supervisors.
- Discussions ensued:
 - Lynch asked what happens after a report is received. Adams stated that he determines if the report is substantiated or unsubstantiated by gathering information.
 - Walker asked Adams to elaborate more on the review techniques. Adams stated that his main focus of expertise is in accounting and finance and that he is not a certified fraud investigator. However, he has received training from MSU's professional organization on campus fraud. If an issue arose regarding misuses of a P-Card, e.g., he would gather data from university business services and review to determine if he believed something was amiss and conduct an interview.
 - Walker continued and asked how investigations would be conducted if someone is reported to have violated the Montana Code of Ethics. Adams stated that in all cases his office would gather information, interview people - people who may have information relating to the situation - and ultimately interview the person who was named. Cook embellished on the process by stating that if there was an ethics violation, Adams would be the first person to be notified, and he would be working with Cook. Together, they would determine what group, which may include legal counsel and/or others, would need to meet. Their aim is to minimizing the number of people who are involved however, the process is collaborative. It is not an accusatory process and determining credibility of the complaint is tantamount to whether the issue proceeds or not.
 - The program costs \$10,000 and although the marketing is aimed at faculty and staff, students and the community may participate as well.
 - Walker stated that MSU has a process already in place whereby departments and other units are organized and people can report what they perceive to be ethics violations. He also believes there is no ethical crisis on campus and most students and people on campus don't know what MSU's ethical codes or Montana's ethical codes are. Therefore, asking students to use a kind of ethics matrix that they are uninformed about is unreasonable. He suggested, having students take a course with an ethics professor, as a first step in improving ethical behavior on campus.
 - Walker, Brester and other senators are uncomfortable with having inquiries conducted as a result of anonymous reports about somebody's behavior. Reidy stated that as a professor, there might be concern that he, and others, cannot do their job if they are fearful of being anonymously accused of things. Professors award bad grades and do things that students might not like. The EH might be used as an anonymous retaliatory tool that erroneously suggests something unethical has been done.
 - Adams stated that some individuals who have complaints do not feel comfortable, have no other outlet for their concerns, and will go outside the university because they never believed they had a place to go to. We will now have the opportunity to

review these complaints, write reports, and decide whether they are substantiated or unsubstantiated. This process provides another avenue, another option for individuals.

- Hostetler, senator from GC, provided feedback from the college's union rep. Unlike most of the faculty in senate, GC belongs to a union, and the rep believes ethics issues would be addressed in the CBU. The rep also reported that at the state regulatory level, the allowance of some anonymous reporting of perceived violations is being phased out because there is substantial evidence that a majority of the reporting was done to cause harm/grief to the individual. He stated that there should be a concrete timeline in which the accused/violator should be notified.
- Lynch asked if non-anonymous information goes to HR, when do Adams and Cook become involved? Cook responded that if the complaint go through HR, or through him for research, or Adams for finance, it is the same process. There is not a different process. The current EH proposal allows for web page submission and more record keeping, but it would be the same process as we now have. It provides anonymity. Adams responded that in his area of expertise, there is an existing fiscal misconduct policy that has been in existence for 10 years and anytime something comes into the fiscal arena, he follows that policy and will still implement the same process. Because of this new program and the potential for increases in reports, Adams and Cook are advising and aligning it more with the four campuses.
- Cantalupo asked, on average, of all the reports, how many do Adams and Cook get and of those, how many are substantiated? Adams responded that reports coming from all different departments (HR, Athletics, etc.) do not get reviewed by him. Instead, he follows up with the contact of the specified department to ensure reports don't remain idle and are addressed in a timely manner. Adams only reviews the fiscal misconduct issues, the area of his expertise. There are about seven (7) reports that come in (accounting and finances) in a year and almost all of them are substantiated once they get to Adams.
- Lynch suggested that wording such as "perceived ethical violations," or "presumed ethical violations" be used on flyers, etc., instead of "ethical violations," as it sounds very much like an assumption/guilt before the fact.
- Kohler stated that he has a lot of concerns about "due process." What sorts of rights do the people have who are accused anonymously? How is this carried out, etc.? He stated that a lot of new things have been put into motion that really need to be better articulated. Many universities have what is known as an ombudsman, as did MSU in the past, and he believes there is value in that kind of an office as it provides an extremely important function on a university campus. He would much rather have a trusted long-term faculty member on campus than some dot com organization: This hotline sounds like a kind of for-profit-ombudsman.
- Babbitt asked Adams, hypothetically, if there was an anonymous tip about him (Babbitt), would Adams contact him if there was no substantiation, no records and, would he know if he was under investigation? Adams stated that this was a unique kind of query in that it was not a situation he had ever experienced. He went on to say that Babbitt's hypothetical doesn't have any criteria that he could act on. If he had just received a report and nothing was substantiated he would, most likely, not contact Babbitt.
- Walker stated that he was confused by Adams' answer, that someone being reported for an unethical behavior would be a unique situation, when the entire purpose of

the EH is just that. He went on to say that there are law enforcement and trained professionals who should handle these situations. Adams' restated his position by saying that if a person is just being referenced as unethical and there was no written documentation, he has never witnessed such a situation. He went on to say that for the fiscal misconduct policy, and as a trained professional, every time something comes in, he, Robt Putzke, Leslie Taylor, the Chief of Police, discuss how best to handle it. Typically when things are a complex accounting situation, Adams would look into it first. If criminality is involved, university police would contact the accused, first.

- Potvin stated that there was another facet of the process that had not been explained. Anonymous tips coming in are given an identification number; sometimes the individual submitting the complaint would allow being asked questions, further questions. So, initially a report may be unsubstantiated, but for some individuals they would allow you to contact them if you needed more information. Adams concurred.
- Babbitt stated that it sounded as if those reporting might be "quasi-anonymous." Adams stated those reporting would still be anonymous. Reporting online requires a password and a key. When those making a complaint do so, he is notified there is a report, he goes online, examines it, evaluates it, asks any follow-up questions and hopes that the person comes back to access the system via the key and password and communicate that way, if they wanted to.
- Bolte stated that last year senate had a long discussion on sexual harassment, and he remembers that if a faculty member is notified, they are supposed to report the incident immediately. He also remembers that process as being non-anonymous. He would like to know how to proceed, if a student comes to faculty? Does faculty report it to this system, EH, or does faculty go through the chain of command of the other offices? Adams answered that faculty would go through Diane Letendre and use the process already in place. He recommended against going through the EH, which is a tool for guaranteeing anonymity.
- Waller asked, as a philosopher who has a lot of unemployed friends who specialize in ethics, what Adams' training was to be able to run an ethics hotline such as this? Adams replied that he is a CPA who has worked for MSU for five years. He has already conducted a number of investigations and has had multi-day training on conducting campus investigations provided by the Associate of Colleges and University Honors.
- Bennett suggested that more complete data about what exactly is going on and to a better understand this process, be gathered and presented. Adams and Cook stated they were already in that process and would be happy to present that data.
- At this juncture both Adams and Cook left senate and discussion among the senators ensued.
 - Reidy would like a more in-depth discussion of how senate should proceed. The fact that this EH was implemented without FS input is bothersome. He would also like to know this policy's origin.
 - Potvin stated that the policy was discussed at the last PEC meeting and faculty were present. She believes there are barriers to whistleblowers even if they think they can go one level above. In terms of trying to identify issues that can be resolved without putting the institution at risk, that was the direction that was taken when thinking

about this policy. The Provost went on to say that she has seen cases at MSU where people have charged ethical violations, faculty against faculty, and administration examines those. Sometimes the accuser says, "I know I'm going to be skewered for bringing this up." She believes the ability to bring things forward for consideration, without fear of retaliation, should have some sort of outlet.

- Miller stated that he had spent 20 years in the federal government involved in the fraud and abuse hotline and the EH program seems to be very similar and mirrors what is done in the federal government. He hears from senators that they don't trust the process as in "How do I trust that I am not going to be unjustly accused?"
- Aytes stated that as an administrator on campus, this policy is unsettling and, at a societal level, there is a concern about how things are done in various places, particularly in public entities such as universities. Faculty resistance might be perceived, in the public if we were to strongly resist it, that MSU doesn't want people to be able to report when bad things happen. Obviously, that is not the intent, but there may be plenty of opportunities for the public to express those. I'm not saying this is the best way, but it is part of the reality we have to face.
- Larson stated that the adjudication process seemed to be what people were uncomfortable with.
- Babbitt asked who developed the policy and whether it is something that comes through senate, or not. He stated that Adams did not seem to have a set policy about what happens under certain circumstances and he was unable to answer his question.
- Larsen remarked that it feels like it is "after-the-fact." How do you protect the integrity of the accused? He doesn't think the process was well thought out, and believes Adams has a standard practice that comes from fairly vetted information. By the time it gets to Adams it has been heavily vetted and there is no longer raw data. Larsen suggested just asking Adams how the accused are protected.
- Lynch stated that he had a sense that the people heading each of the review groups such as HR, etc., have processes and each must differ from one another. Maybe there are protections in all or one of these processes but, is senate in a position to review all of them?
- Mokwa stated that on one level, Adams will get a complaint and feed it out to one of those groups and they will proceed as they always do when they get a complaint.
- Singel, picking up on Larsen's comment about the process as it is initiated, he is concerned about the security of all these half-anonymous complaints. If someone complains in person, that is different than doing it through some third party. How is that secure?
- Lynch asked about records. What records are being kept and for how long? Suppose the accused is found not-guilty, are their records still available if someone wants to access them and prosecute the case outside of the university?
- Babbitt stated that records may be retrieved via the Freedom of Information Act.
- Walker recommended that it be put on ice until they can answer some basic legal/faculty rights; maybe simple Constitutional rights questions about the data, how it is to be used, what the processes are. This institution already has ways to report ethical violations and this use of money. He does not believe there is a way the ISAS can properly investigate these reports and keep anonymous the person who reported it because you have to follow that information and ask questions, that there is no

way to do due diligence so no one will remain anonymous in any kind of serious allegation. He believes a written statement should be presented to senate that can alleviate some of these concerns about the information and that they stop until people feel confident about what they are doing.

- Mokwa suggested informing Adams' office that senate is assembling important questions and before this project is moved forward, senate respectfully request to delay implementation of it.
- Christopher stated that she was online and was able to make a report.
- Miller asked where this policy sits within the university.
- Potvin stated that it sits under Adams.
- Mokwa added that the policy was independent, although Adams has some relationship with OCHE.
- Swinford remarked that since the policy is multi-campus, he believes it extends beyond us. Since Adams is independent, Swinford is not sure that our motion really carries much weight. Swinford would like to examine whether or not the flyer (handed out) guarantees anonymity throughout the process, as this is a legal process, and whether or not Montana law allows prosecution without confrontation of the witness or whether the university becomes the actioning party – he isn't certain Montana law allows you to make anonymous complaints and then not stand up. If that is the case, the policy will allow dragging someone into this who thought they would be anonymous throughout the process, but potentially wreck their life, because of a guarantee this policy implied.
- Babbitt stated that he believes the policy originated and came from Adams as many administrators go to meetings, hear something and bring it back, especially when it has to do with compliance.
- Bolte made a motion that senate ask Adams to cease and desist until senate can have a longer discussion about the policy.
- Mokwa restated the motion to placing the policy on hold, to have an opportunity to have more thorough discussions about what senate raised today and bring up questions.
- Babbitt seconded.
- All in favor → unanimously accepted.

As there was no further business, the meeting adjourned at 5:04 pm.

Signature,
Robert Mokwa, Chair

Signature
Michael Reidy, Chair-elect