

Minutes\*

**Faculty Consultative Committee**  
**Thursday, December 20, 2012**  
**12:00 – 3:00**  
**238A Morrill Hall**

- Present: Sally Gregory Kohlstedt (chair), Avner Ben-Ner, Peter Bitterman, Brian Buhr, James Cloyd, Chris Cramer, Will Durfee, Nancy Ehlke, Michael Hancher, Russell Luepker, Alon McCormick, James Pacala, Ned Patterson, Jeff Ratliff-Crain, Rebecca Ropers-Huilman
- Absent: Linda Bearinger, Scott Lanyon, Elaine Tyler May, George Sheets, Richard Ziegler
- Guests: Professor Neil Olszewski (chair, Senate Library Committee); Professor Mary Kennedy (chair, Disabilities Issues Committee); Provost Karen Hanson; President Eric Kaler
- Other: Amy Phenix (Chief of Staff, Office of the President), Ken Savary (Office of the Board of Regents), Jon Steadland (Office of the President)

[In these minutes: (1) open access; (2) disabilities issues resolution; (3) discussion with Provost Hanson; (4) college constitutions ad hoc committee interim report; (5) discussion with President Kaler]

**1. Open Access**

Professor Kohlstedt convened the meeting at noon and welcomed Professor Olszewski, chair of the Senate Library Committee, to present a proposal on Open Access (OA). Committee members were provided with a draft OA "policy" for consideration (between the \* \* \*):

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As a publicly funded land-grant institution, the University of Minnesota is committed to ensuring the greatest possible scholarly and public access to the research and scholarship produced by the University community. In addition to securing the public benefit of such access, this policy is intended to serve faculty interests by promoting greater reach and impact for articles, simplifying authors' retention of distribution rights, and aiding preservation. In keeping with these principles, the Faculty adopts the following policy:

Each Faculty member grants to the University of Minnesota a shared, limited, right to make available his or her scholarly articles and to reproduce, display, and distribute those articles for the purpose of open access. More specifically, each Faculty member grants to the University of Minnesota a nonexclusive, irrevocable, royalty-free, worldwide license to exercise such rights under copyright as are necessary to achieve the goals of open access, dissemination, and preservation, provided that the articles are not sold for profit, and to authorize others to do the same. The University of Minnesota author retains copyright ownership unless that author chooses to transfer rights to other parties, such as a publisher.

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\* 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.

The policy applies to all scholarly articles authored or co-authored while the person is a member of the Faculty as defined in the Board of Regents Policy: *Copyright* [footnote], except for any articles completed before the adoption of this policy and any articles for which the Faculty member entered into an incompatible licensing or assignment agreement before the adoption of this policy. The Provost or Provost's designate will waive application of the license for a particular article or delay access for a specified period of time upon express direction by a Faculty member.

[Footnote: The University of Minnesota Board of Regents Copyright Policy, as adopted December 14, 2007, defines "Faculty" in §II.4: "*Faculty* shall mean members of the faculty as defined by Board of Regents Policy: *Employee Group Definitions*, along with individuals who are not so defined but who are University employees holding faculty-like appointments (namely, University employees who teach or conduct research at the University with a level of responsibility and self-direction similar to that exercised and enjoyed by faculty in a similar activity. Post-doctoral fellows, researchers, and scholars shall have the same ownership rights as faculty and are covered under this policy."]

Each Faculty member will provide an electronic copy of the author's final version of each article no later than the date of its publication at no charge to the appropriate representative of the Provost's Office in an appropriate format (such as PDF) specified by the Provost's Office. The Provost's Office will make the article available to the public via the University of Minnesota Digital Conservancy or other non-profit open-access repositories.

The Office of the Provost will be responsible for interpreting this policy, resolving any dispute concerning its interpretation and application, and recommending changes to the Faculty from time to time. The policy will be reviewed after three years and a report presented to the Faculty.

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Professor Olszewski explained the background, starting with an ad hoc committee charged by then-FCC-chair Professor VandenBosch and ending with this recommended policy. The charge had two main points: Make faculty and staff work available and look around the country at OA policies, and consider the impact of OA on the University and around the world. The committee focused on the first charge and did not deal with the second. They looked at other OA policies, their impact and function (e.g., Harvard, Duke, MIT, Kansas), and met with the Director of the University Press, who provided good advice on several matters, and Associate Dean Kobialka (CLA), to be sure they had the perspective of the humanities. All of the policies boil down to the goal of more access, in part as pushback against the high costs of some journals.

The committee considered the educational benefits of OA and also the potential impact (negative) on professional society publications. They concluded, however, that the University should have an OA policy, Professor Olszewski said, and crafted the draft drawing on the policies at other institutions. The overriding goal is to retain the bulk of the rights with the author and to give the University what is necessary for it to achieve the goal of OA. The policy provides that authors can opt out of the provisions or delay the release of a publication for OA (e.g., to protect a professional society's journal).

They considered the amount of extra effort that would be required of faculty members and concluded it would be minimal, essentially providing a pdf copy to the Libraries' Digital Conservancy. A

number of institutions are adopting this kind of policy; while there has been a low compliance rate at other institutions (as of a year ago), they are stepping up promotion of the policies.

Professor Kohlstedt noted that a faculty member needs to review a contract when he or she signs it in order to reserve the right to provide the University with a copy of the work. That is covered with the CIC Author Addendum, Professor Olszewski said, which is available through the Libraries. [Information about the addendum can be found here:

<http://www.cic.net/Home/Projects/library/ScholarlyComm/AuthorsAddendumBrochure.aspx>.] It is attached to the publisher's contract and provides the author the flexibility to grant rights to the University.

Professor McCormick asked if, at the models they looked at, a faculty member is violating institutional policy if he or she does not provide the copy. Professor Olszewski said he believed so but does not know if faculty members have opted out or if they are in violation of the policy. Professor McCormick said that if the faculty at other institutions have not actively opted out, and are in violation, he would not want to endorse a policy that, if enacted, will almost immediately put many faculty members in violation.

Professor Cloyd asked how often publishers decline to accept a contract because it includes the Author Addendum. Professor Olszewski said he had no data but the anecdotal information from the Libraries suggests there is not a lot of publisher pushback.

Professor Durfee said the University should be cautious about adopting any policy that would affect where junior faculty members can publish. That is why it includes the opt-out clause, Professor Olszewski pointed out. But one must still go through the steps of opting out, Professor McCormick said.

The incentive is to provide more access to faculty works, Professor Kohlstedt observed. That is less of a problem for people at places like the University, with big library systems; it is a greater problem at smaller institutions and other parts of the world with less access.

In a number of fields, the scholarly output is books, Professor Durfee commented. What is the philosophical distinction between a book and an article? Many authors generate revenue from books; to provide open access to them could undercut the author, Professor Olszewski responded. The opt-out alternative covers book authors.

Professor Ben-Ner said that the University of California has an effective public-access electronic conservatory of published articles. He asked whether something would come up in a Google Scholar search if one puts it on a home page. Professor Olszewski said he believed it would and many publishers allow a link to a home page—although not to a digital conservancy. Many faculty members do not know their rights and what they can keep and give away; this dialogue helps educate them. Professor Ben-Ner asked if the University could encourage faculty members to put items on their home page and provide a standard format for personal publication pages and an easy way to upload them. Professor Olszewski commented that it would be easier for many to send items to the Digital Conservancy and let them upload it.

Professor Bitterman said he would like to see such a standard process so that uploading is not a chore. It is clear that one University initiative is to ensure that faculty scholarship has high visibility. He

commented that he does not want to read long contracts or hold up graduate-student papers; he will opt out if the process is too burdensome.

Professor Cloyd echoed Professor McCormick's concern: He said he would be troubled if the University adopted a policy such that an act of omission becomes a policy violation. If the process for posting publications can be automated and information become a public good, that would be fine. He also asked if Professor Olszewski had thought about the ecology of the research community: Have they considered the impact of OA on journals that are trying to spread scholarship; would OA be a threat to certain journals?

Professor Hancher, who served on the committee that produced the recommendation, said that the committee met a lot, worked a lot, and got a lot of good advice; the document before the Committee today is a better proposal than what is in place at Harvard and Duke. This proposal protects documents from consolidation and outsourcing, something recommended by Douglas Armato, Director of the University of Minnesota Press. They also asked about the viability of journals, anticipating some concerns recently expressed by the American Historical Association (<http://blog.historians.org/news/1734/aha-statement-on-scholarly-journal-publishing>). One concern is that OA is sometimes enabled by charging fees, mostly in the sciences, where grants can subsidize page charges. Because charging fees is not usual in the humanities and social sciences, that practice could weaken journal publication in those fields. There are many sides to the issue that are worth worrying about. A popular sentiment is that information wants to be free; furthermore, OA might put pressure on the exorbitant subscription prices that some science journals charge. OA might solve the problem in the sciences but disrupt the fragile ecology of humanities publishing. Under the circumstances it seemed best to provide for a three-year review of the impact of OA. He endorsed the statement but acknowledged that there are practical concerns also, one of which is the question of how to manage non-compliance and another of which is the added responsibility placed on the provost's office.

On the last point, Professor Olszewski said the Libraries have indicated they will take on the responsibility.

Professor Kohlstedt said she would like to put this item back on the agenda in the near future in order to give Committee members time to think about it. She thanked Professor Olszewski for his work.

## **2. Disabilities Issues Resolution**

Professor Kohlstedt now welcomed Professor Mary Kennedy, chair of the Disabilities Issues Committee, who returned to the Committee with a revised proposal regarding education about students with disabilities. Professor Kennedy provided a handout (between the \* \* \* below) and explained that the Disabilities Issues Committee had had a good discussion in the fall after this Committee had raised some questions in its conversation with her last summer. She reviewed the points in the handout.

\* \* \*

MOTION

The University Senate supports uniform education for all faculty members at the University of Minnesota in the fundamental aspects of disabilities issues and in the nature of reasonable accommodation for students.

#### COMMENT

- The University of Minnesota is committed, in all learning environments, to a positive, inclusive atmosphere that allows and encourages all members of a diverse student body to access, participate and learn.
- The University is committed to the provision of reasonable accommodations for students with disabilities, as required by the letter of the law and implemented using best practices.
- In the absence of required education it is unlikely that faculty have the knowledge and understanding of students' disabilities which results in faculty uncertainty about the scope and limits of their responsibility to accommodate.
- Appropriate education would reduce the inconsistency in how University of Minnesota faculty make and implement accommodations for students with disabilities.

#### DISCUSSION

- Many faculty members are uninformed or misinformed about their roles in providing reasonable accommodations for students with disabilities.
  - Resistance by faculty to provide appropriate and legally mandated accommodations
  - Wasted faculty time when disabilities issues arise
  - Stress and anxiety by faculty and students when required to negotiate reasonable accommodation
  - Over-accommodation by some faculty
- Isolation by students when faculty response to accommodations is lacking, especially those with invisible disabilities
- The Intent of the Senate Committee in Proposing the Resolution
  - Educate all faculty in their legal and ethical responsibilities to students with disabilities and in the process of working smoothly with Disability Services (DS)
  - Save faculty time and reduce faculty and student stress
  - Promote a welcoming classroom atmosphere for that aspect of diversity that is disability
    - President Kaler has made diversity an expressed priority and has assured us that it is a deep and abiding personal priority. This resolution can be seen as one aspect of that University wide priority.
    - Invisible Disabilities: a large percent of those served by Disability services have invisible disabilities, i.e., disabilities that may not be obvious to the others. The willingness of those with hidden disabilities to risk exposing their disabilities in the classroom is greatly dependent on the sensitivity of the professor and the atmosphere of the classroom. The difference that can be made in the learning experience and the overall life of a student with a disability when the professor is relaxed and accommodating is very significant.
    - Promote equal opportunities for all students to participate in the learning experience in the classroom

-- When all students can participate in the learning process, all students benefit because the classroom is a more vital and more diverse place. Students with disabilities are often among those with the most to offer the class. What the Senate Committee on Disabilities Issues Envisions as Appropriate Education:

-- The Committee feels strongly that the educational process should be minimally disruptive to faculty time and ongoing academic and research responsibilities. The Committee does, however, have a vision of an appropriate content and delivery method.

-- Primary educational materials should be web based and easily accessible to all faculty members. This should include 'just-in-time' education.

-- Printed reference materials, keyed to the web presentation, should be available for faculty to reference when needed (in dealing with actual disabilities issues.)

-- Content will:

-- Be created by the Education Committee subcommittee in collaboration with Disabilities Services

-- Be fundamental, compact, and practical in nature.

-- Emphasize and promote an ethical and welcoming learning environment for those with disabilities above and beyond legal requirements and be consistent with the best ethical principles of the University of Minnesota.

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Professor Kennedy explained that they decided not to include all faculty and staff and instead start with the faculty and to roll out a small education program—and after that consider expanding it. Professor Kohlstedt commented that the Disabilities Issues Committee clearly understood the questions that FCC had posed earlier and had revised its proposal accordingly. The question is how to make materials available to faculty members on a just-in-time basis; the Committee would like to see one-time training and then on-going faculty access to useful references to topics managed by the Disabilities Services office.

Professor Ratliff-Crain said that this is an important topic and said it would help, in the COMMENT, to note that faculty members need help in identifying necessary course components and how they communicate attendance requirements and so on. The handout accompanying the resolution is all geared to accommodation training but could include necessary components information and how to communicate as well as the resources to figure out more universal designs to prevent the need for individual accommodations. (Professor Ratliff-Crain explained the meaning of "essential elements." The distinction between essential and non-essential is that an accommodation needs to be reasonable in that it cannot be expected that essential elements of a course be removed for a student because of a disability. For example, there's a difference between a course where an instructor has points attached to attendance in a lecture course and one where the course work and learning cannot occur if the student isn't there [e.g., workshops in writing classes where students work in pairs to evaluate each other's work]. Each course will have essential elements and these need to be distinguished from 'preferred' components or ones that reflect an instructor's habits.)

Professor Kennedy agreed and said the Education Committee is working on that issue, including discussing essential elements. Universal design is a great goal but faculty members in departments must make decisions about the core components of courses. She said she hoped the motion would trigger a

faculty discussion about what is essential and help decide what accommodations can be given and which cannot.

Professor Ratliff-Crain concurred and said that he was thinking about potential faculty resistance if they perceive the resolution as taking away their authority over how they run their course. There is no language in the handout indicating that it is a two-way dialogue.

Professor Durfee asked if the expected outcome of the motion is a University policy. Professor Kohlstedt said it would be brought to the Faculty Senate and could be adopted. If it requires training for all faculty members, Professor Durfee said, it should start as a policy. He said he supports having education available for faculty members and suggested that if the goal is to have a big impact, they should look at the optimum amount of time required to achieve that impact. He suggested looking beyond the members of the subcommittee.

Professor Kennedy acknowledged the point and said they are sensitive to the fact that faculty members are required to go through considerable training. They would like to make this training brief but sufficient to at least reduce the inconsistency in student experiences; they feel strongly about the institutional commitment to the students. Professor Ropers-Huilman observed that they should look at training holistically; this motion would create a demand on faculty time but it would also make things easier for faculty members. Moreover, per Professor Ratliff-Crain, if articulated in the training, faculty members can be informed about things they can do to structure a class so that they do not need to make further accommodations.

Professor Cloyd said he strongly supported the motion and said the Committee should endorse it. The spirit of the motion is to providing training or education for faculty members so they can identify solutions. He wondered if an 800 number should be available, with trained individuals who can help faculty members with solutions. Professor Kennedy said that the goal is to provide faculty with a fundamental understanding about students with disabilities and issues related to inclusion and accommodation, but this goal is not intended to make the faculty the sole decision-makers about students' needs or accommodations—and they have in mind a "1-800" type resource that provides faculty with simple steps about who to call and what kind of help they can get. She said that educating faculty members is about a dialogue between the student, Disability Services, and the instructor—and the process can be quick.

Professor Kohlstedt thanked Professor Kennedy for the motion and said one question is whether it should go to the Faculty Senate or the University Senate. Professor Kennedy said there is also the question of whether it should be a resolution or a policy. Professor Kohlstedt said she would like this issue brought back to the Committee in the near future.

### **3. Discussion with Provost Hanson**

Professor Kohlstedt welcomed the provost to the meeting and suggested she touch on the Academic Health Center (AHC) report, the expanded CIC (Committee on Institutional Cooperation, the Big Ten plus the University of Chicago), gender equity in salaries, and e-education.

The provost began with the AHC report. The general disposition of the report is to leave in place the existing reporting lines and made suggestions about the internal workings of the AHC. A couple of

issues that the president put high on the list, the Medical School ranking and the relationship with Fairview, need more focus than the structure.

Provost Hanson reported that Professor Kohlstedt had asked for clarification about her working relationship with AHC Vice President Friedman. She said that promotion-and-tenure recommendations come through her office, with a recommendation from the vice president; she and Dr. Friedman are often in meetings together and do meet regularly to discuss AHC matters.

Professor Pacala said that he had come to this meeting after a meeting with Medical School chairs at which Dr. Friedman had reported he will be forming a search committee for the Head of the Department of Medicine. He asked that Provost Hanson be involved because that appointment will be the most critical step to raising the ranking of the Medical School. Anything she can do to help the process will be appreciated.

Provost Hanson observed that the expansion of the CIC has been in the news, as has more generally the issue of academic consortia. The CIC is the most successful such consortium and it has been around for a long time (over 50 years). It is changing as new members are added (it has never been co-terminous with the Big Ten but it is often seen that way by the public). There are complications with expansion but there are also benefits. Maryland and Rutgers were anxious to join the CIC; the presidents wished to see the Big Ten and the CIC expand together while being mindful of academic quality—and it is important to the success of the CIC that its members be peers. One can take seriously the expansion of the CIC to the East Coast, and whether one considers Maryland and Rutgers to be "peers" varies by discipline (in her own field, Rutgers is outstanding). There are general benefits to the expansion, such as the recruitment of undergraduate students and an increased interest on the part of the Board of Regents in the CIC. The University participates at all levels of CIC activities, although some activities are not used as much as they were in the past, such as course-sharing and traveling scholars, which is a puzzle). The University may need to look again at how it can benefit from CIC activities. She urged Committee members to think about the possibilities and said she would do the same with the deans. [The CIC home page is here: <http://www.cic.net/Home.aspx>.]

Professor Bitterman said that there are various "arms races," such as in athletics and in high end equipment for genomics and proteomics; has the CIC thought about the latter issues? Such technology ages fast and it is enormously expensive. Would it be possible to have at the various CIC institutions well-funded cores that could be shared? The public research universities, in some cases, are being significantly outspent by private institutions with their large endowments. Will the CIC think about organizing around that kind of question?

Provost Hanson said there has been a lot of thinking in the last three years by the provosts and the chief information officers (CIOs)—and the CIC has not made as much progress as the CIOs might have wished. She said she agreed with Professor Bitterman and that there is more appetite now for such collaboration than there has been in recent years. What has made the CIC work well is that it is a voluntary organization based on trust, one where anyone could opt out of any particular initiative; the CIC is going to incorporate, which will make it a more formal entity, but it could also sponsor the kind of things that Professor Bitterman mentioned.



Professor Luepker said his understanding is that this was an athletically-driven expansion that may be entirely reasonable, but as the CIC has grown, it could become more unwieldy, include people who are more dissimilar, and geography could play against cohesion.

That was a concern among the CIC members, Provost Hanson responded. But she said did not believe it would be difficult to get initiatives going and there will always be an opt-in/opt-out option for the member schools. But the size of the group affects how people get to know and trust each other; it gets more difficult as the group gets larger.

Professor Kohlstedt commented that the decline in participation in CIC initiatives could be the result of declining public financial support for the institutions. Provost Hanson said that as with the suggestion from Professor Bitterman, most of the initiatives are undertaken because it is believed they will be a benefit to the institutions and save them money. Professor Kohlstedt asked if any Midwestern foundations have been interested in providing funding to the CIC. They have, for special projects, Provost Hanson said, but not for the operation of the CIC.

Provost Hanson next thanked the Committee for extending the invitation to speak to the Faculty Senate. She invited the Committee's advice on how to make the reports as useful and timely as possible. Professor Kohlstedt suggested that she inform the Faculty Senate about important items on her agenda; if this Committee has ideas about a particular meeting, she will let the provost know in advance of the Faculty Senate meeting.

On the matter of gender equity in salaries, Provost Hanson next commented, she met last week with the Women's Faculty Cabinet and provided an update. There is a working group that has updated the salary data. She has also had discussions with AHC deans about the principles for gender-equity reviews and has suggested to them that they need to identify ways—that will be permanently in place—that individuals can bring salary grievances to a group outside the one that originally set the salary. All of the AHC schools seemed willing to establish such a process. There will be an effort to see if there are outliers; in the long run, she wants to see mechanisms so that people have a way to evaluate whether judgments about them have been fair. She also wishes to look at equity in initial and retention offers, so Vice Provost Carney's office will build a database that people can use. The process is moving along, albeit slowly, she concluded, but toward the end that is in the spirit of what the institution set out to do.

So there are two things that will be done, Professor Kohlstedt summarized: identify outliers and set up a mechanism to bring grievances. The provost concurred: First they will address gender-equity issues and then set up mechanisms that any faculty member may use. Will something be made more public about this, Professor Kohlstedt inquired? That some changes have been made? Rather than waiting on completion of an institution-wide process? There will be, the provost said.

Professor Bitterman asked if other classes of individuals had been identified. Gender equity problems were glaring and needed to be addressed, but there are other classes of faculty that may need attention, such as ethnicity. When will they identify other characteristics that may have led to disparities? Provost Hanson said that could be a next step but pointed out that there will always be some "inequity" or disparity for a variety of reasons. Professor Bitterman agreed but said he meant identification of characteristics leading to disparities that everyone would agree is a problem. Provost Hanson said the Women's Faculty Cabinet is aware of the issues and looking at how to additional group analyses.

Professor Durfee asked if there is an overall timeline to put the processes in place. Is there a deadline? Provost Hanson said she expects salary adjustments to be made this year. Professor Durfee said it is important that she say that to the University community so it knows.

Professor Ben-Ner commented that other bases for favoritism and discrimination could be height, weight, political views, and other attributes that should not be, but sometimes are, relevant to performance evaluation. He urged that they examine the difference between the predicted and actual salary for each individual in a unit. That gets into salary compression, Provost Hanson observed, as well as when one was hired and salary differences within subfields. Those are more a matter of school or department management. It remains her view that the solution comes from the school's budget because that is where the problem arose. The question of other outliers is more long-term. A college committee could deal with that question at any time, Professor Kohlstedt said; the provost agreed.

Professor Ben-Ner said that if salary compression is age discrimination (or a reflection of lessened mobility by faculty with deeper roots in Minnesota), it should not be looked at more lightly than sex or race discrimination. Provost Hanson said she thought it is not and pointed out that while salary compression could disadvantage older faculty, that would not make it age discrimination.

Professor Ropers-Huilman said that one of the original documents from Women's Faculty Cabinet included race as a consideration, and this Committee brought up that question, but the response was that the University had the data for sex discrimination but not the other categories, so it would first move on the former. She said she did not disagree with Professor Ben-Ner that there are other problems and that they should be addressed as well. It is just that there has not been an institution-wide analysis of the data yet. She further indicated that if the University is to establish "standards" that all faculty are to be measured against, it needs to be careful because there is research evidence that women faculty and faculty of color do more teaching and service work than men faculty and white faculty members. As such, a system that puts a higher priority on research and minimizes the importance of teaching and service in achieving institutional goals will provide an advantage to whites and to males.

Professor Cramer said that merit is intrinsically subjective but that he is a big believer in sunshine and that the regression algorithm for predicting salaries in the *absence* of accounting for merit should be made available to the faculty along with the data on what they make and what the algorithm says they should make. Faculty members should be able to see if they are above or below the line. Provost Hanson said she has been surprised that the mechanisms for setting faculty salaries are not well known (whether they are varies by unit). Some institutions have paid less attention to have a clear process for setting faculty salaries at the lowest level of the organization (departments). It would be healthy for each unit to identify its salary-setting procedures, and they could vary by unit.

Professor Luepker reported that his school does have an active faculty committee, chaired by a statistician. They looked at predicted versus actual salaries using a variety of adjustments. The question is one of appropriate adjustment factors. The School of Public Health has a strongly merit-based system resulting in differential salaries over time. The data were presented at a recent faculty meeting and the initial findings showed no differences at the assistant professor level but differences at the higher ranks. Professor Luepker asked who will pay for the adjustments. Some of the males in the school have noticed that they are in a position comparable to that of some of the women and they ask what is to happen to them. Their School's plan is that they will look more closely at women who are outliers.

If a unit has a well-oiled merit committee that understands how to judge merit, people will understand the decisions even if they are not happy about them, Provost Hanson said.

Professor Kohlstedt inquired about decanal reviews and the timeline. Provost Hanson reported that the college (faculty) representatives are in place and binders are being assembled. The dates for the review committee to meet have been established for all five decanal reviews occurring this year. She said she is mindful of the concern about communicating the results of the review to the faculty, noted that she is following the policy that is in place, and underscored her wish to receive suggestions about how the process can be improved.

Professor Patterson inquired how the faculty representatives from the colleges were chosen. Provost Hanson said that lists were provided to her but she did not know the sources of all the names on them. Some came from the dean and some of them she selected. Professor Patterson said he believed the existing policy called for the names to come from the college's faculty assembly or equivalent.

The provost commented that the University is a "policy-rich landscape" and that she may not have mastered all the policies. She said Professor Patterson's question did lead her to raise a related serious issue: As she appoints committees for various purposes, how should they intersect with Senate committees? There is a need to identify how to get business done efficiently and without duplication, but there is a difference between governance committees and advisory committees that she appointed. She invited the Committee to think about how to match up committees and pointed out that in some cases there may be a need for alacrity (which could be an issue on the governance side). She said she does not want to ignore the committees that are in place.

Professor Kohlstedt thanked Provost Hanson for joining the meeting and wished her happy holidays and a restful break.

#### **4. College Constitutions ad hoc Committee Interim Report**

Professor Luepker now reported for the ad hoc committee on college constitutions (of which he serves as chair) and began by noting that the charge to the ad hoc committee was based on the perception that a number of constitutions had not been approved or were in limbo. That is true. He said the ad hoc committee members had been doing a tremendous job (Professors Carol Chomsky, Nancy Ehlke, Michael Hancher, and Karen Miksch).

Professor Luepker drew attention to the Board of Regents' policy on college constitutions and highlighted subdivisions 1, 3, and 4 and noted that with respect to subdivision 3, the ad hoc committee understands that the president has delegated the authority to the provost:

This policy governs the creation and review of college constitutions, which, with other University policies, guide educational and administrative actions within a college.

**Subd. 1. Guiding Principle.** College constitutions establish the internal governance structure and embody the authority of colleges to govern their own educational and administrative affairs.

**Subd. 2. Definition.** For the purpose of this policy, *college* shall mean an academic unit that is:

- (a) directly responsible for recruiting and hiring faculty and recommending them for promotion and tenure;
- (b) regarded by its faculty as their primary academic appointment home, either in one of the college's departments or directly within the college itself;
- (c) organized around a discipline or group of related disciplines; and
- (d) directly responsible for providing instruction for students that leads to an undergraduate, graduate, or professional degree or certificate.

**Subd. 3. Delegation of Authority.** The president or delegate shall approve collegiate constitutions and any subsequent amendments.

**Subd. 4. Consistency with Board of Regents Policies and Other University Policies.** College constitutions must be consistent with all Board of Regents (Board) and other University policies and procedures. To the extent that any provision of a college constitution conflicts with a Board or other University policy or procedure, the Board or other University policy or procedure shall govern.

**Subd. 5. Relationship to Employment Contracts.** College constitutions are not intended to be and are not part of the contract terms or the conditions of employment for any University employee.

The ad hoc committee has reviewed and summarized all 15 college constitutions; he has met with Professor Kohlstedt and Provost Hanson about its work and the committee will have a meeting with Provost Hanson to obtain answers to several questions that have arisen. What have they found? Professor Luepker said they have found heterogeneity; in a number of cases, an expansion of authority beyond what is probably permitted by the Regents' policy, and in other cases, total silence on important points or instances where bylaws and constitutions contradict each other. The constitutions were written at different times under different circumstances and there is varying evidence on whether the faculty in the college ever actually voted on the constitution. Many of the constitutions have apparently not been approved by the provost.

Professor Luepker provided two examples of salient points that have come up in discussions. One, there are various provisions for the review of the dean and how it should be conducted that are not consistent with University policy, and in some cases there are provisions for impeachment or recall. Two, there are varying degrees of explicitness about who can vote on what. Some allow only the tenured and tenure-track faculty to vote on most matters while others are more ecumenical.

The ad hoc committee will make recommendations and suggest that colleges may wish to review or update their constitutions. Professor Luepker provided copies of a thumbnail sketch of a possible template for guidelines for colleges to consider in evaluating their constitutions. The template includes elements the ad hoc committee believes to be relevant when a college is deciding how to govern itself internally.

Who creates and owns constitutions, Professor Bitterman asked? Professor Luepker said he believes, based on his experience in his college, that it is the faculty of the college, although that is not explicitly stated. A related question is who is responsible for signing off on the document, Professor Kohlstedt said; Professor Luepker said it is the responsibility of the President (who may delegate it) and

reiterated the points that several of the constitutions have never been approved and some are in conflict with University policy. Professor Cramer observed that the Regents' policy is clear on the last point: Conflict with University policy is not allowed.

There is no administrative policy on the appointment of deans so most colleges have set their own procedures, Professor Luepker reported.

Professor Pacala asked whether, since the president or provost approves the constitutions, anyone checks to see if they are consistent with Board or University policy. They do not, Professor Luepker said; at this point, that is what the ad hoc committee is doing, to some extent. Professor Ratliff-Crain reported that the Morris campus did a review of its constitution; it was a laborious process and they received feedback from the central administration during the process.

Professor McCormick inquired if it is a problem that policies are written so firmly in college constitutions when they need not be. There are very explicit procedures in a number of the documents, Professor Luepker agreed.

Professor Kohlstedt asked what should happen next, given the template being developed by the ad hoc committee. They discovered that some constitutions are out of date or out of compliance, but the ad hoc committee should not try to shoehorn them into consistency. She recalled the process for adopting 7.12 statements, which was very time-consuming, and said the Committee should think about what comes next. Those colleges that have constitutions that are out of compliance with policy will need to act, and perhaps the ad hoc committee can identify those that have a problem, those that simply need some attention, and those that are acceptable as is.

Professor Kohlstedt asked Professor Cramer (who originally charged the ad hoc committee) his view. Professor Cramer said he generally agreed with Professor Kohlstedt, that the ad hoc committee should provide feedback to governance groups and the deans; he added that it would be a nightmare to suggest that every college have a constitutional convention, but at the same time it makes the documents look silly if they conflict with institutional policies.

Professor Patterson recalled that when issues arose in one of the AHC colleges, the faculty referred to the constitution. But the attorney from the General Counsel's office told them they could not rely on it because it had not been approved—so it is a good idea to clean up these documents. His college reviews the constitution every 2-3 years but said he did not know if the provost had approved it.

Professor Luepker summarized three points about constitutions. One, the Board of Regents' policy requires colleges to have one. Two, it should be useful and follow the rules. Three, the faculty should be satisfied with it. Professor Cramer said the policy does not require a college to have a constitution; Professor Ropers-Huilman said that the implication is that if it does not, it cannot govern its internal affairs. Professor Luepker asked the Committee what its wishes were. Members of the ad hoc committee have indicated they do not wish to do a college-by-college review and offer advice; they are observers.

Professor Hancher said that short of asking colleges to rewrite their constitutions, he would like to see three things. One, the constitutions and bylaws should be published in an accessible site (they had difficulty finding some constitutions and bylaws). Two, there is a process for approval; those that have

not been approved should be identified and brought to the attention of the provost. Three, because many of the constitutions assign responsibilities to the provost, those cases should be identified and also drawn to the attention of the provost. Professor Hancher said that there also needs to be discussion about the terms under which deans are appointed because the constitutions vary widely on that score.

Professor Bitterman said that whether or not constitutions are useful needs to be clarified. If some colleges use their constitutions, or wish they could, they may require attention. It would be useful to have a clear process for review and approval.

Professor Cramer said that the Committee could suggest to Provost Hanson that as new deans are appointed, she require them to look at the constitutions and approve or update them. That would be one possible ongoing review mechanism.

Professor Luepker said that when the ad hoc committee started its work, it was not sure of the meaning of constitutions. But if the institution is serious about governance, the constitutions structure the rules—so they should be clear and explicit.

Professor Kohlstedt said the Committee would look forward to another report from the ad hoc committee.

## **5. Discussion with President Kaler**

Professor Kohlstedt welcomed the president to the meeting.

The president began by discussing the conversation that is going on with the governor and with legislative leaders. President Kaler said he is optimistic about economic conditions in the upcoming period and about the support that the state will extend to the University. He highlighted the elements of the biennial request. Professor Ropers-Huilman asked if there would be a differential effect on colleges should the legislature agree (or not) to provide funding that would allow the University to hold the undergraduate tuition increase to zero. The president responded that the budget directions to the colleges tell them to assume a 3% increase in revenue, which will either come from state funding or from a tuition increase. The administration is also working with the deans to seek to hold down tuition increases in graduate and professional education.

President Kaler turned to the external review of the Academic Health Center (AHC). In developing his response to the review, President Kaler concluded that now is not the right time for dramatic change, given that the University is in complicated discussions with Fairview to create a new integrated structure and strengthen alignment between University of Minnesota Physicians, the Medical School and Fairview. He said he also believes strongly that a faculty-led strategic-planning effort in the Medical School is critical to future excellence and recruiting. The faculty must lead the process, he emphasized, and make hard decisions. He said that while he thinks the word "malaise," used in the external review, is too strong, he does believe it is time to move forward and act. He will continue to deliver the message that the strength of the AHC and the Medical School are essential to the strength of the University.

Professor Cloyd suggested that the president encourage Medical School leaders and faculty to think about opportunities with faculty in the other AHC schools. There are many opportunities for joint

hires and joint programs. The president agreed. Modern medicine relies on technology and teaching that lies outside the Medical School.

Professor Pacala asked if there is anything in the report of the external reviewers with which the president disagrees. President Kaler said there is not, although he agrees more strongly with some points than with others.

Professor Luepker said he appreciated the report and the president's response. He offered a few caveats. First, fixing the relationship with Fairview will not fix everything. Second, the discussions about structure are a surrogate for discussions about leadership. Third, calling for strategic planning in the Medical School is an excellent idea and involving the other colleges is what the AHC is about, but he hoped the president will call for timelines and action items and not let the process drift. President Kaler said he would not let that happen.

Professor Bitterman said there is utility in doing the strategic planning quickly and efficiently and pointed out that there are experts at the University, such as in the Carlson School, who could help with the process. It would help to have the process facilitated, he said, and there are also opportunities for clinical programs and the inclusion of other health professional schools. It would also help if the president grants "permission" for those involved to widely utilize University expertise with the goal of identifying all opportunities for University-wide synergism throughout the life and health sciences.

President Kaler said a good strategic plan will lead to tactical things that can be done, and when they are completed, it's time for a new plan.

Professor Patterson asked if President Kaler or Committee members have additional ideas for creating the most effective grass-roots effort in strategic planning. Professor Cramer said that if faculty are to BELIEVE that the effort is grass-roots in nature, it will be important to touch the grass widely and both early on and often. Convening large groups of faculty is challenging, but doing so can lend critical credibility and sense of ownership. Professor Bitterman agreed and said that the physicians in the Medical School will get involved if they understand that the president and the Board of Regents are calling for the planning effort.

The president asked if there are any residual questions about the expansion of the Big Ten Conference.

Professor Pacala asked about the policy or criteria used to determine whether there are too many games in sport season. Where do they draw the line? Will there be more games? President Kaler said there is concern about the demands on student time and there are many eyes on the matter of the number of events—the presidents, the faculty athletic representatives, the athletic directors, the coaches, the athletic committees, and committees such as this one. There are many people who would have to say that more games are a good idea before it could happen. In some sports, with the expansion of the conference, it may be that there are more conference events and fewer non-conference, but all of that remains to be worked out.

Professor Kohlstedt noted that Professor Linda Brady is stepping down as Faculty Athletics Representative and that the president has requested nominations to replace her. (Anyone interested in serving or in nominating someone should send names to Elizabeth Eull in the president's office.)

The president mentioned briefly the capital request and noted that the largest part of it is HEAPR funding (Higher Education Asset Preservation and Replacement). The request is for a significant amount but it conveys the message about the backlog of maintenance at the University. Whether there will a capital appropriation (this is not a traditional capital bonding legislative session), or what its size might be, is up in the air at this point.

Professor Pacala told the president that the appointment of the Head of the Department of Medicine is an extremely important hire for the strength of the Medical School and urged that he—the president—use his powers to the full extent possible to ensure the quality of the person hired. Professor Cloyd suggested that perhaps there should be participation by faculty from other AHC colleges in the search; Professor Pacala said that that message should be sent to Vice President Friedman.

Professor Cramer asked if there are any actions afoot with respect to either the heart-rending shootings in Newtown, Connecticut, or a smoking ban. The president said that the unimaginable tragedy in Connecticut may have moved the dial on the discussion about guns; how that might come to Minnesota is too early to tell. He said that he had decided not to send a message following the shootings to the University community because he had just sent out a message about mental health.

As for the proposal for a smoke-free campus, he has received two letters from outside groups and has spoken with the chair and vice chair of this Committee. The president said he understands that there is still some back-and-forth occurring and related that his concerns are practical: The effect on staff members who are addicted (what might be the impact on productivity if staff members have to get off campus to smoke?), the effect on international visitors to the campus (coming from cultures that may have a different view of smoking), and the wisdom of adopting rules that are difficult to enforce. His views have not changed but he will not draw a line in the sand and oppose a ban if that is what the community wishes. Professor Kohlstedt reported that she has suggested that those spearheading the proposed ban need to bring the discussion on campus and involve faculty, staff, and students. She said she believes it is a good idea to move in the direction of a ban—but doing so must move the community along to that conclusion. She also mentioned that some "smoke free" sites, such as airports, actually did provide for a controlled and ventilated space. Professor Bitterman commented that the University has among the world's leading experts on smoking addiction and currently there is no "cure" for the addiction; it is a problem to adopt a ban when people are addicted, are trying to quit, but there is no cure.

Professor Kohlstedt thanked the president for joining the meeting, wished him and everyone on the Committee a happy holiday, and adjourned it at 3:00.

-- Gary Engstrand

University of Minnesota