Florida State University

Faculty Senate Ad Hoc Committee Review Report

Koch Foundation Memorandum of Understanding

July 2011

Charge to the committee

The committee's charge is expressed in a May 18, 2011 email from President Eric Barron to the Faculty Senate and copied to all FSU faculty, deans, and vice-presidents:

"Given the importance of the issue of academic integrity, I would like to formally ask that the Faculty Senate set up a committee to examine the issues surrounding the Koch Foundation agreement and its implementation to ensure that the integrity of Florida State University was protected. I believe it is essential for members of this committee to meet with the members of the faculty in Economics. I would appreciate receiving your findings in as timely manner as possible, as well as any recommendations you might have to ensure that we maintain the highest possible standards in ensuring academic integrity of our programs."

Process

In response to the President's request, the Faculty Senate steering committee appointed a five-member ad hoc review committee, including four former Faculty Senate presidents and a former President of the University (see p. 18). The committee communicated and met with current members of the faculty of the Department of Economics; former Economics faculty at

FSU when the agreement was negotiated who have since left the university; the Chair of the Department; the Dean of the College of Social Sciences and Public Policy; the Dean of the College of Business; the Interim Provost; the Vice-President for Advancement; and the University Counsel. Approximately one-half of the faculty in the department responded to our invitation to provide input. In the interest of conducting this review as quickly as possible, the committee invited and received input in several forms: individual meetings with the full ad hoc committee, partial committee, or with one of the co-chairs only; virtual meetings via Skype; and email or telephone communications.

We reviewed the text of the donor Memorandum of Understanding (MOU); a Donor Partner agreement; archived emails from the Department Chair, Dean, Provost's office, and faculty members during discussion, adoption, and implementation of the agreement; new course approval paperwork for ECO 3131, "Market Ethics," and the syllabus for the spring 2011 section of ECO 3131; current FSU Foundation gift agreement templates; FSU governance documents (department bylaws, the University Constitution, and the Faculty Handbook); and the FSU-UFF Collective Bargaining Agreement. Although we were of course aware of the large volume of reporting and commentary about this topic in the popular and professional press, none of these items formed any kind of primary source for our work. But other outside documents provided supplementary help, especially reports from similar faculty ad hoc review committees about similar issues at other Research-I universities, including the University of North Carolina at Chapel Hill and the University of Illinois at Urbana-Champaign.

Our Findings (pp. 3-13) and Recommendations (pp. 14-17) follow.

I. Findings

1. The committee wants to emphasize that the focus of this review is not political or intellectual advocacy, of whatever kind. The question at issue is outside influence on the academic mission of the University, especially faculty hiring, faculty evaluation, and faculty oversight and management of the curriculum. The committee also wants to emphasize that external funding and expertise are celebrated and eagerly solicited by the university, with proper controls. We could not do our work without such generous support.

2. The committee finds that the faculty hiring to date associated with the agreement has been appropriately governed and managed by FSU faculty and administration.

Articles 17 and 3(b) of the Memorandum of Understanding (MOU) state global conditions for the agreement that are solid guiding principles. Article 17, "FSU Supervision and Control," states: "Subject to the terms of this Memorandum and future Donor Agreements between the Parties, *FSU will supervise and manage all Affiliated Programs and Positions and primarily control the selection process* of individuals named for such Affiliated Programs and Positions" (emphasis added).[1] Article 3(b) states: "The Professorship Positions will be recruited and hired *in a manner consistent with both the FSU Faculty Handbook* and CGK Foundation's intent to support the SPEFE program" (emphasis added). In the matter of the two faculty hires that have already been accomplished under the

[1] We note that exclusive faculty control is not the necessary model; for example, eminent scholar chairs funded with state matching funds have an outside member on the hiring committee, but such outside representation does not have majority power or veto power.

conditions of the agreement, FSU did indeed, in practice, primarily control the selection process, and recruitment and hiring was conducted in a manner consistent with the FSU Faculty Handbook. FSU, not the donor, selected the two faculty members who were hired, and there is unanimous agreement among all parties that these two faculty hires are exceptionally well-qualified scholars and teachers, by any measurement.

3. The committee finds that the donor Memorandum of Understanding (MOU) elsewhere contains several phrases that could open the possibility of undue outside influence in the hiring process.

a. Appointment of Advisory Board. According to the terms of the MOU, hiring for the donor-funded faculty positions is managed by the departmental Executive Committee and by a three-person "advisory board." The membership of that advisory board is determined by the donor, in consultation with the department chair: "an advisory board (the 'SPEFE-EEE advisory board') will be created consisting of three members. *In consultation with the Chair of the Economics Department, the members will be chosen by CGK Foundation*" (MOU 7.a; emphasis added).[2] In the event (the process for the two hires made in 2008-09), the Advisory Board consisted of two faculty from the Economics Department and a Program Officer from the donor, which we find to be a good model for an advisory board with

[2] The MOU directs the establishment of two "programs" (the "Program for the Study of Political Economy and Free Enterprise [SPEFE]" and the "Program for Excellence in Economic Education [EEE]", both of which are located within an established "center" (the "Gus A. Stavros Center for the Advancement of Free Enterprise and Economic Education,") which defines itself as "part of the Department of Economics" (all of the faculty affiliated with the Center are members of the Economics Department, but not vice versa). For practical purposes, we simply refer to the Department of Economics, except when a sub-distinction seems significant. One symptom of the problem we are charged with reviewing is the tendency of the SPEFE/EEE initiative to function as a synecdoche for the larger department. See, for example, the discussion of the staffing and supervision of the "Principles" courses on pp. 10-12.

advisory powers. But the MOU does not specify that the Advisory Board must have any faculty members—or indeed any university representation at all, although the provision for consultation with the department chair insures a university voice in the selection process for the board. As set forth in the following two items, this Advisory Board as defined in the MOU has the potential to exercise decision-making power in faculty hiring for positions funded by the agreement.

b. <u>Approval power of Advisory Board</u>. According to the terms of the MOU, this Advisory Board must approve applicants for donor-funded faculty positions: "The Executive Committee will submit a list of top candidates to the SPEFE-EEE Advisory Board. The SPEFE-EEE Advisory Board will review the list and make a recommendation as to which candidates are qualified to receive funding. The Executive Committee will then select the individual for the Professorship Position. No funding for a Professorship Position or any other Affiliated Program or Position will be released without the review *and approval* of the SPEFE-Advisory Board" (MOU 3.d.iii; emphasis added).

c. <u>Unanimity requirement of Advisory Board</u>. The fact that the 2008-09 Advisory Board was constituted by two FSU faculty and one donor representative (a good ratio not specified or required in the MOU) opens the door to arguments that FSU faculty could in some configurations (as in 08-09) exercise majority control of the Advisory Board approval process. But the MOU requires a unanimous vote: "The decision rule of the SPEFE-EEE Advisory Board in all matters will be *unanimous vote of all three members*" (MOU 7.b; emphasis added). This article gives veto power to any member of the Advisory Board (all of which members are chosen by the donor, in consultation with the department chair).

Thus, in spite of the solid principles of Articles 17 and 3(b) of the MOU, which state that FSU shall "primarily control" the selection process and that recruitment and hiring will be conducted in a manner consistent with the FSU Faculty Handbook, the committee finds that a few phrases elsewhere in the MOU open the possibility of undue outside influence in the hiring process.[3]

4. The committee finds that the department is, properly, not following a condition in the MOU concerning faculty evaluation.

The MOU refers to Advisory Board participation in annual faculty performance evaluations (Article 3, section "e" of the MOU, especially items [iii] and [iv]). The FSU-UFF Collective Bargaining Agreement does not allow such outside materials in a faculty member's annual evaluation file. The department is, appropriately, not following this provision.

5. The committee finds that the donor agreement expresses an inappropriate interest in department chair selection procedures.

In the MOU budget table (Article 12), there is a line item for "Administrative Costs." Explanation of this item is found in the draft proposal prepared by the chair for the department faculty in November 2007: the donor "has indicated that they would not be willing to commit the proposed level of funding if I do not continue to serve as chair until the

[3] In our review, we encountered one instance where the donor independently sought to participate in hiring activity more than was warranted. At the annual meeting of the American Economic Association in January 2009 in San Francisco, donor officers requested personal participation in the interview sessions, which the department appropriately refused. But then members of the departmental interview team learned by coincidence that a donor representative was nevertheless making independent contact with candidates at the convention for lunch or similar informal conversations, without notifying the FSU interview team.

proposal is implemented. They are willing to help induce me to do so, and this line item reflects that effort."

The committee questions two items on this topic. The first is a simple governance issue: according to standard university governance policies, department chairs are appointed by deans, in consultation with department faculty. The outside influence on chair selection expressed in the draft proposal is contrary to long-standing university governance policies.

The second item of concern is a two-fold conflict-of-interest matter.

i) Because the department chair was himself a subject in the proposed agreement, in our judgment he should not have chaired the departmental discussion of the agreement. (The chair in several communications is very clear that he does not view the appointment as a benefit.)

ii) It is our understanding that the draft proposal was developed for the donor with the assistance of one of its employees who was at that time also a doctoral candidate in the FSU Department of Economics, and according to the record the department chair is the co-chair of this student's doctoral committee. (The student defended his dissertation in Spring 2010; in the biographical note to his dissertation, he is listed as an Academic Program officer for the donor.) The department chair in our judgment should have stepped aside as the co-director and as a member of the student's doctoral dissertation committee.

6. The committee finds that the MOU and its Donor Partner agreements offer several conditions for the Economics Department undergraduate program that are of concern.

Article 5 of the MOU is devoted entirely to what the section heading calls the "Undergraduate Program." The first sentence states that "The creation of the Undergraduate Program to enrich and advance the studies of undergraduate students in economics is considered an integral part of advancing the Objectives and Purposes set forth in Section 1(a) above" (MOU 5.a). This language is potentially confusing in that the Economics Department has of course long maintained an "Undergraduate Program," and it thus makes sense to interpret the term "Undergraduate Program" in the MOU to refer to a new sub-program or supplementary set of activities within the long-standing structures of the department.

In places, the phrase "Undergraduate Program" in the MOU seems to signify in just such a manner, to a "Program Director" who will supervise activities, which in practice (these are details not included in the MOU) have included a new "Economics Club" and a small scholarship program tied to a "reading group"—all of which activities are to be funded by a Donor Partner (MOU 5.c). But the MOU also seems to have some larger structure in mind; it calls for the creation of an "Undergraduate Political Economy Committee," who will "design and propose an Undergraduate Program to the department Chair that is consistent with advancing the Objectives and Purposes set forth in Section 1(a) above" (MOU 5.a). The MOU specifies that this committee's proposal may include course proposals: "Approval of this program will follow current department procedures for approving any new course offering" (MOU 5.a). We have not encountered any other reference to this "Undergraduate Political Economy Committee" in our review.

Our point is that the conditions in the MOU and the Donor Partner agreements relating to the undergraduate mission of the Economics Department are not clear. Because there is a prescription for a new undergraduate course with prescribed content in a Donor Partner agreement (see item [a] below); because a non-tenure-track faculty position defined in the MOU and funded by a Donor Partner targets instruction in large-enrollment lower division gateway undergraduate courses (see item [b] below); and because the MOU spells out attention to the "Undergraduate Program" in terms that seem to exceed just a new "Economics Club" (see item [c] below), we conclude that the MOU and its related Donor Partner agreements are staking a very broad interest in the undergraduate component of the academic program of the Economics department.

With this context, we turn to four specific items of concern relating to the undergraduate mission of the department: a) a donor-prescribed course with donor-prescribed curricular content; b) supervision and staffing of required lower-level undergraduate gateway courses; c) extra-curricular undergraduate programs; and d) procedures for creating a certificate program.

a. New course and curriculum content.

A Donor Partner agreement contains this prescription: "The Department of Economics will create a new course on Morals and Ethics in Economic Systems. The work of Ayn Rand will be among the required readings for this course. Initially the course will be offered to 108 students each term, and eventually increase to as many as 500 students. The college of Social Sciences will also offer this course in an online format in the near future." Since the two agreements were finalized in 2008, the Economics department has created a new course, ECO 3131, "Market Ethics: The Vices, Virtues, and Values of Capitalism." That new course proposal was vetted through the regular university process, which includes department, college, and university curriculum committee approvals. However, these documents do not specify that the creation of the course was a condition of a donor gift. The official paperwork for that approval process also does not specify required reading in the official "catalogue description" or in the statements of "course objectives" and "topics" in the official FSU "file syllabus," which constitute the binding conditions of the approved course proposal. However, the "sample syllabus" required as an attachment by the approval process (the details of which are not binding on the course) does list Rand's *Atlas Shrugged* as a course text, and that sample syllabus is the same syllabus used for the most recent section of the course (Spring 2011). In the details of that syllabus, in addition to several Rand essays as assigned readings, the Rand novel is listed as a "supplementary" text, which is typically taken to mean "not required." However, the course requires an end-of-term examination on this novel and the other course textbook (this exam is not the course final examination), which signifies that in this case "supplementary" means "required." However, students are able to exempt this two-book examination (with full credit) by regular attendance and participation. According to our interviews and confirmed by university course records, the department currently teaches this course once a year (in the spring term), in a single section with an enrollment cap of 35. The course is an elective (not required for the major), but it is required for the new "Certificate in Markets and Institutions" (see item [d] below).

The committee is concerned that this new course moved through the approval process without a clear indication that it was donor-prescribed with donor-prescribed content. These faculty committees need the opportunity to determine whether such prescriptions constitute undue outside influence, as part of their evaluation of the proposed course.

b. Undergraduate gateway courses.

The Economics department requires all majors to take two 2000-level "principles" courses as a gateway requirement for upper-level major coursework: ECO 2013, Principles of Macroeconomics, and ECO 2023, Principles of Microeconomics. Because these courses are not limited to majors and are also available to satisfy university-wide general education requirements (Liberal Studies Curriculum Area III, History/Social Science), there is very heavy student traffic (we were given an estimate of about 7,000 students per year), which includes all prospective economics majors.

Staffing multiple sections of these large-enrollment courses every semester (some sections enroll as many as 500 students) is a primary challenge for the department. The MOU specifies funding a "teaching specialist position" (Article 4), a non-tenure-track faculty hire in the Economics Department "to teach economics courses, primarily at the undergraduate level, such as principles of economics and courses in political economy related to the advancement of the purposes of this Agreement" (MOU 4.a). An individual was hired on this line and began teaching in the department in Fall 2009. The concern expressed to the committee by some faculty is that the staffing and supervision of these gateway courses for all majors are being ceded to a subset of the department that may not be representative of the diverse intellectual interests in the department. For example, one of the other instructors regularly assigned to these large enrollment principles sections, in addition to the individual in the new donor-funded position, has also been serving as the "Program Director" for the first three years of the gift's implementation, which in practice means supervising the new Economics Club. (This individual was hired on a non-tenure track faculty line in the department before the MOU was negotiated.)

The department bylaws specify a standing "Principles Committee," which "shall function as a curriculum committee for the principles sequence and as such will be concerned with specific matters of course content, textbook selection, and the like." The membership of the committee is defined as "those Department faculty who are scheduled to teach in the principles sequence." This membership criterion is a problem according to some faculty, to the extent that the faculty who are currently scheduled to teach the principles courses are almost exclusively non-tenure track faculty members affiliated with the SPEFE/EEE program.

c. Extra-curricular programs.

In Article 5, "Undergraduate Program," the MOU in subsections (b) and (c) states that there will be a "Director of the Undergraduate Program who will be responsible for the administration, planning, and coordination of programs, activities and reporting of the program" (5.b). The funding for the "Undergraduate Program" is from a Donor Partner (5.c). In practice, according to an email from the department chair on June 6, 2011, these donor funds have been devoted to "activities for the economics club (pizza, sodas, snacks, for meetings, movies for movie nights), speakers who come to campus to give seminars geared to undergraduate students, and a partial summer stipend for the Director of the Koch Undergraduate Program." There is also a scholarship program: "a small group of highly motivated students receive small 'scholarships' of $200 to participate. They read and discuss academic research done by the speakers who visit FSU to give talks to the economics club and then meet with the visitor to discuss his/her research." As best we can determine, the new Economics Club and the related scholarship program are so far in practice the extent of the "Undergraduate Program" designated in the MOU. The concern expressed by some faculty is that the Economics Club carries a name signifying generally, whereas the topics and speakers are in practice more narrowly defined. Acknowledging these concerns, the department chair states in an email to the committee on June 6, 2011 that "I am increasingly inclined to change the name of the club to something that is less general (e.g., something with Free Enterprise or some similar term in the name)."

d. . Certificate program.

Since the MOU was signed in the summer of 2008, the department has created and now offers a new undergraduate certificate program, the "Certificate in Markets and Institutions." Although the new "Market Ethics" course prescribed by the Donor Partner agreement is not required of Economics majors generally, the course is a requirement for the new Certificate program. The concern expressed to the committee is that this Certificate program was not vetted in proposed form by a department-wide mechanism, but there is disagreement on this point. There is an Undergraduate Committee in the department bylaws: "The Undergraduate Committee has overall responsibility for the Department's undergraduate program. This committee must review all academic policy changes affecting the undergraduate program prior to their final consideration by the Executive Committee or the Department faculty as a whole" (G.1). Membership is defined as "a chair and not less than two other faculty in the Department, chosen from among those faculty who regularly advise undergraduate majors" (G.2). In the event, the chair notes in his email of June 6, 2011 that "I wish I would have made a more significant effort to inform faculty about many things, including the development of the Certificate Program." We conclude that the process of establishing the new Certificate must have fallen short of a usefully functioning standard of transparency and openness.

II. Recommendations

To protect and to continue to affirm the academic integrity of The Florida State University, we offer the following recommendations:

1. We recommend that there should be no more donor-funded hiring according to the agreement unless and until the parties modify several provisions in the hiring process as defined in the MOU.

These revisions are in effect a simple matter of making the entire document consistent with its own existing statements of governing principle in Article 17, that FSU should "primarily control" the hiring process, and in Article 3(b), that "the Professorship Positions will be recruited and hired in a manner consistent with the FSU Faculty Handbook and CGK Foundation's intent to support the SPEFE Program." The hiring cycle in 2008-09 followed these principles. The following modifications to the MOU hiring process will make the entire MOU consistent with these principles and will remove the possibility of undue outside influence on the university academic mission.

a. The three-person Advisory Board should have at least two members of the faculty of the Economics Department. This was exactly the practice in the hiring cycle in 2008-09, but such a membership formula is not specified in the MOU.

b. The Advisory Board may have review and advisory functions in hiring, but approval power should be limited to the department Executive Committee, as in all other hiring.

c. In its review and advisory capacities, the Advisory Board should be able to offer recommendations on a majority basis.

2. We recommend that the university not enter into any future donor agreements which specify outside donor evaluations in annual evaluation files of faculty.

See p. 6, item 5, for the relevant Finding.

3. We recommend that the University not enter into any future donor agreements which offer department chair selection criteria.

See pp. 6-7, Item 5, for the relevant Finding.

4. We recommend that the University Curriculum Committee temporarily suspend its approval of ECO 3131, "Market Ethics," as a new course; the department can resubmit the proposal for reconsideration, clearly indicating its relationship to a donor agreement.

See pp. 9-10, item 6.a, for the relevant Finding.

5. We recommend that the Economics Club be renamed something more specific to match its focus in practice.

The chair has expressed his inclination to take such an action. To strengthen governance procedures, we would recommend that the question be taken up by the department's standing Undergraduate Committee, upon the recommendation of the Chair.

6. In the department bylaws, we recommend that the membership of the Principles committee be revised to contain at least one tenure-track faculty representative from outside the SPEFE/EEE subset of the department.

See pp. 10-12, Item 6.b, for the relevant Finding.

7. We recommend that the college and the department work with Foundation staff to clarify and understand best ways to work with interested donors to help support the academic mission of the university while insuring the autonomy and integrity of the curriculum.

We welcome and celebrate donor interest in the curriculum, and we are eager to work with donors to help strengthen our academic mission, within proper limits. A useful document to study the issues is the "Report of the Task Force to Develop Guidelines on Donations and Curriculum Development" (2006) at the University of North Carolina at Chapel Hill (http://provost.unc.edu/policies/giftsaffectingcurric). Another useful document is the "Resolution on the Academy on Capitalism and Limited Government Foundation" of the Faculty Senate at the University of Illinois at Urbana-Champaign (August 2010), which summarizes the report of the "Chancellor's Advisory Committee on the ACLGF" from 2008 (http://www.senate.illinois.edu/aclg_res_100830.pdf).

8. We recommend that the Foundation a) review its current policies concerning gifts that specify conditions about faculty hiring, faculty evaluation, and curriculum and b) develop updated documents if necessary to ensure the autonomy and integrity of the university's academic mission.

Our review of current Foundation templates and other documents suggests that policy language on these topics is currently very general and may not yet provide the necessary guidance about details in donor conversations. We recommend that the Foundation work with the Faculty Senate steering committee to develop and adopt an updated best-practice policy for the University on this matter.

9. We recommend that the Provost's office and the Foundation create a mechanism to review multiple articulated donor agreements that involve more than one college.

10. We recommend that the new Provost should review with all deans the role of faculty in shared governance and primary responsibility of the faculty for the curriculum.

Concluding observation

One of the ironies of these events is that there have been many good results from a controversial process. Most prominently, the Economics department has been able to make two top-quality hires, by any standard, and it is clear that in practice the University "primarily controlled" the hiring process, which was conducted in accordance with standard procedures in the FSU Faculty Handbook. Many parties stress that there are strong new teachers in place for large entry-level classes. There is an active undergraduate club. In a bleak budget climate, there are new funds available for graduate student support. The committee thus encountered, not infrequently, an argument in favor of the agreement on grounds of these many good results. Such a pattern of fortunate results makes it even more pressing that shortcomings in the process be identified and remedied.

Members of the committee:

Jayne M. Standley, co-chair

Robert O. Lawton Distinguished Professor

College of Music

Faculty Senate President, 2007-09

Eric C. Walker, co-chair

Professor of English

University Distinguished Teaching Professor

Faculty Senate President, 2009-11

Valliere Richard Auzenne

Associate Professor

College of Motion Picture Arts

Faculty Senate President, 2002-05

Talbot "Sandy" D'Alemberte

Professor Emeritus

College of Law

President, Florida State University, 1993-2003

Marilyn J. Young

Professor Emeritus

College of Communication and Information

Faculty Senate President, 1994-96