

Minutes*

**Faculty Consultative Committee
Thursday, September 16, 2010
1:00 – 3:00
238A Morrill Hall**

Present: Kate VandenBosch (chair), Melissa Anderson, Peter Bitterman, Thomas Brothen, Colin Campbell, Nancy Carpenter, Carol Chomsky, Chris Cramer, Shawn Curley, Nancy Ehlke, Barbara Elliott, Marti Hope Gonzales, Michael Hancher, Caroline Hayes, Russell Luepker, Jan McCulloch, Michael Oakes, George Sheets

Absent: Elizabeth Boyle, Jeff Kahn

Guests: Dr. Mary Kroetz (Postdoc Association); General Counsel Mark Rotenberg; President Robert Bruininks

Other: Jill Christiansen (Office of the President)

[In these minutes: (1) proposed changes in the senate/committees: postdocs, UMR, and employees; (2) applicability of the Open Meeting Law to committee meetings; (3) committee business; (4) discussion with President Bruininks; (5) faculty senate docket]

1. Proposed Changes in the Senate/Committees: Postdocs, UMR, Employees

Professor VandenBosch convened the meeting at 1:00, introduced Jill Christiansen from the President's Office, who will serve as the liaison with the Committee, and then asked the Committee to consider several proposed changes in the Senate. She noted that Dr. Mary Kroetz from the Postdoc Association would join the Committee a bit later.

-- The faculty at the Rochester campus have expressed an interest in participating in the Senate. They have surpassed the numbers required for representation (the bylaws provide that any college or campus with 10-19 faculty members is entitled to one representative in the Faculty and University Senate. They also wished to get together with members of this Committee to learn more about governance. Professor VandenBosch suggested that a contingent of faculty members from the Committee might visit the Rochester campus.

Professor Carpenter inquired what number of faculty leads to representation on this Committee. There is no rule, Professor Chomsky said. Professor Carpenter recommended that Committee members visit Rochester because it means a lot to the people on campus.

-- The Council of Academic Professionals and Administrators is taking steps to become a senate, as is the Civil Service Committee. The Board of Regents will need to approve changes in the senate constitution in order for those changes to go into effect.

* These minutes reflect discussion and debate at a meeting of a committee of the University of Minnesota Senate; none of the comments, conclusions, or actions reported in these minutes represents the views of, nor are they binding on, the Senate, the Administration, or the Board of Regents.

-- An "Employee Delegation" has been proposed for the University Senate, a subset of the body consisting of the faculty and staff, to deal with matters that affect all University employees. At present such issues have to be consulted in several different groups or brought to the University Senate—which includes students. Employment issues could be brought to the Senate Consultative Committee (minus the students) and then to the Employee Delegation of the University Senate. The practical effect would be different card colors for voting, Professor Chomsky observed.

It was agreed that a small group would be asked to draft a bylaw change to be brought to the Senate Consultative Committee.

-- Professor VandenBosch welcomed Dr. Kroetz to the meeting to discuss the concerns of postdocs.

Dr. Kroetz said that postdocs would like to look at how they might be more integrated into the University. There was an office of postdoc affairs that helped with connections in the University, but the office was dissolved, so they are looking themselves into connections within the University. They would like to participate in governance.

Are the functions that were covered by the postdoc office now missing, Professor VandenBosch asked? The office was a one-quarter-time person who did a number of things, including setting up workshops to explore future employment (which consists primarily of three categories for postdocs: liberal-arts colleges, research universities, and industry), holding one-on-one conversations to help postdocs, and developing Individual Development Plans (IDPs) that provided postdocs with a mechanism to identify goals, etc. The responsibilities formerly handled by the postdoc office have been transferred to the Office of the Vice President for Research. Human Resources is working on a new orientation program for postdocs that will also help them with the IDPs.

Professor Curley asked if the postdocs need administrative support or if they need governance participation. The office provided administrative support but it would be helpful to be in governance, Dr. Kroetz said, especially for those who are interested in continuing their careers in the academy. Participation would also give voice to a small group.

Professor Luepker asked what group Dr. Kroetz represented. It is a voluntary group run by a small committee, Dr. Kroetz said. They represent the three categories of postdocs: Research Associates, postdoctoral fellows, and postdoctoral associates. Most people who come to the University for additional research experience before they go on with their career; 80% or more are in biomedical departments. Professor Luepker commented that a Research Associate position is a job while the other two are postdoctoral training. Dr. Kroetz concurred and said their association supports the postdoctoral fellows and associates who are at the University for less than five years. There are about 500 Research Associates who are here longer; their association also supports them because it is sometimes difficult to draw lines between groups.

The Committee discussed the categories of postdoc appointments and which are represented in governance. There is a broader group of professionals in training, Professor VandenBosch said, which includes 17 categories of employees representing about 1900 people. About 1500 of them are eligible to participate in governance. So this is a larger issue than postdocs, she concluded.

What kind of issues would they wish to participate in, she asked Dr. Kroetz. Dr. Kroetz said she was not sure. Professor Chomsky said it sounds like the postdocs need to find out more about what goes on in governance so that they can identify issues they care about. There needs to be a way to inform the group, allow them to track issues, and let them know who they should talk to. Dr. Kroetz agreed and added that because they are a transitory group, they don't know how to work within the system, although they need to be aware of what is going on at the University, of the workings of the University—and they need to get their work done. They may be interested in both academic and P&A issues, Professor Chomsky said, and need information about both and a way to express their views in return.

Professor VandenBosch noted that a small group from governance, including some from this Committee, could come to the Postdoc Association and talk about governance and what they could be interested in.

Professor Gonzales suggested it would be a good start for the postdocs to attend meetings to get a sense of employment policy issues. They should also receive the minutes of Senate committees, Professor Hancher said, and the names of the chairs of committees of interest. Professor Anderson said many faculty members do not know a lot about governance, either, and it would be nice to have an open meeting for an hour that anyone could attend to learn about governance.

Professor McCulloch noted that there are opportunities for governance at the department and college levels as well. There could be other places where postdocs learn about governance.

It was agreed that Dr. Kroetz would be provided information about governance. Professor VandenBosch thanked her for joining the meeting.

2. Applicability of the Minnesota Open Meeting Law to Committee Meetings

Professor VandenBosch next welcomed General Counsel Mark Rotenberg to the meeting to discuss whether the Committee (and Senate committees in general) is subject to the provisions of the Minnesota Open Meeting Law. She noted that a couple of faculty members had expressed dismay that the FCC retreat and that occasionally parts of FCC meetings are closed and no record is written of the discussions during those closed sessions. She reported that several FCC members met with Mr. Rotenberg last summer about the issue; it was agreed that he would meet with the Committee to report on and memorialize his advice.

Mr. Rotenberg said that he had thought about and discussed with colleagues about applicability of the Open Meeting Law to meetings of this Committee. He said he does not believe it applies and asked for research on the history of the law and subsequent legislative amendments. The legislative history of those amendments that are arguably relevant suggest strongly that the legislature did not have this Committee in mind when it adopted them. The legislature has not considered the uniqueness and peculiarities of the activities of a large research university when it adopted and amended the law, so there are certain incongruities in the language used when one tries to apply the law to the University. Most prescriptions and proscriptions apply to other kinds of organizations, such as school districts and state agencies. The task of his office is to try to give a reasonable interpretation of the law as applied to the unique circumstances of the University (as it tries to do with all laws), and try to determine how a court would apply the law in that context.

There has been no judicial interpretation of the Open Meeting Law as it might apply to committees of faculty (such as in an academic department), Mr. Rotenberg said.

Mr. Rotenberg distributed copies of his advice to the Committee, which read as follows:

September 20, 2010

MEMORANDUM

TO: Kate VandenBosch, Chair, Faculty Consultative Committee
Christopher Cramer, Vice Chair, Faculty Consultative Committee

From: Mark B. Rotenberg
General Counsel

RE: Application of the Minnesota Open Meeting Law to Meetings of the Faculty Consultative Committee (FCC)

The following is a non-privileged memorialization of my previous legal advice regarding the application of the Minnesota Open Meeting Law to meetings of the FCC.

The FCC is created by the University Senate Bylaws, and serves as a consulting body to the president and as executive committee of the Faculty Senate. The members of the FCC are faculty members of the University, elected to their positions by the tenured and tenure-track faculty. *See* Senate Bylaws, Art. IV, para. 5H.

The Minnesota Open Meeting Law, Minn. Stat. Chapter 13D, as relevant here, applies to "all meetings ... of the governing body" of the University, and of any "committee, subcommittee, [or] board" of the body. Minn. Stat. § 13D.01. "The Board of Regents is the governing body of the University of Minnesota." Minnesota Daily v. University of Minnesota, 432 NW2d 189, 190 (Minn. Ct. App. 1988). As provided in the Senate Bylaws, *supra*, neither the function nor the composition of the FCC suggests that it is a committee or subcommittee of the Board of Regents. The Board of Regents has no operational control over the business of the FCC, and has no role in selecting its membership. Indeed, Regents' policies do not provide any formal oversight relationship between the Board and the FCC.

A plain reading of the statutory text could indicate an exceptionally broad interpretation of the phrase "committee . . . of a public body." However, Minnesota courts, the Commissioner of Administration, and practical constraints functionally limit the reach of the statute to include only committees that have the capacity to transact public business on the part of the public body by making final policy decisions. The committees considered by the courts to be transacting public business are committees of the governing bodies of the public body--at the University of Minnesota, this means committees of the Board of Regents. We are aware of no Minnesota court opinion stating or suggesting that the Open Meeting Law applies to a committee such as the FCC, which is not a committee or subcommittee of the Board of Regents and does not transact business on behalf of the Board.

Accordingly, the FCC is not subject to the provisions of the Open Meeting Law.

Please do not hesitate to contact me if you wish further counsel on this matter.

Mr. Rotenberg noted that there is no ambiguity about the applicability of the law to the meetings of the Board of Regents and its committees, and they go to great lengths to assure that the Board is complying with the law. He said he has no such concerns about this Committee. There are a lot of administrative opinions under the Open Meeting Law about ad hoc groups, but nothing that indicates the meetings of this Committee are covered by it.

Professor Sheets asked if Mr. Rotenberg would offer the same advice to other University Senate committees. Mr. Rotenberg said he would.

Professor Cramer noted that the Chair of this Committee provides "reports" to the Board of Regents. Professor Chomsky observed that it is not "reports to" in the sense of line responsibility, it is to give the Board a sense of what the Committee is doing. It is not an administrative reporting relationship, which is what the law seems to contemplate.

Professor VandenBosch noted that the bylaws of the Senate provide that any Senate committee may close its meetings. (Article II(3)(d) of the University Senate provides that "Committees of the University Senate shall have a policy of open meetings. Closed or executive sessions may be held only after approval by a two-thirds majority of the committee members present and voting. The committee shall keep a list of all topics discussed and actions taken in its closed meetings and incorporate that list in its minutes. Only committee members and others designated by the chair may remain in the meeting once a motion to close the meeting has been adopted." Article IV(3)(e) provides the same for committees of the Faculty Senate and Article VI(3)(e) provides the same for committees of the Student Senate. Professor Gonzales noted that these bylaws were adopted without dissent by the bodies.)

Professor Chomsky noted that this Committee, along with other Senate committees, shares an immense amount of detail and has a tremendously open process, but committees can close or be off the record to enhance their ability to consult effectively.

Mr. Rotenberg said that the administration does not consider the Senate and its committees an administrative unit; the President can't "fire" the Senate or its committee chairs. He also said that his office would defend Committee members if they are sued about the applicability of the Open Meeting Law to committee meetings, because under the provisions of the Board of Regents Policy: Legal Defense and Indemnification of Employees, Committee members would be acting within the scope of their employment in conducting meetings.

Professor VandenBosch thanked Mr. Rotenberg for joining the meeting and providing counsel.

3. Committee Business

Professor McCulloch recalled that at the Committee retreat she had promised to be in touch with Provost Sullivan about the college blue-ribbon committees. She recalled that at the retreat, some of the new members of the Committee had no knowledge of the functioning of the blue-ribbon panels in their colleges. Provost Sullivan had reported that all of the deans informed him about what they did but there

was a sense among Committee members that there had been variability in the process across the colleges and in the use of the committees. Provost Sullivan feels confident that the deans reported what they did but that some may have reached deeper into their colleges than others; he is aware of the differences across colleges, Professor McCulloch said.

Is the process seen as so uneven that it is not a valid process, Professor Bitterman asked? He would say that it was not. The variability is disconcerting, Professor Luepker said; when the blue-ribbon committees were rolled out, they were seen as very important. Some committees completed their work in two months, some are still working on it, and some say it will take a couple of years, Professor McCulloch said.

Professor Chomsky asked if the Committee should convey its concerns to the Council of Deans. There is a real concern and the deans need to know that faculty are concerned. The process requires faculty participation but it is not clear that there was such participation across all colleges. The coordinate campuses should be included in any expression of concern, Professor Carpenter commented.

Professor Cramer recalled that the Committee heard about the blue-ribbon committees a year ago, and at that time suggested uncertainty about them. The Provost liked the idea nonetheless and asked the deans to establish them. If there is a concern about the way they functioned, it should be directed to the deans, not the Provost.

These committees are a piece of the process leading up to dealing with the financial situation, Professor Curley observed. The Committee's concern is about appropriate faculty participation. If asked what the Committee should do, it is the process it should look at because it does not have the authority to make the decisions. He said he would like to see from the President and Provost a timeline and process description for the next nine months. Within the last couple of years, with the Graduate School and the budget issues, the administration acted without sufficient consultation and created an uproar; this Committee had to step in and fix the process. Things did not move as smoothly as they could have; he said he would like to skip that part of the process next time.

Professor Bitterman said that the data elements that go into the decision-making process need faculty consultation.

Professor VandenBosch said that she discussed the process with the Provost, and Vice President Brown agreed, that there should be a discussion with Provost Sullivan about the process of making decisions concerning allocations to units. There is participation of faculty in the blue-ribbon-committee and compact processes, then there is a black box where decisions are made, and then there are outcomes (the Provost has agreed to provide multi-year data on the outcomes). The Committee has asked what happens in the black box. Professor McCulloch reported that the Provost said he would be glad to respond to questions.

Professor VandenBosch said the Committee can ask about the compact process but there is also this one-time process in place as well. Professor Bitterman said it is important to distinguish between annual planning and strategic planning or it will be difficult to have a good discussion. Professor Curley, he said, was focusing on the strategic planning.

4. Discussion with President Bruininks

Professor VandenBosch now welcomed the President to the meeting.

President Bruininks, coming in on the end of the previous discussion, said he has worked hard to be sure that annual discussions take place in the context of a longer-range plan while still dealing with matters that come up during the year. But it should not be an "invoice process," he said; there must be strategic planning.

President Bruininks took a moment to present Professor Luepker with the Outstanding Service Award (because, the President noted, Professor Luepker had been unable to attend the ceremony last spring due to teaching obligations. The students always come first, Professor Luepker commented.) The President said the award is for "individuals who have provided exceptional service to the University, its schools, colleges, departments, service units, and have gone well beyond their regular duties and have demonstrated an unusual commitment to the University community." It is extraordinary for an individual to receive one of these awards because there are many nominations, the President said, and it is a special experience for him to award them. He congratulated Professor Luepker; Committee members gave him a round of applause. (It was noted that Professor Hayes had also received the award last spring.)

Professor VandenBosch recalled that the President had brought a number of topics to the Committee at its retreat; the discussion covered some but not all of them. She and Professor Cramer asked him to talk today about his priorities for the remainder of his term in office as well as transition issues.

The President said June of 2011 is approaching fast, at which point he will return to the best job at the University, that of professor. He said he has been honored to serve as the president and believes that the University set the right priorities despite going through two recessions and facing the deepest cuts to its budget since the Depression. Some things could have been done differently, but the University is set on a path to make it much stronger in the future. He said he was determined that when he reached the end of his term in office the people of Minnesota would think differently about the University's transformative leadership role and responsibilities in the state and society. He said he met recently with the presidents of the private colleges in the state and found that they were talking about different issues than they were eight years ago—they are talking about the University's land-grant mission and its role as the state's research university.

There are only so many things that can be accomplished in the remaining months when one thinks about changes in the context of consultation and governance responsibilities, in a "new normal" environment with declining resources and increased demands, while protecting the University. There needs to be a thoughtful discussion about change processes in the University, the President said, because the transaction costs of closing a college, changing Extension, and reorganizing the Academic Health Center have taken a tremendous amount of time. He said he has tried to do those things in a thoughtful and sensitive way and he followed the University's gold standard in consultation. He related that he spent about 300 hours in the last 18-24 months on the Academic Health Center reorganization, but if every major change has transactions costs that are that high, the institution needs to rethink its change-management process. The faculty need to think about the number of departments, about the liberal-education and preparation standards, and so on. They need to see how decisions fit together, e.g., how admissions relates to liberal-education requirements to the cost of education to increases in retention and

graduation rates. In five years, people will look at the University for the value it provides on those measures—and these concerns can be connected to graduate and professional education as well.

It is important to address long-term issues, the President said, such as academic goals, quality, outcomes, academic productivity, and retention and graduation. He said he believed that those measures could perhaps be improved by 10% simply by changing the University's procedures. Administrators can't do that—the faculty have to lead the changes.

The President said he does not intend to "run out the clock" during his last months in office; there are some things he would like to get done.

The academic quality of the University has to be protected. The University has been asked by the state to produce plans for budget cuts of 5%, 10%, and 15%. These plans will likely need to be revisited with a new governor and finance department next year. None of the three gubernatorial candidates has yet presented a specific budget plan on higher education. The most important thing to accomplish is to protect as much of the University's base budget in state funding as possible in order to protect its long-term quality. That is one reason the administration is looking carefully at costs (e.g., energy, facilities, technology) that can be changed to save resources without costing jobs, but they are about out of those savings. There will never be significant savings on space without faculty involvement because it is so easy to use resources that everyone pays for.

It will be a big job to shape the FY2012 and 2013 budgets. He will be leaving office, the President commented, but will—with the Committee and the Board of Regents—have to set the financial plan for the next two years. A new president cannot come in and garner a lot of new funding and make big changes immediately, but he believes there will be improvement in the economy so that the new president will eventually be successful in receiving some additional funding. But growth will be slow.

There may be an opportunity for a capital bonding bill, the President said. If so, the University will first seek HEAPR funds for repairs and renovation, which require no matching commitment from the University. If there is an opportunity for major projects, the University will seek funding for them. (These priorities are in the University's six-year capital plan and in previous requests. They will be discussed after the election.)

The University will continue to increase tuition at the undergraduate level to address its budget challenge, with continued need-based scholarship support (graduate and professional programs are pegged to market). The legislature will push to keep tuition low, but if the University does so, it creates a long-term financial problem for itself. It (the University) needs to keep tuition at reasonable increases so that it can pay its costs and also be very aggressive in raising funds for financial aid. The University should also work with Congress to develop a human capital plan like the National Defense Education Act in the 1950s. January will mark the beginning of phase two of a campaign to raise student scholarships and financial aid funds (including for graduate and professional education); the University has over \$300 million in endowments for financial aid now.

Professor Hayes reported, apropos of strategies to fund education so students can meet their dreams, that she recently had a conversation with a legislator who talked about someone who was laid off and pursued an alternate career—and who asked if the University has advising that directs people to different education and career options. She said she was not quite sure how to respond, because it is not

the University's job to tell students what they should do. They are paying tuition and they should have the freedom to decide what they wish to pursue.

There are things the University can do, President Bruininks said. Today, students are paying tuition but they also want jobs when they complete school. The Morris campus has a 93% placement rate, and it is one of the most liberal-arts-oriented units in the University. There are answers to the question in the context of the University's history and mission. If the University were being more strategic, it would work with the high schools to develop a core curriculum in high school that students could take and more easily transfer, but right now University standards are not strongly aligned with challenging school curricula. The average freshman on the Twin Cities campus has 28 college credits when entering; if the University and schools were better aligned, the student would save almost a year's worth of tuition or could stay the full four years and experience a very different kind of education (which is what most of them do, with double majors or minors or study abroad or internships). The University can do more with career advising and could set up experiences in the community to enhance student competitiveness upon graduation. If one asks what the problem is, it is not pigeon-holing students into degrees but to enhancing educational opportunities with a strong liberal-education foundation.

There needs to be serious discussions about curriculum and work with the K-12 schools. The University can help reform the last two years of K-12 education, which could affect admissions (because there could be better preparation and future flexibility with a more challenging high-school curriculum).

Advancing strategic planning to the next level means identifying qualitative and quantitative metrics to measure progress, the President said. A framework and policy for such measures will go to the Regents in November, although the Board will not be asked to adopt specific measures. This will be strongly linked to the earlier FCC initiative on metrics and measures.

The Academic Health Center (AHC) and the Medical School will be a high priority for him, the President related, and he will soon name an interim replacement for Senior Vice President Cerra. The next president will have the opportunity to conduct a national search. There is also the need to look at other AHC issues, such as health care, the relationship with Fairview, the structure of support services, and the relationships and interdisciplinary projects among academic units.

He plans to talk about the importance and future of higher education in society and believes the University should be a leader in that effort. He is sponsoring a Great Conversation with Jonathan Cole and Robert Berdahl and will speak about the need for the state to develop a more thoughtful approach to human capital and long-range support education and the University of Minnesota.

In terms of management of the transition, he would like it to be as smooth as possible, including working with other administrative transitions. He is talking with all of the vice presidents about plans; he wants a strong team but there will be openings with a new president taking office; he will not fill open positions in order to provide the new president maximum flexibility.

The President said he intends to try to complete requests for private funds that he has been working on. He would like to get them done or have a good handoff to the next president.

There are knotty issues related to the redesign of systems, the President said, and the University is as good if not better than most organizations in its administration. There is discussion about the size of

the administration, but a lot of senior administrative positions have been eliminated. The President pointed out that this is also both a system and a campus office, thus avoiding the duplication of different offices, but in some ways the University still runs like a country store. Large improvements have been made in a number of areas, but there are others where the University is still layered; that needs to be reduced in order to drive costs out.

Professor Chomsky returned to one of the President's first points, consultation, and commented that she detected a sense that he thinks it takes too long to get things done because there is too much consultation. She said she felt obligated to press that point on behalf of the governance system. They have tried, over the years, to shorten the consultation process while retaining an open system. She said she did not believe consultation needed to take a lot of time; it is about productive conversations, not about the number of hours. Consultation can be effective and she said she believes the Committee has been a good partner and not taken an enormous amount of time for the administration. She also noted that it is important for the administration to acknowledge when a decision is being made with which some or even many disagreed during consultation. The Committee understands that leaders will make choices based on their own best judgments and may not go along with those who have given advice, but acknowledging the difference of opinion is better than suggesting the decision was widely or unanimously supported if it was not, as the Committee has heard in a few instances. Committee members recognize that consultation is not about controlling the outcome, it is knowing that one has been heard. She concluded that it will be important to be sure the consultation process works during the last months of his administration and into the next one.

The President said he believes in the fundamental value of consultation and that all of his decisions benefited greatly from consultation with this Committee and other members of the University community. (The pay plan that went to the Senate last spring was changed dramatically as a result of consultation.) If one wants lasting change, there has to be consultation on decisions. But if one values consultation, one must examine whether it is working and productive or whether people, when they do not get their way, are encouraged to go around the process. The transaction costs are very high for effecting fundamental change at the University, the President said, so it would be responsible to think about any consultation and governance processes in the future. But, he emphasized, he wished to retain the fundamental values of the University and the hard-earned consultation culture that has been established at the University.

President Bruininks said, apropos of the unit reviews that have been proposed by the Committee on Finance and Planning, that they are fine, but the governance system needs to be careful about which activities it chooses to pursue. He repeated that he is not arguing against the concepts of shared governance and consultation but that he does worry about moving a \$3.5-billion organization into the future. He suggested that joint administrative-governance ad hoc groups worked well in the past on special issues and could be used to work through issues when there is a need to move more quickly. There is much to celebrate about the achievements of the University governance processes, but perhaps this approach (i.e., small joint committees) could move more quickly on issues early in the development process. There are several good examples today.) There may be times when the University simply needs to move a little faster in this challenging environment. Professor Chomsky said that things can move faster with early consultation; that would make the process move more smoothly. The President responded that one must think about what it takes to get something done in this environment, the impact on people, and the long-term improvement and productivity of the University community.

Professor VandenBosch thanked the President for joining the meeting and recessed it for the meeting of the Senate Consultative Committee.

5. Faculty Senate Docket

Following the Senate Consultative Committee meeting, Professor VandenBosch reconvened the Committee, which approved the docket of the September 30 Faculty Senate meeting.

Professor VandenBosch adjourned the meeting at 4:45.

-- Gary Engstrand

University of Minnesota