FACULTY COUNCIL MINUTES
250 Student Union
November 13, 2001

Chuck Edgley called the meeting to order with the following members present: Achemire, Bays, Binegar, Breazile, Comer, Damicone, Dickman, Ebro, Fletcher, Fournier, Gasem, Henderson, Holcombe, Lamphere-Jordan, Lawry, Masters, Mayer, Moder, Mokhtari, Peeper, Redwood, Sanders, Schestokat, Veenstra, Weeks, and Wetzel. Also present: Birdwell, Gamble, Gonzales, Good, Harp, Johannes, Jones, Komanduri, Lackmeyer, Low, Marciszewski, Marshall, Matoy, Matzen, Maurizzi, Moretti, Oehrtman, Raff, Rockley, Schlegel, Schrader, Steinbrink, Traynor, Van Delinder, Watkins, Weaver, and Young. Absent: Smethers and Weiser.

HIGHLIGHTS

A motion to approve the Minutes of the October 9, 2001 meeting was made by Peeper and seconded by Lawry. The motion passed unanimously. A motion to approve the Agenda was made by Breazile and seconded by Fletcher. This motion also passed unanimously. Edgley said that President Halligan and Executive Vice President Keener were not present because they had to attend an out-of-town meeting. Edgley said that the Council had not intentionally planned the special report to coincide with their absence, that the Council would have preferred for them to be present for this, but that they have been privy to this information. He then introduced Professors Raff and Rockley, who would speak on damages done to faculty and staff by changes in the OSU retirement plan.

SPECIAL REPORT: OSU Retirement: OTR/TIAA-CREF Damages and Redress — Lionel Raff and Mark Rockley

Raff said that he and Professor Rockley had initiated action on this situation, and that they had been working closely with the Executive Officers of Faculty Council, especially the Chair. He then called attention to two packets of information which had been distributed. The first will be sent to all faculty members. It describes what has happened and how to make calculations of the damages in detail. He said he would not go over that packet in detail, but rather present an overview of its contents. The second packet contains the transparencies of the presentation. He said his presentation would explain why we are in the mess we are in and would then cover three main points: the magnitude of the losses over the last five or six years for OSU faculty and staff created by changes in the OSU retirement system, misrepresentations made concerning the system, and the differential in benefits between OSU and the University of Oklahoma. He said he would conclude by discussing the steps being taken to remedy the situation and what they expect the faculty to do to help. Finally, Raff noted that Professor Rockley has designed a javascript website that permits all faculty and staff to assess their personal financial damage. He then began the report.

Here's the history. We suffered a double whammy. Before the mid 1990s, starting in 1971, OSU had an absolutely superb retirement system, which we used successfully to recruit faculty. Oklahoma State University contributed 10% of the faculty and staff salaries in excess of $7,800 into the TIAA-CREF accounts of OSU faculty and staff. In addition they paid Oklahoma Teachers Retirement System (OTRS) premiums on the low base of $25,000. Faculty and staff opting for the high base of $40,000 in 1987 were required to pay the extra OTRS premiums themselves. Starting in the mid 1990s and ending in 1996, we suffered two breaches of contract, either one of which standing alone we could have weathered, but the combination of both of them have effectively done us in. It began by the University conducting what we view as an unequivocal breach of contract, in that they unilaterally substituted a 7-11 program, our present program, for the TIAA-CREF program. Under this program, the total University contributions to OSU Retirement were reduced and no provision was made for grandfathering vested faculty. Everybody is vested; you are vested as soon as you put one dollar in TIAA-CREF. It is illegal to change a vested retirement program without giving people vested in that program the opportunity to be grandfathered. You were not offered that opportunity. We contend that this action places the University in breach of contract.

This alone we could have probably weathered without too much damage, but this was followed almost immediately by breach of contract by the State when the State Legislature altered the mandated contributions to OTRS. They altered the bases on which those contributions had to be made and they altered the percentages. This was a breach of contract because contributors are vested into OTRS after ten years, and no one was given the opportunity to be grandfathered into the old system. It is the double whammy of these two breaches of contract that caused the overall disaster that we're now suffering.

We are currently seeking both legislative and judicial redress for these damages. We want money deposited into our TIAA-CREF accounts to compensate us for the damages done by these two breaches of contract. In addition, we want either the legislature or the court to mandate that any faculty or staff member who wishes to be grandfathered back into the previous system has the right to do so. To press this for us, we have retained legal counsel, Mr. Larry Derryberry and associates in Oklahoma City. Mr. Derryberry was a former Democratic Attorney General of the State, a former attorney for OTRS, a former legal counsel for TIAA-CREF, and he has a legal firm that is extremely strong. They are going to be pressing our case for us and in a moment, I will cover what they request that we do.

Now let's talk about the damages. The first piece of damage done to OSU faculty and staff occurred when the University changed the TIAA-CREF program to the present 7-11 program. When this was done, we immediately lost retirement benefits, because the retirement contributions from OSU into faculty and staff accounts were reduced. The change was NOT revenue neutral. For example, here is the result for a faculty or staff member with a salary of $30,000. Before the change, the OSU contribution for TIAA-CREF plus the low base for OTRS was $3,970. After the change, the contribution was $2,839. This is a loss of $1,131 **per year**. Now reflect to what happens to that $1,131 after 20 years of a working lifetime when you get ready to retire. Assuming a 7% appreciation of the principal balance, which is very modest since TIAA-CREF accounts appreciated an average of 11% from 1995 to 2001, the loss **per year** is $4,524. Over twenty years, this approaches $50,000 to $60,000 lost by the faculty or staff member. The magnitude of the loss depends upon the salary. As your salary gets larger, your loss goes down. It's very benevolent. If you can just get yourself up to $143.000 per year, you'll be breaking even. Who makes $143,000 here? I think it's the administration; I'm not sure. I don't think too many faculty make this. That's the first whammy. We just don't get the contributions we are supposed to get by contractual agreement.

The second whammy comes because of the action by the State. They changed the manner in which the OSU retirement contributions are distributed. All the calculations you need to do to make this analysis quantitative are described in the large document. Dr. Rockley and I have spent about a hundred hours trying to unravel this, but here's the final result. This is an example of a faculty or staff member making $70,000 in the year 2001. In the program we had previously, the OSU contribution to this particular employee's retirement was $7,970, counting the contribution to the low-base OTRS and the 10% of salary in excess of $7,800 to TIAA-CREF. After the change, that contribution dropped to $7,239. That was not too much of a change and we probably could have weathered that, but the second breach of contract by the State resulted in OSU changing the distribution of this money between OTRS and TIAA-CREF. Before the change by the University, based on 2001 contribution rates, $1,750 of the total $7,970 would have gone to OTRS and the remaining $6,220 to TIAA-CREF. After the change by the State and the decision by the University to take the extra contributions mandated by the State to OTRS out of your TIAA-CREF funds, this is what happens. If you selected the low- base option in 1987, you now have an almost equal division of your benefits between OTRS and TIAA-CREF, with $3,675 of the total $7,239 going to OTRS and $3,675 to TIAA-CREF. If you made the mistake of selecting the high-base option, a lot more goes into OTRS ($4,830) and only a little bit goes into TIAA-CREF ($2,409). This example is for a salary of $70,000, but no matter what your salary, you still suffer. The people that really take it in the neck are the people who don't make much money. Over 85% of their contributions go into OTRS.

The killer is what happens to these two funds as you work and serve OSU and as time progresses and you approach retirement. Here's what happens, using the example of the $70,000 salary. The money that goes into OTRS adheres to the lockbox theory of retirement. You take this money, you weld it into a lockbox and you bury it in your backyard. When you retire, say in year 2020, you dig it up, you open the box and, by golly, it's still there. And that's what you have. That's all you have. On the other hand, TIAA-CREF, which is one of the strongest retirement programs in the country, appreciates. This example assumes a 7% appreciation rate, which is probably going to be low, but I wanted to make it low, because I can make the point even with this low rate. Between 1995 and 2001, the average rate was about 11%. Under the previous program, the $6,220 contributed into TIAA-CREF would have appreciated to about $21,800, so what you would have had is the sum of this TIAA-CREF amount plus the $1,750 in OTRS. That's the previous program. In the program we have now, the OTRS contribution still does not appreciate, but TIAA-CREF does. So, what you have for the low-base option is the sum of the $3,675 OTRS contribution plus TIAA-CREF, which will have appreciated to about $12,470. The poor person who selected the high base has $4,830 in OTRS and only $8,430 in TIAA-CREF. Thus, the total funds available in 2020 are $23,550 (original TIAA-CREF program), $16,145 (7-11 low base), and $13,260 (7-11 high base).

What counts is the total for each year, summed for all the years. What do we get if we do this calculation not just for the year 2001 for a salary of $70,000, but sum it for the entire five years this program has been heaped upon our heads for every salary? This example assumes a 3% salary increment, an appreciation of TIAA-CREF of 7% from the year 2001 to retirement, and a retirement date of 2020. If you change these parameters, you change the result. Professor Rockley's website will allow you to enter your own data and assess your personal damage. Here's the sort of thing you're going to see. In the previous program, the available cash at retirement for a person with a $30,000 salary in 1995 would have been about $80,000; for a salary of $100,000 it would have been almost a third of a million dollars. [Complete graphs of the data are available at the Faculty Council website that can be easily accessed by clicking on Faculty Council at the OSU startup webpage.] Available cash is money you can get when you retire. It's money you can take out of the fund, open a business, buy a yacht, or if you leave the University and go to Florida because you got a better job. This is the money you get to take with you. If you die, this is the money your spouse, your children, your grandchildren get. That's all they get. Look at the damage. What you get is $40,000 to $80,000 less. This differential is the redress we seek. If you average these losses for all OSU faculty and staff, with legal fees, the total loss, at present, is about $39 million dollars. If the present program continues unabated, the losses are going to rise to over a hundred million.

Here's another interesting point. You paid to be on the high base. If you hadn't paid the extra premium, you would have had less damage. Maybe if you had paid even more, you could have gotten your retirement benefits all the way down to zero. Such is the program we have.

When you show these data to the administration, the standard response is that you are concentrating on available cash. OTRS is a "defined benefits program." Now look up "defined benefits program." It says, "see fraud." Let's take a look at benefits. Let's say you don't want the cash. You retire and you're going to turn all your TIAA-CREF accounts into an annuity and take what you have from OTRS. Here's what you would have had in benefits under the previous TIAA-CREF retirement program, strictly from the contributions from OSU from 1995-2001 in dollars per year, assuming retirement in 2020 but counting only the contributions for these six years. Of course, the higher the salary, the more the benefits. If you have a salary of $100,000 a year in 2000, you would have $35,000 a year in annual income from the contributions for these years. If you have a salary of $30,000, your annual benefits would have been $10-11,000 per year. Under the present 7-11 "defined benefits program", the lower paid employee will actually get only $6,000 per year. That's a loss of $5,000 a year for every year of retirement, which means a $100,000 loss over a retirement life of 20 years. That's devastating when you make a salary of $30,000. If you make $100,000, the loss isn't pleasant, but you aren't going to have to take in wash and mow yards. People with lower salaries are simply not going to be able to retire.

This whole program has been surrounded by misleading statements, duplicity and outright lies. Here's deception number one and deception number two. This is an excerpt from a "Special Notice to Higher Education Employees" distributed by the OSU administration. The underline is my emphasis. A copy of the actual document is contained in the large packet of information that has been distributed.

Senate Bill 932 enacted by the 1996 Legislature has again changed the salary limits on contributions for higher education members. The new law requires all higher education employees, except OU, OU Health Sciences Center and OSU, to contribute on total compensation beginning in the 1996-7 school year. Salary limits for employees at OU, OU Health Sciences Center and OSU will remain "capped" for <u>five more years, but the cap will increase by $5,000 per year through the 2000-01 school year.</u>

We were promised that the caps would be raised $5,000 per year through the 2000-01 school year. Here's what we got. In 1995 the cap was raised $2,500 for the low base and $4,000 for the high base, not $5,000. This is breach of contract number 3. In 1999, the increase was zero. This is breach of contract number four. In 2001 the cap was not lifted, breach of contract number five. The current promise is that the cap will be lifted in 2006. I don't believe it. Do you?

If you look up duplicity, it is defined as "words or actions designed to conceal one's intent." Let me show you the duplicity in these two retirement programs. Here are two statements that I have frequently heard. "Oklahoma State University is contributing more dollars toward faculty and staff retirement under the 7-11 plan than was the case under the previous TIAA-CREF retirement program." That is a fiction; we've already seen that. That is just simply not true. It looks like it might be true because 11% is bigger than 10%, but it's 11% of what that counts. And when you ask of what, you see this is a fiction.

The following deception is one I heard as recently as five weeks ago. It was made in the presence of the Executive Officers of this Faculty Council, my presence and Mark Rockley's presence.

"The University implemented the 7-11 program to help OSU faculty and staff who either could not afford the 5% mandatory contribution to TIAA-CREF or who did not wish to make this contribution."
This, too, is a fiction. Let me show you why. First of all, the figures already mentioned show that the contributions by OSU have gone down, not up. If the University intended for the 7-11 program to helpful, the program would have been devised so that it was revenue neutral, but it was not. The average savings that the University made on contributions was about $800 per faculty or staff member, for a total of roughly a million dollars a year taken out of OSU retirement funds and put into the general fund of the University. I don't think you would find a faculty or staff member at any university in this country who would look at that and say that's designed to be helpful. The other reason we know the 7-11 retirement program was not designed to be helpful is because if it were, you would have been given a choice. It's not possible to have two retirement programs, TIAA-CREF and 7-11, that are equally helpful to all faculty. A helpful program would have said, "Take your pick. We will give you advice, if you need it, as to which one you should pick relative to your situation." You weren't given a choice. You were forced into the 7-11 program. Why? Well, they can only realize maximum savings if everybody is forced into the 7-11 program. That was the driving force. There was no intent to be helpful.

Duplicity number two: "OSU faculty and staff will receive higher retirement benefits if they pay the extra premium and select the OTRS high-base option." We've already seen that's wrong. You get fewer retirement benefits, not more. This deception continues. Let me show you an example that I got from the administration less than three weeks ago. This is not my construction; this came right out of the benefits office. OTRS Sample Retirement Calculation. Here's a low-base example of a faculty or staff member who joined in 1990, continued for 15 years to 2004 with one year of sick leave credit and then retired. The annual retirement income is $11,550.24. If you take this same example and you do the high-base calculation, the retirement income is $15,740.28. This is $4,250 more than the low-base income. The implication is clear-cut: "Don't you wish you picked the high-base option?" What they don't tell you is that to get this extra four thousand dollars, you paid through the nose in your TIAA-CREF retirement fund. That's just conveniently forgotten.

Let me show you one more thing. In the example from the Benefits Office, there is one year of sick leave credit. The faculty or staff member gets 2% credit for that. We note that this person has been working for 15 years. You accumulate sick leave over your entire working career. So what should they take 2% of? Well, it should be the average of all the bases for the fifteen years of the employee's working lifetime. That's fair. That's not what they do. They take 2% of the **lowest** base, $25,000, and that's your sick leave credit. The basic bottom line rule is whatever gives you the least, that's what you get.

Here is the worst deception of the whole lot. This is the one that deceived me totally. Many faculty realized years ago that there was a problem with the OSU retirement system. They were very astute. They alerted the Faculty Council and talked to the administration. They sent me a letter. I looked at it, and I thought they were wrong, because I was deceived by this fraudulent retirement benefits formula. The actual document coming from Tommy Beavers' office is reproduced in the packet. It announces unequivocally that the OTRS Benefit Formula is Annual Retirement Benefit = 0.02 x (Average of 3 highest Contributory Annual Salaries) x (Years of Creditable OSU Service). That formula is a complete, total fabrication. It hasn't got the slightest connection to what is actually done. Let me prove it to you using the example generated by the OSU Benefits Office. In their example, there are fifteen years of creditable service plus a year of sick leave; that's 16 years of creditable service. The highest three years of salary are $67,000, $64,000, and $62,000. The formula says we're going to average those three, multiply by 16 times .02. That would give us $20,587 per year. The actual benefit is not even close to that; it is $11,550. The deception equals $9,037 per year. If you live for 20 years after your retirement, that's a $180,733 deception. That's the one that deceived most faculty.

Now, I would like to make one more point before I stop. I have heard the excuse for all this being given as: "Well, it's real bad, but we didn't have any choice. The State mandated this. It's the State's fault." Well, the State certainly did breach its contract with OSU faculty and staff; they are not blameless, but the State did not mandate that OSU take the extra contributions out of your TIAA-CREF funds. They mandated that more money should be contributed, but where that money is obtained is up to the University. They did not have to raid your TIAA-CREF funds. How do we know that's true? Because David Boren didn't do that to his faculty at OU. He grandfathered the OU faculty. The OU administration gave all OU faculty and staff the opportunity to be grandfathered under the former TIAA-CREF program. That makes an unbelievable difference. Here's the OU program. The University contributes fifteen percent to TIAA-CREF on salary in excess of $9,000. The employee pays the member premium for OTRS out of his own pocket. To see the difference, I've compared an example for a faculty member hired 1985, who selected the OTRS low base, whose 1995 salary was $60,000. The example assumes an average raise program of 3%, a TIAA-CREF appreciation of 7% annually, and retirement in 2020 after 35 years of service. Here are the differences. For the contributions solely between 1995 and 2001, not counting anything after that, the OSU faculty member has $160,060 in vested cash. His/her counterpart at OU has $296,555. If you want to convert this to benefits and not take the cash, the OSU employee receives $19,775 a year, the counterpart at OU gets $35,306. It's true the OU employee has to pay $19,775 in OTRS premiums from 1995-2001, but he/she regains these contributions in retirement benefits in less than two years. About five weeks ago when the Faculty Council Officers, Dr. Rockley, and I met with the President in his office, the President suggested that because OU faculty have to pay their own OTRS premium, they're worse off. I made the offer, you switch me to the OU program and I'm happy. There was no response.

To try to correct these problems, we are pursuing two initiatives. We've hired Derryberry and associates to represent us as legal counsel. They have filed a class-action lawsuit. The petition, filed October 4, is given in the packet. It asks that we be grandfathered back into the previous program, and it asks that funds be provided to reimburse all faculty and staff for the differentials in our TIAA-CREF accounts that are present because of these breaches of contract. In addition to the court suit, our legal counsel is conducting a lobbying effort. We've already started with Mike Morgan and his staff. He is sympathetic. The idea is to convince the leadership of the State Legislature that this has to be fixed. This is unequal protection under the law; this is breach of contract. Hopefully, if through this legislative lobbying effort, we can get the legislature to enact laws, it will avoid the court suit. We've invited the administration to work with us on this. They seem to be responding positively. We've invited them to work with us on the court case by recommending to the court that they hand down a decision favorable to the faculty and staff to redress these wrongs. We're still hopeful they will join us wholeheartedly. If we get redress through the court action, there will be no expense to OSU faculty and staff since this case is being taken on contingency. But the legislative lobbying effort carries no contingency fee. If we win that, then we get reimbursed, we get grandfathered, but our legal counsel does not obtain appropriate fees for services rendered. Consequently, all faculty and all staff will be receiving a letter toward the end of November asking that you contribute $100 to the lobbying effort for faculty, $50 for staff. If the case goes to court and we win a court suit with a contingency fee, this money will be refunded. If we win in the lobbying effort, then they keep the money as their legal fee, but you're not going to care because you're going to get back tens of thousands of dollars. That's the best deal you're ever going to get. We have a superb legal firm and I don't think you can get great legal counsel for any less than $100. I urge all of you to respond positively when you receive that letter asking that you contribute to the legal fees. That's best thing you and your constituents can do to help. Your worst bottom line loss is you lose in the legislature, you lose in court, so you lose your $100 or $50. But you've lost so much more than that, the

$100 or $50 will be negligible. So let me turn it over to Dr. Rockley, who will show you how to calculate your own personal loss.

If you're like me when you get a document like this you put it in the "to do" pile and six months later it's still there. In this circumstance that would be a huge mistake. There's nothing you can do that would benefit yourself or your family more than to study the document until it makes you mad, which it certainly will do. The other problem that I had was going through this document trying to program these formulae. It took me weeks and I work with equations. So I figured if two of us took hundreds of hours to figure this out, how were we to make the case to you? The way to make the case to you is to make it up close and personal. So what you can do is get on the web and go to this address: solomon.bond.okstate.edu/otr/. I will step you through the program. The first screen says it's an online guide. It's on a server in the chemistry department. If it goes offline, you'll all know. In the color scheme OTRS is red and TIAA-CREF is green. Red is where you don't want to go and green is where you should go. This is a spreadsheet. Now I am not accessing this to find out how much you make. First of all, I couldn't care less, and second of all, I could get it all from the library. There is no information kept about you here. The emphasis is for you to look at this and to actually use it. The website gives instruction for use. The first thing you can do is leave the default values on the screen which are for a faculty member making about $60,000. This is probably high for the average faculty, but it's a good start. If you just push calculate, you can see the damages for someone at that salary. You can enter into this program information specific to your situation. You can do this the easy way by going to your paycheck and seeing what your total pay was for the year 2000 and entering that into the program. Then ask for the program to calculate what it was before that and work it out for you. The default value is for a 3% raise. You can put your actual values in if you want. We've also put in a default value for the growth of your TIAA-CREF portfolio. Some of you put your TIAA-CREF portfolio half into TIAA and half into CREF. Some of you put it all in CREF. But suppose you don't really know and it's going to be hard for you to find out. You can get out your forms from TIAA-CREF and figure out the annual growth rate, but Dr. Raff has worked through the average for a 50-50 split for TIAA-CREF during the time that this damage has occurred to you. You can leave in that default value of 11%. Past that you have to put in something called the growth rate. How much will TIAA-CREF grow between now and when you retire? We put in a default value of 7%. You can put in 1% or 12% or whatever you wish. Then you need to enter in the number of years before you retire and click on the CALCULATE NOW button.

There are some assumptions built into the program. One of them is that you were employed prior to 1995. The second is that you're a faculty member or an A&P employee. Most classified staff had virtually no retirement benefits prior to 1995. The program operates with the default values, unless you enter in another value. If you use the default values, all you need to do is enter your 2000 salary, and the program computes your prior salaries, assuming a 3% raise program for each year. It will also compute your OTRS base. You need to indicate whether you selected the low or high base option. Then click on the Calculate Now button. The program fills in your prior years' salaries and your OTRS Base.

The table below the first one indicates the total contributions made by OSU. Notice that it looks like the contributions increase, but this is because your salary has increased. The next column is the total amount OSU would have contributed before the change. Notice the difference in the amounts gets worse and worse. The next column tells you the amount that was contributed to TIAA-CREF after the change and the next column lists what it would have been before the change. These amounts are totaled with interest over the 7 years and the difference, indicating what you lost over those years with interest, is listed in the box below. The last column is the contribution to OTRS after the change. This figure is determined by a complicated formula associated with your base, which is not what you think it is. You can compare the amount of the loss for OTRS high base and low base by changing the settings. You will see that if you

selected low base you lost a lot less in TIAA-CREF. Below that table is another table which shows the vested cash that you would have available at retirement from the contribution made between 1995 and 2001. It gives figures for before the change, after the change, and the differential. The OTRS difference is also included. OTRS went up, but TIAA-CREF went down, really down. For a person at 70,000 in 1995, OTRS went up $15,000 but TIAA-CREF went down $105,000, a 7 to 1 difference. The total vested cash lost is $87,000 because of this change, in which you had no decision-making power. The last table shows the single-life annuity benefits for 20 years of retirement from the contributions made between 1995 and 2001. This will show you the projected loss over a 20-year retirement. For the person at $70,000 in 1995 that loss is $80,000 on the low base and $115,000 on the high base. The projected loss is generally one and a half to two times your annual salary.
Let's look at some examples. Let's look at a secretary making $25,000. She chose the high base. The damage for this lady, who has served us incredibly well, is $13,650, but if she'd gone to the low base there would have been no difference. The difference on the single life annuity is $90,000. At $20,000 on the high base, the loss would be $81,000. At $60,000 on low base, the damage is about the same. The damages for the faculty member, who earns three times as much as the secretary and chooses low base, compared to the high base option of the poorly paid secretary is just about the same.
I urge you to write down this address and go to it, after you've cooled down.

Edgley then indicated that the floor was open for questions and comments. Larry Jones asked whether retired faculty and staff who were put into the 7-11 program would benefit from the suit, if they retired after 1995. Raff said they hoped so that they have asked the legal counsel to consider them as part of the class. However, he said anyone could opt out of the class. The counsel will send a letter to every faculty and staff member affected and then they can choose whether to be part of the suit or not. He said they intend for everyone who has retired, been terminated, or died to collect redress. If you died, your family is entitled to redress. Edgley said that some classified staff, as early as 1984, were in both TIAA-CREF and OTRS. He has assured them that they will be in the class, as well. Anyone who has been damaged will be in the class. Henderson asked whether faculty at the branch campuses would be included in this. Raff said he thinks they were affected. Birdwell affirmed that they were in the same program, except that OSU-Tulsa was not in the system until about 1990 or 1991. Rockley said every faculty member would receive the information in the mail and that it would be put on a web site to be available to faculty at other sites. Raff said every effort should be made to get the information to faculty at other campuses. Edgley said their representatives were present and should pass the information on. Breazile asked how the accountants in the administration responded when asked how they allowed this to happen. Raff said they said it was the State's fault. Breazile said that surely they knew what was going on; we are always told that the administration is making up deficits, that they don't have contingencies, and now we find that we're the contingency. Edgley said that the position they have taken, which is reflected is a joint press statement that was distributed, is that these decisions occurred under a previous administration and this administration recognizes the damages that have been done to use. Breazile said that they didn't recognize them until faculty raised the questions. Edgley said he understood that but that the administration was going to cooperate with faculty in seeking this redress. However, the Faculty Council is considering an investigation into who was party to this and what happened. Breazile said that in the past it has been suggested that we have an ombudsperson to represent the interests of the faculty in this sort of thing. Most faculty are busy with teaching and research and assume the university will take care of these kinds of things. We give them that authority and trust them, but maybe we can't. Edgley said the breach of contract is particularly significant because OU did not do this to their faculty. They asked how we could have let this happen to us. The university educates students and that's the job of the faculty. The other people around are here to see that the people who do that are compensated for their work.

That's the administration. Somewhere along the line that second group let the first group down. I've heard nothing but words of support from the current administration about assisting us in pursuing this and getting this redress. That's how we trust it will stay. Mayer made the point that the OU faculty as a matter of course has legal representation because they have a law school and the law faculty is active in the Faculty Senate. He said that this whole sorry history indicated the need of the OSU Faculty Council for something like an Ombudsman and/or legal counsel that will take an active role in protecting the interests of the faculty. I remember when this happened that a lot of people were outraged, but it was presented as a *fait accompli*. It was presented as something about which we could do nothing, and I believe it was presented as something that would be generally applied across the state. It turns out this was not true. This constitutes a good argument for Faculty Council making sure that it is properly represented in the future to prevent this kind of thing from happening again. Edgley agreed and said that in the past two years the Faculty Council has sought the counsel of attorneys who are on the faculty. There are about a half a dozen at any one time. These consultations have been helpful. If we could codify this in some way it would be even better. A.J. Johannes said that OU has a Faculty Senate and that the big problem is that Faculty Council is a powerless, hopeless organization. We give advice to the President; we are not running the university. OU's Faculty Senate is in a different situation. Edgley said that issue has been discussed many times and that he was not sure that OU's Faculty Senate was much more effective than we are. If you talk to them, they have the same range of problems as we do, except that don't meet with the administration. They meet by themselves and then they go talk to the administration anyway. We sit with the administration and we have no constitutional power. We have only the power of proximity and we have the power of public shame and humiliation. We have used that judiciously, but effectively on occasion. It is debatable whether we'd get a better deal if we had a Faculty Senate. Johannes said his point was the Ombudsman may not have helped. Fournier said he hoped the collective response would make all of Professors Raff and Rockley's hard work pay off. He asked if someone elects not to pay the fee for the lobbying, whether they would be out of the class action suit. Raff said the contribution was voluntary and that the class action suit was totally separate. All we can do is plead with people to please support it, since we are not going to be able to get legal counsel to work with us on the lobbying effort for free. Edgley said the lawsuit was one portion and that we hoped that it would never go to court. To work with the legislative endeavor, we need someone to lobby on our behalf. Should it go to a judicial conclusion, everyone in the class will benefit, unless they have specifically opted out. Fletcher asked whether anything else would be done to inform the wider faculty. Edgley said that later in the meeting Lawry would recommend that a special General Faculty meeting be held December 3 in the Student Union Little Theater at 3 P.M. to present the information to the faculty and to answer questions. Every faculty member will also get the documents electronically. The Staff Advisory Council will be asked to assist in getting the names of affected staff members. Fletcher asked about the timeline of events. Edgley said the Council officers, members of the Retirement and Benefits Committee, and the attorney will meet with the administration November 28, the General Faculty meeting will be on December 3, and Mr. Derryberry will send letters to members of the class by mail in a few weeks. That's the timeline now, but the legislative solution is likely to be time-consuming. Sanders asked whether the OTRS formula based on the highest three years was part of the changes made or whether it was a myth. Raff said it was a myth and that it appears never to have been part of the calculations. In the calculations we have seen from the benefits office, which are done correctly, the highest three years never enters the calculations. It may have some bearing if things eventually become uncapped. If you call OTRS and ask them to send you your benefits formula, you will not see any indication that that formula had anything to do with the calculation. Rockley added that the OTRS sheet you would receive, the retirement formula for years gave that formula, but in 1999 it said contact your nearest distributor for further details. They removed the formula. Basically, it was a tremendous deception. Raff said the changes were a mistake but that the administration has given every indication that they are appalled by the results and there is every indication that they intend to join us. If they do, they deserve accolades. Peeper said that one of the documents mentioned using tobacco settlement money to fund the damage repayment. He suggested that there are many agencies lined up for that money and that it would be a mistake to say that we are going after that money. Raff said that that might be true, but that the decision should be left up to the legal counsel since Derryberry is very savvy about the legislature. Edgley said the class action petition did not mention the tobacco money specifically, and that the legislature should decide where to get the money. Achemire asked if a presentation could be scheduled at his campus in Okmulgee. Edgley suggested that we could teleconference the Special General Faculty Meeting to the branch campuses. Henderson asked that information and documentation be made available to faculty at all sites. Gamble asked whether university legal counsel could assist in the suit, since the administration is being cooperative. Edgley said one of the legal counselors for the university and the legal liaison for the Board of Regents were involved in early discussions with Mr. Derryberry on this issue and that some of them would be attending the meeting on November 28. He said that he fully expected us to work cooperatively on resolving the issue. Bays asked about the status of faculty and staff hired after 1995. Raff said they had a completely different program. They take the average of the highest five years of salary, no cap, times 2%, times years of creditable service. This is not bad in terms of OTRS benefits. The problem is if you die or move to another job, you only get what is deposited in OTR. If you make it to the rule of 90 and retire, the benefits are not bad. There is no grandfathering case for those hired after 1995. Edgley said the problem for new faculty is that they have OTR as their only benefit. While that program will be better, it will still not be as good as TIAA-CREF, plus they are prisoners of the State of Oklahoma for their entire lives. Bays said he left Louisiana for that reason and came here in 1995 under the old system, but was hired in 1996 on tenure-track and was put in the new system. Raff said OU faculty hired after 1995 are under the OTRS formula he just described, but they also get 8% contribution into TIAA-CREF. Edgley said this was unequal treatment under the law. Lawry said the Council officers have talked with Smethers about having the Retirement and Benefits Committee look at the post 1995 people to see if this is the kind of retirement system we want to have. Raff said there was no grandfathering case for these faculty but that there was unequal protection under the law, because OU and OSU are both constitutionally established universities with the same mission, the same faculty, nearly the same budget and there is a vast difference in retirement programs. Edgley mentioned that the Retirement & Benefits Committee and perhaps other committees will be working on resolutions to present to the Council. We are asking for faculty to be returned to the previous system, we're asking for redress, we're asking for OTR to live up to its promises, but the most important thing that we're asking for is to stop the bleeding now. For younger faculty, the damage is more and more and the liability is greater and greater, the longer we go without fixing this. Masters pointed out that legislative action and the class action suit address losses already incurred, but that the university administration could make clear their support by immediately fixing the problem. Edgley said that was at least one way they could do so. He said he has heard verbally from administrators that we need to fix this. Masters said that it is easy for them to say that, but fixing it immediately and letting the lawsuit address the past losses seems to be appropriate. Edgley said that was something they were going to encourage the administration to do. Raff said that we are going to have to be willing to work with the administration, but even if we had absolute agreement, where would they find 35 to 40 million dollars? Raff said whether the solution was legislative or judicial, only the legislature has the money. Masters said she understood the difficulty of fixing the past problem. She said it was easy for the administration to say they support this, but that it is not clear that they are committed to its support, unless the problem is immediately fixed for future pay. Lawry said that, pragmatically, if we don't fix it now and we are eventually successful, it will be the legislature that will pay for the solution, not the university. Raff said that if anyone had any great ideas, they should e-mail him and Rockley or the

Faculty Council officers. Peeper asked if the breach of contract was a federal law. Raff said it was not a federal offense. Edgley said that the legal firm made the decision about the appropriate place for the suit. Dickman expressed appreciation for the time and effort that Rockley and Raff had spent on this issue. The Council joined in a round of applause. Edgley announced that Raff and Rockley would be joining those Councilors invited to a reception following the meeting. He said others could join, if they wished to continue with more informal discussions.

REPORT OF STATUS OF FACULTY COUNCIL RECOMMENDATIONS:
President Halligan, Executive Vice President and Vice Presidents

01-04-01-BUDG **_Market-Driven Salary Increase to Tenured and Tenure-Track Faculty:_** Funds not available at this time. Recommendation referred to University Budget Committee for consideration (as reported at the Sept. 11, 2001, Faculty Council Meeting).

01-05-01-CFSS **_Parking Policy:_** Under review. The Parking Committee will develop one-, two- and three-year plans and alternative means of financing. A draft survey form is being reviewed by constituent groups, after which campus input will be sought.

01-05-05-RES **_Copyrightable Intellectual Property Policy:_** Under review. Members of the Deans Council reviewed the document at their October meeting and tabled action until the Research Directors approved same. Research Directors approved on October 17, and deans subsequently approved. Policy is being reviewed by Legal Counsel. Approval by the OSU Board is also required.

Edgley indicated that Faculty Council had approved the deletion of three commas in the document, which was proposed by the Dean's Council, and that the document had gone on to Legal Counsel.

01-09-01-BUDG **_Formalization of the University Raise Program:_** Acknowledged. Dr. Keener reviewed the budget implications of this recommendation with Pres. Halligan. Harry Birdwell, and Joe Weaver. Raises for faculty and staff remain a high priority for the administration; however, other mandatory increases must also be considered. (As reported at the Nov. 13, 2001, Faculty Council meeting.)

01-10-01-FAC **_Charity Fund Drives:_** Accepted (11/13/01). President discussed recommendation with members of his Executive Group, and Dr. Keener discussed same with members of the Deans Council. All endorsed the fact that charity drives are intended for faculty and staff participation.

01-10-02-ASP **_Revision for Scheduling of Final Exams:_** Accepted (11/13/01). Recommendation was reviewed and approved by the Student Academic Services Directors on October 10 and by members of the Deans Council on October 11. Implementation expected Fall 2002.

01-10-03-ASP/FAC **_Final Exam Overload Policy:_** Accepted (11/13/01). Recommendation was reviewed and approved by the Student Academic Services Directors on October 10 and by members of the Deans Council on October 11. Implementation expected no later than Spring 2002.

01-10-04-RP **_Abolish the Academic Computing Advisory Committee:_** Accepted (11/13/01). Dr. Keener presented the recommendation to members of the Deans Council on October 11. They endorsed abolishing ACAC.

REPORTS OF STANDING COMMITTEES:

ACADEMIC STANDARDS AND POLICIES — Brenda Masters

The Final Exam policy approved at last meeting will be implemented in Spring 2002. Information on final exam overload policy will be distributed by Dr. Keener's office. Voluntary faculty compliance with the overload policy for Fall 2001 is desirable. The committee reminds faculty that no final exams should be given in pre-finals week, and no assignment counting for more than 5% should be given. Final exams should be given times established in the schedule. Policy on Incomplete grades are being exam. Faculty should forward concerns or comments on Incomplete grades to masters@okstate.edu. Committee has studied alignment of OSU-OSU-Tulsa calendars. Concern about Fall break continues. Masters said there may not be a solution and we may decide it's okay to have a break in Stillwater, but not in Tulsa. Moder asked why. Masters said OSU-Tulsa was hesitant to let out Monday classes for Fall break when classes meet only once a week and Labor Day is already a Monday holiday. Other break schedules have been considered, for example letting out on Wednesday before Thanksgiving and beginning school on Tuesday, but they would still lose a Monday. Lawry asked if OSU-Tulsa lets out for Martin Luther King Day. Masters said she did not know. Edgley said he thought they did. Edgley said he forwarded a request for American Sign Language to be counted as meeting the foreign language requirement. Masters said the committee has reviewed that before.

CAMPUS FACILITIES, SAFETY, AND SECURITY — Marcia Dickman

Committee will meet with Geary Robinson about the Parking Survey. They are continuing to look at recycling and electricity use. Edgley asked if the parking survey was out. Dickman said the Parking Survey would not be out until February.

REPORTS OF LIAISON REPRESENTATIVES:

Technology Fee — Tom Peeper

Peeper distributed a report from the university technology fee committee. He summarized its contents as follows. In 1999, the committee spent a little over $1 million and had a million dollar carryover, which they did not spend. By last spring the carryover was about 2.3 million. The Colleges get $2 of the $5 fee and needed more money. There was a proposal to raise the fee by another dollar, but they needed to spend the carryover first. Over the summer a special committee outlined possible expenditures totaling 2.3 million dollars. After discussion the committee approved the expenditures, which included a 100-computer staffed lab in Cordell with extended hours and some college-based labs which will be open to all students. Tomorrow the committee will decide what to do with this semester's funds and will probably decide to approve the additional dollar in fees for the Colleges. One problem is that the student members, appointed by SGA, rarely attend the committee members. Without the student members there was no quorum and no decisions could be made. It was decided to ask the Colleges to send student representatives and to eliminate the quorum requirements. Dickman asked if technology fee money could be used to support University Testing. Peeper said the fee was only for technology. Binegar asked who generated the suggestions for spending the funds. Peeper said the ideas were generated by the subcommittee and passed onto the whole committee. He said the committee made an effort to collect ideas from the administration, students, and faculty and that they would be open to any ideas or suggestions. Masters asked why technology fee was being spent on staff salaries. Peeper said the money went to support staff in the labs and that the students supported that use. Gasem asked why there would be additional fees, if we had not been able to spend the money we had. Peeper said the Colleges needed the funds to properly staff and equip their labs. Gasem asked whether it would be better to shift $1 of the fee to the Colleges. Peeper said Dr. Keener was not willing to change the way the fee was structured because the students had approved it in this structure. Birdwell said the students initially approved $3 for general university technology and remainder to Colleges; this structure was then approved by the legislature and the State Regents. The money accumulated because they went several months without a quorum and couldn't spend the money. Breazile said when he was on the committee almost all the money was spent on replacing the computers every three years and that the decrease in costs might be a factor. Binegar asked if any of the $3 could be used for infrastructure. Birdwell said he didn't know the exact allocation, but that the university generally provided the infrastructure and the fee paid for hardware and support staff for labs. He said Dean Johnson could provide more specifics. Peeper said the use of funds was evolving. Funds have been allocated for a state-of-the-art audiovisual classroom, with the stipulation that it would be available for student use when it wasn't needed for classes.

Athletic Council — Larry Sanders

A full report is available from Diane LaFollette. Sanders provided a brief summary. The Council continued discussion of the10-day absence per semester rule. The schedules that exceeded the 10-day rule by a day or two were approved. The committee discussed men's & women's golf schedules but allowed them to exceed the rule because those teams generally have good academic records. They will ask the coaches of these teams to come and discuss the limits. There will be more investigation of possible changes to the rule. There was a discussion by the administration represented to the Council that Dr. Keener takes class absences very seriously, but he noted that some faculty are too inflexible about class absences for university-sponsored activities and that learning experiences outside the classroom involve learning, as well.

Emeriti Association — Larry Jones

The Emeriti Association is about to launch a $250,000 fund raising drive to raise money to help pay for part of the facilities in the OSU Alumni Association Building, on which construction will begin in the not-too-distant future. Many members of the association recently responded to questionnaire, either by telephone or received in the mail, regarding the feasibility of a facility called a Creative Retirement Complex to be built off Lakeview near the airport. An organization out of Mississippi is conducting the feasibility study. The same organization conducted a feasibility study for Purdue University, where such a complex is now complete. They reported that the response for such a facility was better here than at Purdue, so there is optimism about the eventual construction the retirement complex. The First Friday dinner was well attended with about 70 present. The general membership meeting was less well attended, but those in attendance enjoyed a good presentation on Ground Source Heat Pump Research given by Dr. James Bose.

Staff Advisory Council — Dawn Good

Staff Appreciation Day went great. SAC would like to thank the faculty for helping serve 1,225 staff personnel the meal. SAC voted to support the Faculty Council recommendation of raise increase policy. Myra Traynor will write a letter to President Halligan stating SAC's support. SAC's policy, benefits and budget committee is checking into day-care services. They are drafting a survey to send to faculty and staff.

Women's Faculty Council — Jean Van Delinder

The final showing of the Fall Semester OSU Women's Film Festival will be the film "Tough Guise," a documentary on the social construction of masculine identities in the US in the late 20th Century. The Spring Semester OSU Women's Film Festival will begin in January. The next meeting of the Women's Faculty Council will be Wed., Nov. 14 at 3:45 in Student Union Case Study Room 416. The following items are on the agenda: Task Force on Women's Issues, Women's Faculty Council Scholarships and Women's History Month. All faculty members are cordially invited to attend the meetings.

OLD BUSINESS:

Edgley announced that the Fall General Faculty Meeting will be November 20 at 3:30 P.M. in the Student Union Little Theater. The topic will be "The Crisis in Scholarly Publishing" and will feature Dr. David Shulenburger, the Provost of the University of Kansas, who is a national expert. On November 27 at 3:30, there will be a follow-up discussion by local faculty. Edgley said he had forwarded a letter stating the Staff Advisory Council's support of the raise recommendation to Comer and the Budget Committee.

NEW BUSINESS:

Lawry moved that, given the importance and complexity of the information presented at the beginning of the meeting, the Council endorse a special meeting of the general faculty on December 3 at 3:00 in the Student Union for information and questions and answers about the problems with the retirement system. Breazile seconded. The motion passed unanimously.

The meeting adjourned at 5:10 p.m. The next regular meeting of the Faculty Council is December 11, 2001.