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THE UNIVERSITY OF RHODE ISLAND
Kingston, Rhode Island
FACULTY SENATE

BILL

Adopted by the Faculty Senate

TO: President Robert L. Carothers

FROM: Chairperson of the Faculty Senate

1. The attached BILL, titled Report of the Research Policy and Facilities Committee: Recommendation #1, is forwarded for your consideration.
2. The original and two copies for your use are included.
3. This BILL was adopted by vote of the Faculty Senate on March 26, 1992 (date).
4. After considering this bill, will you please indicate your approval or disapproval. Return the original or forward it to the Board of Governors, completing the appropriate endorsement below.
5. In accordance with Section 10, paragraph 4 of the Senate's By-Laws, this bill will become effective April 16, 1992, three weeks after Senate approval, unless: (1) specific dates for implementation are written into the bill; (2) you return it disapproved; (3) you forward it to the Board of Governors for their approval; or (4) the University Faculty petitions for a referendum. If the bill is forwarded to the Board of Governors, it will not become effective until approved by the Board.

March 27, 1992
(date)

Leonard M. Kahn
Leonard M. Kahn
Chairperson of the Faculty Senate

ENDORSEMENT

TO: Chairperson of the Faculty Senate

FROM: President of the University

Returned.

- a. Approved .
- b. Approved subject to final approval by Board of Governors _____.
- c. Disapproved _____.

4/12/92
(date)

Robert L. Carothers
President

**Report of the Faculty Senate
Research Policy and Facilities Committee
on
Policy on Misconduct in Scholarship and Research**

In compliance with the charge of the Faculty Senate, the Research Policy and Facilities Committee has taken steps to invite comments from the University ^{Community} Committee on the "Draft Policy Statement on Policies and Procedures for Dealing with and Reporting Possible Misconduct in Science."

An announcement for an open hearing on the draft policy, accompanied by copies of a) the draft policy, b) the U.S. Public Health Service regulations, and c) the National Science Foundation regulations, was sent to the entire faculty (see attachment). Special invitations to comment on the draft policy were also sent to the URI/AAUP, the URI Physicians' Association, the URI Professional Staff Association, the Graduate Student Association, and the Student Senate. The Open Hearing was held on January 30, 1992 in White Hall at which fifteen persons attended. We also received written comments from the AAUP Executive Committee as well as from one other faculty member. It should also be pointed out that during the 1990-91 year REPOFAC had reviewed the draft policy.

On the basis of the comments we have received, REPOFAC has again reviewed the draft policy, and has made a number of changes. The revised policy statement appears below, and REPOFAC recommends its adoption.

Prefatory Comments

The policy, in the first instance, is drawn up in order to comply with the regulations of the PHS and NSF so that the University can continue to qualify for funding by those two agencies. Most of the provisions of the policy, and indeed their language, are drawn from these regulations. At the same time, REPOFAC believes it is important that the University adopt general procedures to deal with allegations of misconduct with respect to research and scholarly activities, whether funded or unfunded.

This policy is not intended to cover normal classroom/instructional activity; it does, however, apply to such classroom/instructional activity that may be funded by the National Science Foundation, in accordance with NSF's regulation with respect to "activities funded by NSF," which may include "science and engineering education" [See Federal Register, May 14, 1991, pp. 22286-22290.].

Questions have arisen about the applicability of the policy to students. As stated under the "Applicable to:" section, the policy would apply to all students who are "University employees involved in scholarship, research, research training or research related activities pursued at the University or under the sponsorship of the University." These would include all students employed on projects under grants or contracts, or under research-related work funded by the University. It would not cover other student-employees of the University [e.g. those who work in the Memorial Union, student help, etc.] and students who are not employees of the University; such students would be subject to the normal University procedures contained in the *University Manual*, as well as in the respective undergraduate and graduate student manuals.

Questions have arisen over the definitions of terms contained in the federal regulations, such as "fabrica-

tion, falsification, plagiarism," etc. The federal regulations do not define these terms, and after careful consideration, REPOFAC is convinced that it would be imprudent, if not futile, to attempt to do so in an academic environment where the definition of the terms would have to encompass widely divergent disciplines from art to zoology. The policy embodies the notion that academics in the various disciplines, who may be called upon to participate in the process, will be expected to exercise their best professional judgments in each case as it arises.

The mediation section (A.4.), that we have added to the process was suggested to us by one member of the faculty. It is predicated on the idea that some situations may arise out of misunderstandings among the parties to a dispute, and that mediation may be the most appropriate and expeditious way of resolving differences. It would be expected that the Vice Provost would appoint a person—internal to URI, or external, as appropriate—to serve as mediator who would a) be considered to be neutral with respect to the parties and the details of the allegations in the case, and b) have experience or training in dispute or conflict resolution.

RECOMMENDATION 1:

REPOFAC recommends the adoption of the following (changes shown in italics & underlined):

**Policy Statement on
Policies and Procedures for Dealing with and
Reporting Possible Misconduct in Scholarship and Research**

1. Purposes:
The purposes of this policy statement are stated below.
2. Basis:
The basis for establishing this policy is 42 CFR Part 50 *and 45 CFR Part 689* (Code of Federal Regulations). Reports to the Federal Office of Scientific Integrity (OSI) *or to the National Science Foundation* will occur only when required by federal law or regulation or when mandated by grant or contract provisions.
3. Applicable to:
All University employees involved in scholarship, research, research training or research related activities pursued at the University or under the sponsorship of the University. *Also applicable to all University employees involved in science and engineering education projects sponsored by the National Science Foundation. Students who are not included in the above definitions, against whom allegations of misconduct in research and scholarship have been made, shall be subject to regular University procedures.*
4. Responsibility:
Vice Provost for Research, the Provost, and the President have primary responsibility for administration of the policy as specified below.

5. Policy:

**University Policies and Procedures for
Dealing with and Reporting
Possible Misconduct in Scholarship and Research**

Purpose

It is the policy of The University of Rhode Island to foster a scholarship and research environment that discourages misconduct in all research, research training or research related activities pursued at the University or under the sponsorship of the University.

Misconduct in research and scholarship means: "fabrication, falsification, plagiarism, or other practices that seriously deviate from those that are commonly accepted within the academic and scientific community for proposing, conducting, or reporting research. It does not include honest error or honest differences in interpretations or judgments of data." Allegations of misconduct in research and scholarship must promptly be reported directly to the Vice Provost for Research. Acts of retaliation against those who, in good faith, make allegations of misconduct shall be deemed to be misconduct in research and scholarship. Allegations that are determined to have been made in bad faith shall be deemed to be misconduct in research and scholarship. In the interest of protecting the reputation and privacy of those who may be involved, it is important that allegations be treated with confidentiality. In the event of allegations of such misconduct, it is the policy of the University to initiate a preliminary inquiry into such allegations; to conduct an investigation, if warranted, and impose appropriate sanctions, if warranted; and, if appropriate, to report to the federal office of Scientific Integrity (OSI), a component of the Office of the Director of the National Institutes for Health, or to the Office of the Inspector General (OIG) of the National Science Foundation. These actions will be undertaken in accordance with 42 CFR 50, Sec. 50.101-105, and 45 CFR Part 689 with the University's procedures set forth below, and with due consideration to the rights and reputation of the accuser and accused.

It is the responsibility of all persons at the University involved in scholarship research, research training or related research activities to familiarize themselves with these policies and procedures. Copies of 42 CFR 50, Sec. 50.101-105 and 45 CFR Part 689 are available from the Office of the Vice Provost for Research upon request.

A. Immediate Steps to be Taken When Allegations of Misconduct in Research and Scholarship have been made.

1. All allegations of misconduct shall be reported promptly in writing directly to the Vice Provost for Research (VPR).
2. The VPR shall advise immediately the Provost and the Dean or comparable administrative officer to whom the accused reports about the allegations.
3. The VPR shall determine immediately whether (a) an immediate health hazard is involved, (b) there is an immediate need to protect federal funds or equipment, (c) there is an immediate need to protect the accuser or the accused, (d) it is probable that the incident will become public, or (e) there is reasonable indication of possible criminal violation. If the VPR determines that any of these conditions may exist, the VPR shall immediately inform the Provost with recommendations for appropriate action insofar as is necessary to address the identified condition. The Provost shall notify the federal Office of Scientific Integrity (OSI) (if the alleged misconduct has been performed under

PHS sponsorship) or the Office of the Inspector General (OIG) of the National Science Foundation (if the alleged misconduct has been performed under NSF sponsorship) within 24 hours, and report on action taken, if appropriate.

If, at any stage of the Inquiry or Investigation process, the VPR or the Provost determines that any of the above conditions exist, the Provost shall notify the OSI or the OIG within 24 hours, if appropriate.

4. The Vice Provost for Research may, within five days of the receipt of the allegations, appoint a person to serve as a mediator. The mediator's sole responsibility shall be to meet with the accuser(s) and the accused, individually or jointly, and/or other appropriate parties to the case to determine whether the matters at issue can, or should, be voluntarily resolved among the parties, and to facilitate that resolution. Bargaining unit employees are entitled to union representation at mediation sessions. Confidentiality shall be maintained by all parties throughout the mediation process. The mediator shall submit a confidential report of the results of his/her mediation efforts to the Vice Provost for Research within ten days of his/her appointment to the case; such report shall ONLY include that:

- a. the parties have settled their dispute and the charges have been withdrawn, with a written statement to that effect signed by the accuser(s); OR
- b. the mediation of the dispute was not resolved, and that the consideration of the charges should proceed to the Inquiry stage.

The mediator shall not make recommendations nor offer any commentary relative to the merits of the dispute within this confidential report. Thereafter, neither the mediator nor his/her notes or records may be used in any way whatsoever at any further stage of the "Procedures" or otherwise, i.e. he/she may not give testimony or statements, nor may the mediator's notes or records be requested or demanded. Further, nothing said, done, implied or discussed within the mediation process may be heard or considered by those who may conduct an Inquiry and/or Investigation in the case.

B. Preliminary Inquiry into the Allegations

1. When an allegation of misconduct in research and scholarship has been submitted to the VPR, the VPR, or the person appointed annually by the VPR as the Officer for Research Standards, shall immediately initiate an Inquiry. The Inquiry shall consist of information gathering and initial fact finding to determine whether an allegation or apparent instance of misconduct warrants an investigation.

In conducting the Inquiry the VPR or the Officer for Research Standards may

- obtain the assistance of appropriate faculty or administrative officers; and
- obtain the services of outside experts;

and the VPR or the Officer for Research Standards shall

- take steps to protect the privacy of the accuser to the maximum extent possible;
- provide confidential treatment to the affected individuals to the maximum extent possible;

- inform, in writing, the accused that an Inquiry is being conducted as well as the substance of the allegation;
 - provide the accused the opportunity to comment on the allegations, to submit documentation, and to have legal and/or union representation present;
 - take precautions against real or apparent conflicts of interest on the part of those involved in the Inquiry;
 - within 60 days of the initiation of the Inquiry, prepare a written report to the Vice Provost for Research including a copy of the allegations, the evidence provided, as well as the conclusions of the Inquiry regarding the initiation of a formal Investigation;
 - provide the affected individual(s) an opportunity to comment on the findings of the Inquiry;
 - maintain sufficiently detailed documentation of the Inquiry, which records shall be maintained in a secure place for a period of three years;
 - may recommend the institution of a formal investigation if there is sufficient evidence to indicate that acts of retaliation may have occurred against the accuser(s);
 - may recommend that the Vice Provost take action under these procedures if there is evidence to indicate that the allegation(s) may have been made in bad faith.
2. If, as a result of the Inquiry, the VPR or Officer for Research Standards
- determines that there may be reasonable indication of possible violations, the VPR shall, within 24 hours, notify OSI or OIG if appropriate, the Provost, and the accused. A formal investigation will then be initiated.
 - determines that no formal investigation is warranted, the VPR shall so notify the accused and the Provost, and shall deposit the records of the Inquiry in a secure place. The VPR shall also undertake diligent efforts, as appropriate, to restore the reputations of persons alleged to have engaged in misconduct when allegations are not confirmed, and also undertake diligent efforts to protect the positions and reputations of those persons who, in good faith, make allegations.

C. Investigation of Alleged Misconduct

1. If findings from the Inquiry provide sufficient basis for conducting a formal examination and evaluation of all relevant facts to determine if misconduct has occurred, the Provost shall
- so report, in writing, to the Director of the OSI or to OIG, as appropriate under the PHS and NSF regulations, on or before the date the investigation begins if appropriate. At a minimum, such notification shall include the name of the person(s) against whom the allegations have been made, the general nature of the allegation, and, if appropriate, the grant number involved.*
 - within 30 calendar days of the completion of the Inquiry, undertake an Investigation. The Investigation normally will include examination of all documentation, including but not necessarily limited to relevant research data and proposals, publications, correspondence, and memoranda of telephone calls. Whenever possible, interviews should be conducted with all individuals involved either in making the allegations or against whom the allegation is made, as well as other individuals who might have information regarding key aspects of the

*Information provided through the notification will be held in confidence to the extent permitted by law, will not be disclosed as part of the peer review and Advisory Committee review process (at the PHS), but may be used by the Secretary (of Health and Human Services) in making decisions about the award or continuation of funding." Sec. 50.104 of 42 CFR Part 50. NSF actions are detailed in 45 CFR Part 689.

allegations; complete summaries of these interviews should be prepared, provided to the interviewed party for comment or revision, and included as part of the investigatory file.

2. In conducting the Investigation, the Provost will appoint a three person Investigation Board composed of one faculty member from the college or school in which the accused has an appointment and two faculty members from outside the college in consultation with the appropriate Dean and the VPR. This Investigative Panel may:
- obtain the assistance of appropriate faculty or administrative officers.
 - obtain the services of outside expert(s).
 - obtain the assistance of the University Legal Counsel.
3. In conducting the Investigation, the Board shall
- make diligent effort to complete the Investigation within 120 days of its initiation.
 - take such actions and submit such reports to OSI or OIG as appropriate under the PHS and NSF regulations.
 - take precautions against real or apparent conflicts of interest on the part of those involved in the Investigation.
 - prepare and maintain documentation to substantiate the investigation's findings. This documentation is to be made available to the Director of OSI or OIG, as appropriate under the PHS and NSF regulations, who will decide whether those respective Offices will either proceed with their own investigation or will act on the University's findings.
 - take interim administrative action, as appropriate, to protect federal funds and ensure that the purposes of federal assistance are carried out.
 - shall keep the OSI or OIG, as appropriate under the PHS and NSF regulations, apprised of any developments during the course of the Investigation which disclose facts that may affect current or potential federal funding for the individual(s) under Investigation, or that the OSI or OIG, as appropriate under the PHS and NSF regulations, needs to know to ensure appropriate use of federal funds and otherwise protect the public interest.
 - undertake diligent efforts, as appropriate, to restore the reputations of persons alleged to have engaged in misconduct when allegations are not confirmed, and also undertake diligent efforts to protect the positions and reputations of those persons who, in good faith, make allegations.
 - notify the OSI or OIG, as appropriate under the PHS and NSF regulations, of the outcome of the Investigation together with information on such sanctions that may have been imposed by the President of the University.

D. Procedures at the Investigation

1. The Provost shall be responsible for maintaining the records of the Investigation Board in a secure manner.
2. The accused and his/her own legal counsel and/or union representative may attend all hearings before the Investigative Board. University Legal Counsel may also be in attendance at all hearings. Legal counsel for both the University and the accused and/or the accused's union representative shall provide passive assistance only to their respective clients, and shall not participate in the actual examination or cross-examination of witnesses.
3. At the commencement of the proceedings, the accused shall have the right to raise preemptive challenges for proven bias of Board members.

4. The accused shall have the right to receive copies of all documents in evidence, the right to cross-examine witnesses, the right to raise procedural issues, the right to present evidence on his/her behalf, and to contest evidence against him/her.
 5. The University shall make an audiotape recording of all oral presentations at the Investigation and such audiotape shall be made part of the record. A copy of such audiotape shall be made available to the accused, upon request.
 6. The Investigation Board shall make diligent effort to maintain confidentiality of the proceedings and shall, to the maximum extent possible, protect the privacy of all persons involved in the Investigation as permitted by law. Hearings shall be closed. The Investigation Board may hold closed executive sessions.
 7. The Investigation Board shall provide a written report to the Provost regarding the findings of their investigation. The Provost shall initiate such further action as is warranted under the procedures or statutes of the University, *in accordance with Collective Bargaining Agreements if the actions contemplated include any that relate to matters covered by such agreements, insofar as they do not conflict with PHS and/or NSF regulations in appropriate cases, and in accordance with relevant federal regulations if applicable.*
 8. At the conclusion of the Investigation, the Provost shall immediately submit a report, as required in Sec. 50.104, to the President. Simultaneously a copy of the final report of the Investigation shall be given to the accused. Copies shall also be provided to the appropriate governing bodies and/or professional organization(s) for the specific discipline of the accused. ~~If they can be identified, The~~ person(s) who raised the allegation should be provided with those portions of the report that address their role and opinions in the investigation.
- E. Records**
1. During the conduct of an Inquiry, the Provost shall be responsible for the secure maintenance of records.
 2. If it is determined that the allegations were not warranted, all records of the Inquiry and Investigation shall be maintained by the Provost who shall have the responsibility of storing the records in a secure place for a period of at least three years after the termination of the Inquiry. These records shall be the sole record of the allegations and Inquiry. These records shall be made available only to authorized persons as permitted by law. At the conclusion of three years, these records shall be destroyed.

Issue of Representation by Counsel

Among the comments REPOFAC received from the URI/AAUP was one that related to the issue of representation by legal counsel. The AAUP wrote:

All of us recognize, in this day and age, that one's chances for success in judicial proceedings depends in large measure on the quality of one's representation, notwithstanding the theoretical neutrality of legal proceedings or the administrative process in the draft policy. The URI/AAUP Executive Committee is dismayed that the policy as it now reads places the

resources of the University entirely on the side of the accuser in any hearings that transpire while providing nothing in the way of support for the accused. Why is the accused expected to provide his/her own legal counsel? As a University employee, isn't he/she entitled to either legal counsel or a Human Resources Administration representative? Who does the University Legal Counsel represent in the proceedings? The accuser? The Board? Clearly it would not be proper for the University Legal Counsel to be acting on behalf of or in concert with the accuser. Does the accuser have right to legal counsel? Who directs the prosecution of the case? Surely not the accuser. The Board? Can it both prosecute the case and remain impartial? The University Counsel? That would raise the issue of disparity of resources.

REPOFAC shares the concerns raised here. We believe, however, that it is beyond the charge of REPOFAC to deal with these difficult issues, and that they should be examined collaboratively by the Senate, by the unions and by the University administration. Accordingly we propose:

~~RECOMMENDATION 2:~~

~~That the Faculty Senate Executive Committee establish a committee to consist of representatives of the Senate, of the appropriate unions and of the University administration to consider the issue of legal representation in the Misconduct in Scholarship and Research process.~~

Members of REPOFAC:

N. Dholakia, Marketing
 L. Clune, Student Senate
 A. Gentile, Student Senate
 S. Gunturi, Graduate Student Association
 R. Gutchen, History, Committee Chair
 S. Kislalioglu, Pharmaceutics
 C. Lee, Food Science & Nutrition
 S. Pickart, Physics
 L. Siitonen, Library Science

February 20, 1992