

Subject: Re: Request vs Direct, continued.

To: Dave Frohnmayer <dfrohn@uoregon.edu> [Add to address book...](#)

Cc: "Peter Gilkey" <gilkey@uoregon.edu>, "Gwen Steigelman" <gwens@uoregon.edu>, "Joh... [Add to address book...](#)

From: Franklin Stahl <fstahl@uoregon.edu> [Add to address book...](#)

Date: Wed, 20 May 2009 14:21:55 -0700

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Peter: It's OK by me for you to post this letter. I leave it to you as to whether you will lop off the copies of prior communications. Frank

Dear Dave and Colleagues,

I wish to thank President Frohnmayer for contributing to this discussion on UO governance, especially for pointing out my mistake in chronology relative to the statutory acts of October 21, 1876. Below, I have commented (in RED marked with *****) on those of Dave's statements (in BLUE) which might benefit from additional consideration.

Dear Frank and Colleagues: I post these thoughts with reluctance, since I do not much like broadcast messages over technical matters when I know end of term urgencies command our attention elsewhere. But Professor Stahl's memo of today is, regrettably, quite wrong. His analysis is directly contradicted by the discussion of footnote 1 of the Department of Justice Opinion No. 6735 (November 7, 2008). The opinion notes that the authority of the President as "executive and governing officer," [with] "authority to control and give general directions to the practical affairs of the school" is in the original "Charter". It is in the statutory act of October 21, 1876. It is not a later presidentially "biased" corporatist appendage; it was enacted at the very same time and in the same Charter the language that constitutes the President and Professors as the "faculty". What this means, as I understand Professor Gilkey's lucid analysis earlier this weekend, is that a confrontational model of governance is not embodied in some conceptual mismatch between the Charter and later-enacted statutes (as Professor Stahl appears to argue). Rather, there is a legal problem that is quite fundamental if the "faculty" (President and Professors) attempt to "direct" action that is entrusted from the beginning to the President's responsibility over the University's "practical affairs".

*****That is the crux of the issues that confront university governance. The Charter gives the Faculty (President and Professors) the responsibility of governing the university while simultaneously conferring special authority on the President. How

are we to deal with the tensions created by these two views of governance? **IMD 1.123 Internal Governance and Authority over the Faculty**, subsequently issued by the State Board, was apparently designed to aid universities that find themselves struggling with this problem.

****One feature of the IMD prescribes a procedure by which the President can **exercise** the “authority to control and give general directions to the practical affairs of the school” granted him by the 1876 ORS. “The President shall define the scope of authority of faculties, councils, committees, and officers, subject to review by the Chancellor, when not otherwise specifically defined by Board policy or established in the internal governance statement.” I think that Dave has yet to define the scope of authority of these bodies as is required by the IMD. Without such a document the Senate is adrift. Furthermore, the Senate and its committees could, theoretically, be turned on or off at the whim of a President, depending on whether that President wanted to squelch the Senate or to use it as cover for his/her actions.

****The IMD provides a process by which any disagreements between the Senate and the President may be resolved: “The President shall have the right ... of veto over [Faculty] decisions or those of the representative body, subject to review by the Chancellor.” This right of veto implies that issues regarding the President’s sphere of authority and accountability are expected to arise in good faith. The processes of veto and review by the Chancellor ensure that the dispute is fully and openly examined from all sides.

In the 15 years of my presidency, I have not vetoed a single item, notwithstanding an occasional issue concerning the President’s sphere of authority and accountability. I have believed that comity and good will should be our touchstones, and I am confident that this has been the sentiment of the faculty as well.

****Starting from the premise that both the President and the Senate care deeply about the mission and welfare of the University, I suggest that avoiding the veto is not necessarily in the best interest of the University. There should be no stigma attached to the use of veto when the President believes that Senate action is detrimental to the welfare of the University. I believe that the President’s veto rights were designed not to create confrontational governance, but to promote open discussion of important issues. If a President avoids the veto in dealing with disagreements, but retains the strong belief that the Senate has taken unacceptable action, he/she might be tempted to pre-empt challenges to his designated sphere of authority and accountability by, for example, indicating that the Senate may request, but not direct, actions by the administration. Or such a President might be tempted to simply ignore actions of the Senate

he/she considers bad for the University. Under such circumstances, it would not be surprising to find that few faculty would be willing to serve on the Senate or its committees.

I have believed that comity and good will should be our touchstones, and I am confident that this has been the sentiment of the faculty as well. Best regards, Dave

*****Joining you all in comity, good will and respect of process,

Best regards, Frank

-----THIS LINE MARKS THE END OF THIS LETTER.-----

On May 17, 2009, at 6:48 PM, Dave Frohnmayer wrote:

Dear Frank and Colleagues: I post these thoughts with reluctance, since I do not much like broadcast messages over technical matters when I know end of term urgencies command our attention elsewhere. But Professor Stahl's memo of today is, regrettably, quite wrong. His analysis is directly contradicted by the discussion of footnote 1 of the Department of Justice Opinion No. 6735 (November 7, 2008). The opinion notes that the authority of the President as "executive and governing officer," [with] "authority to control and give general directions to the practical affairs of the school" is in the original "Charter". It is in the statutory act of October 21, 1876. It is not a later presidentially "biased" corporatist appendage; it was enacted at the very same time and in the same Charter the language that constitutes the President and Professors as the "faculty". What this means, as I understand Professor Gilkey's lucid analysis earlier this weekend, is that a confrontational model of governance is not embodied in some conceptual mismatch between the Charter and later-enacted statutes (as Professor Stahl appears to argue). Rather, there is a legal problem that is quite fundamental if the "faculty" (President and Professors) attempt to "direct" action that is entrusted from the beginning to the President's responsibility over the University's "practical affairs". In the 15 years of my presidency, I have not vetoed a single item, notwithstanding an occasional issue concerning the President's sphere of authority and accountability. I have believed that comity and good will should be our touchstones, and I am confident that this has been the sentiment of the faculty as well. Best regards, Dave

From: Franklin Stahl [<mailto:fstahl@uoregon.edu>]

Sent: Sunday, May 17, 2009 5:16 PM

To: Peter Gilkey

Cc: Dave Frohnmayer; Gwen Steigelman; John E Bonine (UO); Henriette Foss; President Frohnmayer; Paul van Donkelaar; Dave Hubin; George Pernsteiner; drmiller@uoregon.edu; bengtson@uoregon.edu; Paul E. Simonds; Jeff Hurwit; Mary Jaeger; Linda King; cjellis@uoregon.edu; shankhac@uoregon.edu; rdavies@uoregon.edu; reza@cs.uoregon.edu; hlin@uoregon.edu; shlomo@uoregon.edu; Gordon Sayre; Peng Lu; LiShanChou; dlevin@uoregon.edu; tublitz@uoregon.edu; Gerald Berk; cap@uoregon.edu; plambert@uoregon.edu; eherman@uoregon.edu; Lynn Stephen; redford@uoregon.edu; mathaesa@uoregon.edu; trespyle@uoregon.edu; gladhart@uoregon.edu; dfalk@uoregon.edu; middlebr@uoregon.edu; analisa@uoregon.edu; toadvine@uoregon.edu; aschulz@uoregon.edu; jrowell@uoregon.edu; Laura Vandenburg; Deb Olson; plounds@uoregon.edu; cbassett@uoregon.edu; jhnewton@uoregon.edu; acoles@uoregon.edu; aamos@uoregon.edu; rillig@uoregon.edu; Heather Briston; emp@uoregon.edu; klenn@uoregon.edu; pangburn@uoregon.edu; rcb@uoregon.edu; mhenney@uoregon.edu; aemami@uoregon.edu; cerise@uoregon.edu; sjpaul@uoregon.edu;