

Summary Update Number 2

Lionel M. Raff  
Regents Professor  
Chair of the General Faculty

On Saturday, July 3, the Daily Oklahoma carried a front page story under the byline of Mr. Mick Hinton. A similar story appeared in the Tulsa World under the byline of Mr. Jay Cooper. These stories reported the details of secret agreements between Mr. Brandon LaBonte, Mr. Mike Hewitt and, presumably, Oklahoma State University, although the only signature on the agreements is that of Vice-President Gary Wiggins. A summary of the key points of the agreement for Mr. LaBonte is given below; the agreement with Mr. Mike Hewitt is similar. The full text of the secret agreement with Mr. LaBonte may be examined on the Faculty Council's webpage:  
<http://facultycouncil.okstate.edu/>

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Overview of Brandon LaBonte Settlement Agreement.

- 1, Mr. Brandon LaBonte releases OSU from any claims arising from his employment at OSU.
2. OSU releases Mr. Brandon LaBonte from any claims arising from his employment at OSU.
3. Mr. Brandon LaBonte accepts this Agreement as full settlement for any damages, injuries he may have sustained while at OSU.
4. Mr. Brandon LaBonte agrees to submit an irrevocable letter of resignation, effective June 30, 2004.
5. OSU agrees to pay Mr. Brandon LaBonte \$16083.34 within 30 days.
6. OSU agrees to seal any negative documentation it has in its personnel and other files regarding Mr. Brandon LaBonte. Such documentation shall not be made publicly available to any employee or officer of OSU. OSU further agrees that a representative of the Office of Legal Counsel to the OSU Board of Regents will meet personally with the officers of the Faculty Council and will strongly recommend to those individuals that they make no public adverse comments after the time and date of the execution of this Agreement about Mr. Brandon LaBonte, and that doing so may subject them to personal liability.
7. OSU agrees to make no adverse comments regarding the employment of Mr. Brandon LaBonte to prospective employers . Mr. Brandon LaBonte agrees to make no adverse comments about OSU to any third parties.
8. OSU agrees to provide a positive job performance reference regarding the employment of Mr. Brandon LaBonte to prospective employers. OSU agrees that written, oral, or electronic mail requests for information about the employment history of Mr. Brandon

LaBonte be routed to Dr. Gary Wiggins, except for routine inquiries (employment dates, positions held, gross salary), which information is public record under the Oklahoma Open Records Act.

9. All parties agree that it is essential to the settlement of this matter that the terms and conditions of this agreement, indeed the very settlement of this matter, must remain absolutely confidential except ...

10. The terms and conditions set out in this agreement are in compromise and settlement of disputed claims of unlawful, inappropriate, and unfair treatment, the validity, existence, or occurrence of which are expressly denied by the parties.

11. The terms of this Agreement shall be binding on the parties hereto, and their relatives and representatives. This Agreement is not revocable by either party.

12. The validity, construction, and enforcement of this Agreement shall be governed by applicable state and federal laws. Venue for such action will be Payne County Court or US District Court for Western District of Oklahoma.

13. If any provision of this Agreement contravenes applicable law or public policy, such provisions shall be regarded as modified to the extent necessary to conform with such applicable law.

14. This Agreement embodies the whole agreement of the parties.

15. The undersigned, Mr. Brandon LaBonte, affirms that the only consideration for his signing the Agreement are the terms stated above.

Signed: Brandon LaBonte  
Notarized: Jennifer Caldwell

Signed: Gary Wiggins  
Notarized: Judith Barnard.

(The agreement with Mr. Hewitt is very similar. It is also signed by Vice-President Wiggins.)  
For a full copy of this secret agreement, see <http://facultycouncil.okstate.edu/>

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Mr. Hinton and Mr. Cooper obtained the information for their stories by means of open records requests to President Schmidly on July 1, 2004. Were it not for Mr. Hinton and Mr. Cooper's diligence in pursuit of the truth, the Faculty and some members of the Administration might never have learned of this secret deal. All employees of Oklahoma State University who value the integrity of the University are indebted to Mr. Hinton and Mr. Cooper.

With the facts of the secret agreement now exposed, I wish to communicate certain additional facts to the Faculty that bear on these issues.

1. In his first open records request, Mr. Hinton requested all information pertaining to payments made to Mr. Brandon LaBonte and Mr. Mike Hewitt along with all e-mails, notes, communications, or other agreements concerning the matter. In response, Mr. Nestor Gonzales, Manager, OSU News Bureau, sent the following communication to Mr. Hinton:

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Dear Mr. Hinton:

In response to your request pursuant to the Oklahoma Open Records Act, please be advised:

1. The financial settlements with Mr. Brandon LaBonte and Mr. Mike Hewitt were as follows:
  - A. Mr. LaBonte - 60 days pay for a total of \$16,083.34
  - B. Mr. Hewitt - 60 days pay for a total of \$12,883.33

The settlement was offered to preclude the possibility of litigation because of the matter. The University administration, by virtue of state statute and the Oklahoma Constitution, has the authority to enter into such contractual agreements if it is deemed appropriate and necessary to protect the interests of the institution.

There were no e-mails, notes, communications or other agreements concerning this matter.  
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The Provost and the officers of the General Faculty are in possession of a copy of Mr. Gonzales' communication. Mr. Hinton was not satisfied with this response and probed further in such a manner that he had to be given access to the secret agreements.

2. No officer or member of the Faculty Council was informed of the existence of this secret agreement. Mr. M. Scott Fern of the Office of Legal Counsel to the OSU Board of Regents did meet with the present and past chairs of the General Faculty and the Provost as described under Point #6 of the Agreement. This meeting lasted 90 minutes. Mr. Fern did strongly recommend to us that we make no public adverse comments. However, at no time was the existence of such an agreement mentioned. Had it been, we would have vociferously objected.

3. The Provost and Executive Vice-President of the University, Professor Marlene Strathe, was unaware of the existence of this agreement until she received a copy of Mr. Gonzales' response to Mr. Hinton's open records request. As soon as she was made aware of these facts, she informed the Chair of the General Faculty, Lionel Raff.

4. Subsequent to the meeting Mr. Fern held with the present and past chairs of the General Faculty and the Provost on Friday, June 25th, I requested an additional, one-on-one meeting with Mr. Fern on Monday, June 28th. Mr. Fern accommodated this request, and we met in his conference room for 90 minutes that morning. A wide array of items related to the IT issue were discussed, but at no point did Mr. Fern inform

me of the existence of the secret agreement or its contents.

5. I have received e-mail communications and have held discussions with the other officers of the General Faculty concerning these revelations. All are appalled.

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With at least some of the facts now exposed, I will state my position as Chair of the General Faculty. (Hopefully, I still possess my First Amendment rights.)

(1) Neither the University Legal Counsel nor Vice-President Wiggins has a right to sign any agreement that binds the Faculty of Oklahoma State University without their knowledge and consent. They most certainly do not have the right to sign agreements that abridge the First Amendment rights of the Faculty. I am appalled and outraged at this and unequivocally reject the content of this agreement. The other officers of the General Faculty are equally outraged. I strongly suspect that the OSU General Faculty will share this outrage when they learn the details of this secret agreement. The language of Point 6 of the agreement that blatantly threatens OSU Faculty if they choose to express opinions related to these matters is unacceptable.

(2) The Gonzales' communication to Mr. Hinton, which states that no other agreements concerning the matter exist, is clearly an evasion. Perhaps, from a legal perspective, Mr. Hinton did not phrase his open records request in the correct form. However, that is a pathetically sorry excuse for withholding the information.

(3) Under Point 8 of the Agreement, "OSU agrees to provide a positive job performance reference regarding the employment of Mr. Brandon LaBonte to prospective employers." If this isn't enough, OSU further agrees "... that written, oral, or electronic mail requests for information about the employment history of Mr. Brandon LaBonte be routed to Dr. Gary Wiggins..." Where are the ethics of the University? They appear to be buried somewhere in the desert. A recommendation is supposed to be an honest evaluation of ability and previous job performance, not a cover-up. Where is the consideration of the University for the parties who might request such a job performance recommendation? No one but Vice-President Wiggins is to be permitted to provide a recommendation, and Dr. Wiggins is the individual who hired and supported Mr. LaBonte far too long.

(4) Point 9 of the agreement states, "All parties agree that it is essential to the settlement of this matter that the terms and conditions of this agreement, indeed the very settlement of this matter, must remain absolutely confidential except ..." My paraphrasing of Point 9 is, "All parties agree that it is essential to the settlement of this matter that the terms and conditions of this agreement must remain hidden and secret otherwise the cover-up will fail."

(5) As I informed the Faculty in Summary Update Number 1, discussions are currently in progress between the present and past chairs of the General Faculty, one member of the Faculty Council Information Technology Committee, the Provost, and Vice-President

Wiggins to determine if it is possible to go forward under the present leadership of the University and if so, how. These discussions were initiated before the officers of the General Faculty and learned of the secret agreements signed by Vice-President Wiggins with Mr. LaBonte and Mr. Hewitt. In light of these revelations, I consider it impossible to go forward effectively with Dr. Wiggins as vice-president of IT.