

Minutes*

**Faculty Consultative Committee
Thursday, September 5, 2002
1:15 – 3:00
238A Morrill Hall**

- Present: Dan Feeney (chair), Gary Balas, Susan Brorson, Tom Clayton, Arthur Erdman, Marti Hope Gonzales, Mary Jo Kane, Candace Kruttschnitt, Marvin Marshak, Judith Martin, Jeff Ratliff-Crain, Martin Sampson, Charles Speaks
- Absent: Muriel Bebeau, Les Drewes, Marc Jenkins, Mary McEvoy
- Guests: Interim President Robert Bruininks; Professor John Fossum; Carolyn Chalmers (University Grievance Office), Jan Morse (Student Dispute Resolution Center)
- Other: Interim Vice President and Chief of Staff Kathy Brown

[In these minutes: (1) report of the chair (support service unit accountability, football stadium); (2) discussion with Interim President Bruininks (football stadium, biennial budget and public support); (3) secrecy in research; (4) the ombudsman function]

1. Report of the Chair

Professor Feeney convened the meeting at 1:20 and provided an overview of what has been occurring with respect to several matters. First, however, he introduced Professor John Fossum, his guest at the meeting and someone he has nominated to serve as chair of the Senate Committee on Faculty Affairs; the Committee on Committees must make the final determination on who will fill the position.

On the matter of accountability of support service units, he met with Vice President Carrier after she had been provided a copy of the draft charge he had formulated for a proposed ad hoc committee on support service accountability. Vice President Carrier is drafting the charge to a joint faculty-administration task force that will address the issues of concern to FCC. One idea that has been floated is a periodic review of the support service compacts. There might be a standing faculty/administration group that would import talent as needed for reviews of particular units. Professor Feeney said he had great confidence in Vice President Carrier and that he was optimistic how the effort would develop. He said he tried to impress upon her the need for something with teeth; the University cannot afford not to have a serious effort and the faculty don't want to waste time on something that won't be.

On the matter of the football stadium, at the meeting of Senate/Assembly committee and subcommittee chairs earlier in the day, it became clear that there are stadium issues that cut across a lot of committee lines (including, for example, Student Affairs and Disabilities Issues). The governance system will need a coordinated and inclusive approach, Professor Feeney said; issues of territoriality need to be avoided and as many minds as possible should be engaged in the issues. He said he will prepare a letter

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to Interim President Bruininks asking for a coordinated University approach to a stadium and asking that a point person be designated. He said that the issues will be aired in the minutes, no committees will be excluded from the deliberations, and that he wants an open dialogue with all the appropriate committees involved. Professor Feeney reported that he has also asked for preparations of summaries of (1) what has occurred thus far in terms of consultation and information provided, and (2) concerns.

Professor Speaks said he would distribute a summary. He recalled that at the FCC retreat there had been talk about the need for a group to look at other uses for a stadium; since then, Mr. Swanson in Mr. Pfutzenreuter's office has appointed a task force to do exactly that. The members of the task force include Professors Erdman, Martin, and Speaks.

2. Discussion with Interim President Bruininks

At this point Interim President Bruininks joined the meeting. In response to a comment, he commented that the stadium discussion must be more focused. He said that the University must be clear about the assumptions and principles that will govern its approach to a stadium. The principles enunciated earlier were primarily concerned with financial protection for the University; a strong academic statement has been added.

Professor Marshak said it is important the University not be perceived as simply blocking a stadium. He said there are three options: stay at the Metrodome, build a stadium on campus only for the Gophers, or participate in a joint-use stadium with the Vikings. It is important that the University look at the other alternatives as well as a joint-use stadium; otherwise the faculty governance system will just be seen as naysayers.

Dr. Bruininks said the University must live up to the expectations of the legislation, which calls for a study of feasibility of a joint-use stadium, but he agreed that the University should consider alternatives in that context.

Dr. Bruininks turned to other items. He said that this had been one of his toughest weeks in central administration, with the death of the football team member; this week, and the week when the student died a couple of years ago, have been the most difficult times he has had in the office.

There are a number of ongoing activities in which the administration is strongly linked to the faculty governance system. One is the biennial budget strategy, which has two parts: a capital request for funds for the projects vetoed by Governor Ventura (for which there appears to be strong support), and the biennial budget. The biennial budget strategy is a delicate matter. The University (along with state agencies) has been asked to prepare a budget showing how a 10% reduction would be implemented (and which has no compensation increase, which in effect means a 13-14% reduction); such a reduction would come on top of the \$24 million cut the University already sustained last year. Dr. Bruininks said he did not believe there was much support for such cuts among the three major gubernatorial candidates but as a matter of public responsibility the University must comply with the request. At the same time, however, it is also preparing a biennial request seeking an increase in funds.

The University will propose to take care of some of its own problems (it does so anyway, so it might as well make it known to the legislature as part of a "proactive" budget strategy) through tuition increases and internal reallocation; the state would be asked to fund the remainder. Dr. Bruininks said he

did not ever want to see salary freezes again--they create a mess that it takes years to dig out from. Even in very tough times, he said, he would prefer to deliver at least small increases, even if they have to be taken from inside the University. The Committee and Dr. Bruininks discussed the level of the University's proposed request.

Dr. Bruininks related that it has been interesting to him, in budget discussions outside the University, that these same conversations are occurring in corporations, non-profit organizations, and foundations. It resonates when he suggests that the institution must take the responsibility for improving its own services and quality. In his view the University budget cannot be DOA at the legislature and ignored, because that will deprive the University of the opportunity to tell its story. For example, the University receives 98% of all external research funding that comes to higher education in Minnesota, and most of that funding is competitive. The UMD campus--which is doing very well--receives twice as much as the entire remaining private and public systems outside the University. The state must understand that funding for the University is not optional; in a global economy, when knowledge is the coin of the realm, education is not just a private benefit. The private-benefit-of-education analysis does not produce the research that comes from the University nor does it produce highly-ranked departments and more expensive but essential educational programs (e.g., engineering fields). If dollars only follow the students, institutions will only offer the less-expensive programs and off-load the more expensive ones.

The University must be clear with the state about the return on investment that the state receives. Dr. Bruininks agreed that the argument along this line needs to be sharpened.

Professor Martin recalled that there were a series of radio ads about the University a few years ago; those were extremely effective, she maintained. Dr. Bruininks said University Relations is preparing a similar set of ads for future use. There are a couple of worrisome state problems, he said. There is a \$17-million deficit in funding for work study and child care benefits for students that go especially to low-income students. The University cannot make up the work-study deficit but it will try to find funds for child care. There will be a request to the state to make up the deficit; that alone will take \$46 million from the higher education budget before any money has been appropriated for the University or MNSCU (the number is much higher than the \$17 million because the funding did not take into account tuition increases and higher enrollment--and the balances that were available were raided to balance the budget). Dr. Bruininks said he was not sure where the University ought to stand on this; students should be held harmless on work study and child care, he opined, but there should NOT be increased funding of other kinds of aid (such as to part-time students). There should be "fulsome debate" if there are to be changes in higher education student aid because, while the problems in the current programs need to be fixed, the needs of the higher education systems also need to be addressed.

This is simply the charter schools/school voucher arguments revisited in higher education, Professor Marshak argued.

Professor Erdman said that the Institute of Technology did a study of the number of companies founded by IT graduates (about 1,000+), the revenues they generated, and the taxes they paid. What would the state be without the University, he inquired?

The University should not pit itself against K-12 education, Professor Speaks cautioned. It should also develop a database on the percentage of staff members in K-12 education--teachers and

administrators--who came from the University. The percentage is not as large as it was in the past, Dr. Bruininks responded. The College of Education reduced teacher education programs as part of a larger reduction in the size of the undergraduate student body--something that was a big mistake the University should not repeat, he contended. There are still a large number of University graduates who are leaders in business, education, and other fields, but the University is not as dominant in this area as it was 30 years ago.

Dr. Bruininks commented that generally the University has made what he believes to be very strong arguments for funding over a number of years. Unfortunately, persuasive arguments do not always carry the day in a political or this financial environment. If there are no new revenues on the table during the upcoming session, the situation could be grim. The state deficit will be close to \$3 billion.

Another important point about this year's biennial budget request, in his view, Dr. Bruininks said, is that the University must talk about its core interests: compensation (both regular and competitive), facilities and operating expenses, academic investments, the student experience, and technology. The last includes a specific item for the research infrastructure. The broad infrastructure items include such things as faculty development, classroom upgrades, instructional technology, that help to sustain research and education programs. In terms of compensation, the University will reallocate to find some funding for compensation. The legislature has never seen compensation as a high priority--it accepts the argument that competitive salaries are important but not that the state should do something about them.

Would it be helpful if a subset of FCC members were to meet with a subset of legislators, Professor Feeney asked? Dr. Bruininks suggested talking with Ms. Peterson in October. He cautioned that the University has often been fragmented in the past in its approaches to the legislature; he said he wants to avoid lobbying for parochial interests in preference to advocating for the good of the whole. Committee members concurred. Professor Kane suggested a "bring a legislator to work day." Dr. Bruininks observed that the University has done this in the past, providing an organized experience for legislators that included instruction and research; they liked it very much. They also need to see examples of outreach, Professor Kane responded, so they can see another way in which the taxpayers' dollars are at work for them. Dr. Bruininks suggested the Committee talk with Professor McEvoy about this idea. Professor Sampson said that the Academy of Distinguished Teachers could also become involved in advocacy. He emphasized, however, that it is important everyone "be on the same page."

Professor Sampson also observed, apropos the 98% of research funds that come to the University, that one thing that differentiates the University from places like Macalester and Carleton is the amount of UNFUNDED research that takes place. To highlight only the units that receive research grants could lead one to argue that units without substantial external research funding should be cut out. Universities are not pushing the message about liberal arts graduates, he said, even though corporate chief executive officers say they want them. Universities are part of the problem, Dr. Bruininks said; whenever cuts to higher education are proposed, they respond mostly with economic arguments. He said he would argue that the University desperately needs other programs besides those graduate and professional programs that have a direct link to the economy. Professor Sampson added that there must be research and thought about society that is not driven by a government agenda (that is, funded by the government).

Professor Martin said that former President Yudof had begun to talk about the impact of the University on the quality of life in Minnesota. The Twin Cities would not be what it is without the University of Minnesota. Economically it is important, but the University's impact on the arts, culture,

education, and other elements of society are equally great. The Twin Cities is the economic engine of the state and the legislature needs to understand the impact of the University on that engine.

The problem is how to get these concepts across in few words, Dr. Bruininks observed. The difficulty with quality of life measures is that in Minnesota they tend to be measured one sector at a time, rather than the whole picture, and usually don't usually include trends in the arts or the environment. The University needs help with stories, which have enormous power if well-anchored. What is also interesting about the University is that reform and change happens all the time. The University has cut transaction costs significantly, which can be monetized. What it does not capture so well is changes at the department level (e.g., new investments within Physics in Biophysics, which is a tremendous shift in emphasis).

The University must also get to the taxpayers in a meaningful way, Professor Erdman urged. If the University were to accumulate all the inventions and products relating to humans and the environment that have come from the University, for example, it would be possible to cover a lot quickly. And it would be impressive. Professor Fossum recalled that Dr. Bruininks earlier in the meeting cited the \$1.3 million difference in lifetime earnings between a high-school graduate and college graduate: making moderate economic assumptions, the individual earning that money pays taxes and more than pays back all the money the state puts into the University. Dr. Bruininks agreed the University needs to look more closely at the public return on investment. He repeated, however, that the appropriations process is not wholly rational in relationship to such arguments.

Professor Feeney thanked Dr. Bruininks for joining the meeting.

3. Secrecy in Research

Professor Feeney turned next to Professor Kruttschnitt for a report from the ad hoc committee on secrecy in research.

Professor Kruttschnitt reviewed the documents that the ad hoc committee had examined and reported that they had received an enormously helpful presentation from Mark Bohnhorst from the General Counsel's office. This is a very complex and evolving situation, she said, and in light of the national situation, the University's history, and Regents' policy, the ad hoc committee concluded there were three options.

Continue with the current procedure of granting exceptions as specified in the Board of Regents Policy on Research Secrecy, Section II.

Form a standing sub-committee that will develop expertise in the range of national policies that have affected, and are currently affecting, whether projects are classified or treated as fundamental research.

Recommend that no exceptions be made under any circumstances to the University of Minnesota's policy on ensuring public dissemination of information generated from research grants or contracts.

The ad hoc committee was worried about going down the path of allowing exceptions; many are worried about restraints on research and publication.

The ad hoc committee recommendations were as follows:

"Members of the ad hoc committee expressed strong and unanimous support for the existing Board of Regents Policy on Research Secrecy. It was noted that this policy both reflects deeply held values and provides a workable system for granting exceptions under unusual circumstances. Further, the procedures set forth in this policy for granting exceptions include important safeguards that guarantee that no one person or committee is given the sole authority to grant these exceptions. Accordingly, the ad hoc committee sought to develop a set of recommendations that preserves this Policy, while anticipating the likely increase in the imposition of restrictive language on previously non-classified research.

"The ad hoc committee recommends that a standing subcommittee of the Senate Research Committee be established to develop expertise on the national and University policies that are relevant to the review of requests for accepting research grants and contracts that (i) limit the public dissemination of the results of research or (ii) impose retroactive classification of research.

"The ad hoc committee further recommends that the standing subcommittee of the Senate Research Committee develop a set of guidelines for reviewing exceptions to the Board of Regents Policy on Research Secrecy and that a useful place to start in the development of these guidelines would be to consider the Necessary Conditions for SRC Review and Review Considerations developed by the SRC last year in their consideration of the requests for exceptions to public dissemination of research information.

"Necessary Conditions for SRC Review

1. Public disclosure of receipt of research funds must be allowed.
2. All International Trafficking in Arms Regulations and related restrictions on participation of graduate students must be removed.
3. Sponsored Projects Administration, with the PI and others (e.g., Office of the General Council) must certify that negotiations to remove restrictions have gone as far as possible.
4. A proposed review is limited to only work sponsored by the proposed project.
5. The process of review and recommendations is timely.

"Review Considerations

1. Is the work a continuation or logical extension for the faculty member's program of research?
2. Does the work extend the scholarship of the faculty member?
3. What is the scope of review? Is it drawn as narrowly as possible?
4. What is the likelihood any review will lead to restrictions in dissemination?

"The ad hoc committee also suggested that any guidelines developed by the standing subcommittee of the SRC should give explicit attention to the following issues:

1. The importance of sensitizing the research community and their program officers who work with army contracts of the increasing possibility that their research may be classified and the implications this status will have on their use of foreign nationals in their research projects and their ability to publish the results of their research;
2. The importance of disclosing any restrictions that have been placed on a research project to the students involved in the project, especially in light of the need to protect students' publication interests;
3. The importance of considering that exceptions only be granted for government research, and then in as limited a way as possible; and,
4. The importance of informing the Senate Consultative Committee of recent changes in the federal funding environment and what might be anticipated as a result of these changes.

"The ad hoc committee recommended that annually the chair of the Senate Research Committee and the Vice President for Research should review the guidelines that the standing sub-committee of the SRC develops for review of requests to accept grants or contracts that limit public dissemination of information, their application and their consequences in light of the Board of Regents Policy on Research Secrecy."

"Summary: Although the ad hoc committee finds the move toward restrictions in publication to be ill-advised for any research, they were willing to entertain some instances of restrictive language in government contracts as long as the spirit of the Regents' policy is not violated. The ad hoc committee believes that, at this point in time, the changes in governmental contracting processes are too new to justify radical changes in policy or procedures. The proposed establishment of an informed standing subcommittee, charged with reviewing the potential exceptions and charged with a yearly self-review, seemed to be the most prudent course of action. If the standing subcommittee of the SRC finds that the restrictions on previously non-classified research are violating the spirit of the Regents' Policy, the acceptance of any contracts with restrictive language will need to be reevaluated."

The ad hoc committee felt that having people see cases and develop expertise would be a better approach than that used last year. The ad hoc committee also felt that an annual review of the guidelines is necessary, as well as a tally of the requests for exceptions.

Professor Kane noted that the report recommended only allowing exceptions for government-funded work; what is the current policy with respect to corporations, she asked? There is no separate policy except that the University will occasionally allow a 30- to 90-day delay in publications in order for the organization to protect intellectual property.

The requests for exceptions go to the Senate Research Committee only as a last resort, Professor Kruttschnitt reported, after long negotiations between the University and the funding agency.

Professor Martin observed that the ad hoc committee was appointed because last year the Senate Research Committee had three requests for exceptions, all of which had to go to the Senate--which most people thought was not a desirable way to proceed. This process makes much more sense. Professor Kruttschnitt pointed out that the recommendations of the ad hoc committee do not change the Regents' policy, so requests for exceptions will still have to be brought to the Senate. The policy has checks and

balances that are important, she said, including bringing such requests to the Senate. She said she hoped that with accumulated expertise on the subcommittee, the process could move faster.

Professor Speaks recalled that the Senate Research Committee deliberated carefully and a long time and then made a recommendation. The recommendation came to the Senate Consultative Committee, which had a short discussion and cast uninformed votes. Professor Balas agreed, and said that while the Senate Research Committee spent a lot of time on the requests and asked a lot of questions, it was not particularly in favor of them. They did wonder why they spend all the time if they are going to be reversed by the Senate Consultative Committee.

[Note: The Regents' policy calls for the Senate Research Committee to make recommendations to the University Senate, which then makes a recommendation to the President on whether to grant the exception. In the three cases during 2001-02, the Senate Consultative Committee acted on behalf of the Senate--which it is authorized to do when there is a need for fast action--and overturned the recommendations from the Senate Research Committee. The actions taken by the Senate Consultative Committee were subsequently reported to the Senate, which in turn reversed the action of the Senate Consultative Committee.]

Professor Erdman said he saw this as similar to the IRB issues. This is no place for Senate action, he said; the Committee should look at the Regents' policy, and if it concludes that the recommendations should come from a subcommittee of the Senate Research Committee, then the policy should be changed. Professor Speaks concurred. Professor Kruttschnitt disagreed and said the situation is too fluid. It would be premature to change the process, she said; the ad hoc committee LIKED the process of taking requests to the Senate rather than having a small group of people make a recommendation with no oversight. Professor Balas said he was hesitant to recommend changes to the Regents' policy, which has strong language about the restrictions the University should not accept, because if the procedural elements of the policy were to be considered, some might wish to reconsider other parts of the policy as well. Many were reacting to "a stupid process" last year, Professor Martin acceded, which discounted the deliberations of the Senate Research Committee. She said she is concerned about the process and this Committee could refuse to hear requests and insist they go to the Senate. That might discourage such requests. But the General Counsel's office has worked long hours on these grants, Professor Balas objected, and they come to the Senate Research Committee as a last resort. A part of the problem is that researchers begin the research--and begin spending money--before the funds are received, Professor Feeney observed; that should not be allowed.

Professor Sampson suggested adopting the report and see what the situation is like in another year or two. The ad hoc committee paid a lot of attention to these issues and came to agreement. Professor Martin concurred. Professor Ratliff-Crain also agreed, noting that the Regents' policy is clear on not allowing exceptions other than in narrowly-defined ways. The Committee needs to look not at the Regents' policy but at its own processes in order to be sure the governance system is prepared to respond to requests.

Professor Feeney suggested that the Committee bring this report back and think more about it after the Senate Research Committee has had a chance to review it. The Committee gave Professor Kruttschnitt a round of applause for her report.

4. The Ombudsman Function

Professor Feeney now welcomed Carolyn Chalmers (University Grievance Office) and Jan Morse (Student Dispute Resolution Center) to talk about the ombudsman function. [Note: Ms. Morse, early in the discussions, said that in the interests of historical accuracy and language integrity she came to prefer the use of the term "ombudsman" rather than "ombudsperson" or some other construction, so these minutes will use the original Swedish term, ombudsman.] Professor Feeney noted that every few years the idea of a faculty ombudsman resurfaces. Each time, the question is whether the need is as great as the perceived need or if there are only a few cases each year. He said the Committee wanted their perspective on the matter (and noted that such a function would not deal with matters related to faculty tenure).

Ms. Morse said that she is the ombudsman for students and others on campus to deal with academic issues. There was an ad hoc committee about ten years ago that recommended to the Senate that a faculty/staff ombudsman office be created. The recommendation was vocally opposed by a number of students running the student advocacy service because they believed the ombudsman would co-opt their service.

Ms. Chalmers said that the ombudsman role usually refers to someone who is neutral, has facilitative skills, mediation skills, and uses these skills to resolve problems. The first two steps of the University's grievance process involve these kinds of skills--but they only come into play after a grievance is filed, so it is already packaged as an adversarial proceeding. Who would one grieve against, Professor Kane asked? The grievance policy is for employees and requires that one allege a violation of a University policy, rule, or practice; the grievance is usually filed against a supervisor or an administrator. So grievances based on race or sex would not be covered, Professor Kane asked? Individuals may choose to use either the University Grievance Office OR the University's EEO office, but not both, Ms. Chalmers said. With respect to faculty, her office has had grievances about teaching assignments, merit pay, post-tenure review, the change to semesters--not a lot. If her office has 40 cases per year, perhaps 10 come from faculty. Tenured faculty and civil service employees use her office more than P&A staff or non-tenured faculty. Students use her office if they are also University employees.

The ombudsman idea started in universities about 40 years ago, Ms. Morse related, and there are now a lot of such offices. They are typically an independent office, not part of the University structure, they are neutral, they are flexible so they can adapt to the needs of their clients, and they are confidential. An ombudsman office can help someone put a problem in perspective and identify what they should do next. Students find the process very satisfying and very fair, Ms. Morse reported.

Professor Feeney said the goal is to bring resolution to the rise and fall of the ombudsman discussion. The germane issues include the number of cases and the fact that there is no service for faculty and staff but there is for students. The issue seems to simmer along.

If an ombudsman office for faculty and staff had been in place ten years ago, would it have changed her workload, Professor Martin asked Ms. Chalmers? Ms. Chalmers said she would like to see more informal mechanisms available to all employees that could be presented as options to deal with disputes. Some issues need an adversarial proceeding but there is also a need for something more flexible. If there were an ombudsman office for faculty and staff, would it duplicate what her office does, Professor Martin asked? Ms. Chalmers said she would want to see collaboration and coordination

between her office and the ombudsman function rather than a free-standing office, so there is a University message about where people can go and find different ways to resolve disagreements.

Would there be student resistance to the proposal this time, Professor Kane asked? There would not, Ms. Morse said.

Is there a need for a pre-grievance process, Professor Sampson asked? Perhaps the current structure is acceptable. Ms. Chalmers said she does provide a lot of consultation before grievances are filed. Does she receive requests for mediation, Professor Fossum asked? She has received one, Ms. Chalmers said. The policy says that the grievance officer is to mediate in steps one and two of the process, at which points about two-thirds of the disputes are resolved.

The idea of the ombudsman is to provide a zero-barrier environment to allow people to talk to someone about a problem without filing a grievance, Ms. Morse said. There is talk of organizations as organisms that can adapt; to do so, they must be able to deal with problems. An ombudsman office provides a place people can go without stigma, threat, or worry, and can get a matter out of their lives. In addition, Professor Fossum pointed out, in a grievance one must allege a violation of a University rule or procedure, but one need not meet that threshold in an ombudsman office.

Professor Feeney said that the Committee would get this issue resolved this year. He asked that a copy of the report from ten years ago be provided to the Committee, and thanked Mss. Chalmers and Morse for joining the meeting.

Professor Feeney adjourned the meeting at 3:00.

-- Gary Engstrand

University of Minnesota