

Minutes*

Faculty Consultative Committee
Thursday, May 23, 2013
1:00 – 3:00
Room 238A Morrill Hall

Present: Sally Gregory Kohlstedt (chair), Linda Bearinger, Avner Ben-Ner, Peter Bitterman, James Cloyd, Chris Cramer, Will Durfee, Michael Hancher, Scott Lanyon, Russell Luepker, Elaine Tyler May, James Pacala, Ned Patterson, Paul Ranelli, Rebecca Ropers-Huilman

Absent: Brian Buhr, Nancy Ehlke, Alon McCormick, Jeff Ratliff-Crain, George Sheets

Guests: President Eric Kaler; Professors Linda Brady and Perry Leo (Faculty Athletics Representatives); Susan Rafferty (Office of Human Resources)

Other: Amy Phenix (Chief of Staff), Jon Steadland (Office of the President)

[In these minutes: (1) discussion with President Kaler; (2) thanks and congratulations; (3) Faculty Athletics Representatives (Twin Cities) annual report; (4) policy on Background Checks and Verifications; (5) replacement for Professor Kohlstedt]

1. Discussion with President Kaler

Professor Kohlstedt convened the meeting at 1:00 and welcomed the president.

President Kaler began by reviewing the outcome of the legislative session. He said he was pleased with the outcome and noted that it was the first funding increase from the state for the University in six years. The MN Drive funding will be allocated very carefully, he said; the process for allocating the funding will be led by Vice President Herman and will be focused on high-quality activities. He said he would like to see the funds used to hire stellar faculty members and to provide competitive stipends for graduate students, among other things. He also expressed satisfaction at the increase in the state grant program, which could cut costs for Minnesota resident undergraduates by \$730.

The compact process will allocate the additional state funds exactly as if there had been a tuition increase. The biggest investments will be in Law, CLA, and Duluth in order to solve budget problems those units face.

In June the University will receive the benchmarking study of information technology, procurement, human resources, and finance from Huron Consulting, the president reported. This is separate from the "spans and layers" study; it will no doubt indicate things the University can do better but presumably will also identify things it is doing well.

* 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.

Strategic planning work will begin this summer and he will bring the matter to the Board of Regents in July, the president said, and there will be discussion with the faculty leadership about it. He does not want or expect this to be a long, drawn-out process; his goal is to have the structure completed by the end of fall semester and any refinements to be made during the spring.

The current Boynton Health Service plan to implement the campus smoking ban is not congruent with the resolution adopted by the University Senate and he has asked that it be reformulated to follow the Senate statement, the president said. He later agreed with a comment by Professor Durfee that bringing the implementation plan to the appropriate Senate committee would be a good idea; while it is a management plan, he would welcome opinions about it.

The adjustment in the UPlan is clearly needed because the University cannot pay the "Cadillac tax," the president told the Committee. So the University must make noticeable changes, including elimination of the "couples/spouse" tier. In terms of the \$1.9 million that is either a cost shift to employees or the cost of moving the plan forward, depending on how one looks at it, he has not decided whether to put the money back in the plan, return it to employees, or select some other option.

Professor Kohlstedt thanked the president for his summary and asked Committee members if they had questions.

Professor Bearinger said she wished to raise two issues in her capacity as chair of the Senate Research Committee (SRC). First, there has been pushback on identifying areas of research excellence at the University, an effort that Vice President Herman has spoken to SRC about, and whether doing so is in the best interests of the institution. Perhaps it would be better to talk about excellence in collaborative research, for example, rather than about research in specific areas. Or perhaps there could be monthly identification of areas of research excellence. There is also concern that the areas of excellence will be identified over the summer, which means that faculty on nine-month appointments will not be able to be as responsive. This concern must be weighed against the fear that one's college or area will not be on the list, especially if the identification of areas of excellence also involves the distribution of resources.

The second issue is the notion of hiring faculty "stars," members of the national academies, Professor Bearinger said. The concern is that the University will be looking externally, but that effort must be combined with an effort to identify candidates internally.

President Kaler agreed that any compilation of a list of areas of research excellence should not be conducted over the summer but said he believes it worthwhile to think about where programs are—because not all of them are likely to be above average. As for Professor Bearinger's second point, he agreed that there are unintended consequences of adopting a strategy of recruiting to the University faculty who are members of the national academies. If an internal candidate is that good, or close to being that good, and an external candidate is brought in, the internal person may leave—and be excellent somewhere else—so the University must be careful in this effort. He said he has also talked about a more intensive effort by the University to get its faculty into the national academies and one can envision making that part of the deans' work plans. He agreed that the University should look first to its own faculty. It may also be that someone recruited externally may already be collaborating in research with faculty at Minnesota and who would work well here, Professor Kohlstedt commented.

Professor Lanyon recalled the conversation earlier in the year about the expansion of the Big Ten Conference and the possibility that expansion would continue. How comfortable is he as president with those conversations?

President Kaler said that Big Ten Commissioner Delaney is doing an outstanding job and the Big Ten is in a good position. They did as well as they could in involving the campus community in the discussions, but shifts in conference alignments are high-wire acts that require confidentiality. The conversations about conference realignment are quiet right now, but it is clear to him that any prospective additional members of the Big Ten must be AAU schools or of equivalent quality. Professor Lanyon said his question was about whether the conference presidents continue to indicate there are academic constraints on which schools might be considered for membership. The president said the academic quality of the institutions is very important.

Professor Patterson observed that the University is in the midst of a search for Dean of the Medical School and Vice President for the Health Sciences and that the search committee is working on the position description. He said he would like to hear about the portfolio for the vice presidential part of the position.

President Kaler said that the decanal responsibilities are the primary part of the job; the vice presidential portfolio includes research enhancements in collaboration with the vice president for research as well as serving as the interface with Fairview for clinical activities.

Professor Kohlstedt commented that it is a big job; will there be any additional restructuring? The president agreed it is a big job but said he continues to believe it is not two jobs. The individual selected will obviously not be excellent across the board in all the skills that will be required, so there will be a need to build a team around the new person.

Professor Pacala said he had a question from left field: In how the University makes itself more attractive to faculty and students, how green is it? It is very green, the president said, and the University has a good story to tell. He noted examples: he has signed the American College & University Presidents' Climate Commitment, the Morris campus has a national reputation, and there is a student group working on identifying the sources of food served on campus. That story should be told, Professor Pacala said; many institutions refer to their green attributes, especially those that are food-related.

Professor Cramer noted that the University of Wisconsin has announced that it will give credit for competency-based education, which involves paying a fee and taking a test to earn credit for a course a student would have passed if he or she had taken it. What does the president think about that? President Kaler observed that the University already offers credit by examination; he said that in the MOOC world, this practice is one more threat and opportunity. Professor Kohlstedt asked if anyone can walk in off the street, pay the fee, and take the test, or if the person must already be a student at Wisconsin. Professor Cramer said he did not know. It was noted that Provost Hanson has asked the Senate Committee on Educational Policy to take up next year the question of the appropriate mix of credits by examination and resident credits.

Professor Cloyd asked the president if he has incorporated in his plans a vision of what the University will look like in ten years, given changes in demographics and other factors. Moving a

university is like moving a supertanker, he commented, because it takes a long time. The president said that Professor Cloyd's question will be part of the strategic-planning process early and often—and that one must be sure where one wants the supertanker to be going. The institutional leaders are aware of the declining high-school cohorts and the need for a more national brand; the larger question, per Professor Cramer, is whether the University is sure it will be where it wants to be with respect to MOOCs and digital learning. President Kaler said he did not believe that residential undergraduate education would disappear, but what is done within the walls of the institutions is likely to change—and to change what faculty members do.

In terms of asking hard questions, Professor Cloyd said, will they look at projected needs (e.g., is there a need for more chemical engineers or whatever)? The president said he has talked with the Itasca group of business leaders about their needs; the University cannot move as fast as the market changes and it cannot mold student interests to workforce needs—it is not a manufacturing plant. So he emphasizes a core liberal-arts education and being educated in how to learn.

Professor May said that while she would certainly not bemoan the vast new opportunities that MOOCs provide, she recalled that there was a major effort at the University in the last decade and more to enhance the undergraduate experience on the campuses; that effort included a great deal of money directed to it. Is there a way to put all the good that came from that effort, about the experience of learning, together with the digital learning that is now available?

President Kaler said that the opportunity for students to be in a classroom and watch the best lecturer in the world talk about a subject, and then come to class to work in groups, for example, can be experiential learning facilitated by digital learning. Is that on the horizon, Professor May asked? It seems to have dropped from sight. The president said it is incumbent on the University to have conversations about where technology can enable great learning outcomes. Will there be an internal conversation about that, Professor May asked? There will be, the president said, and in the strategic-planning process he would like to see a high-quality conversation about teaching and learning. Professor May suggested that such a conversation may not fit with outcomes-based assessment; the president said he was not so sure and that one can evaluate outcomes by assessing differences in teaching.

Professor Kohlstedt thanked the president for joining the meeting; Committee members gave him a round of applause for his successful work with the legislature and governor.

2. Thanks and Congratulations

Professor Durfee presented Professor Kohlstedt with a gift; Committee members gave her a round of applause for her work as chair of the Committee and on her appointment as interim Vice Provost and Dean of Graduate Education while Dr. Henning Schroeder is away on a one-year appointment in Washington, D.C.

3. Faculty Athletics Representatives (Twin Cities) Annual Report

Professor Kohlstedt welcomed Professors Brady and Leo to the meeting to provide the annual report from the Faculty Athletics Representatives (FARs) for the Twin Cities campus.

Professor Brady reported that it has been a good year academically, which is a credit to the McNamara Academic Center, which provides academic support for student-athletes. She provided data on the academic performance of the athletic teams: 24 of 25 teams had fall 2012 GPAs over 3.0 and 23 of 25 had cumulative GPAs over 3.0; the football team had one of its best academic records ever. Much of this improvement is the result of the work of the McNamara Academic Center, and they have received a report from Ms. Holleran, the director, on how their tutors are trained. Credit also goes to the coaching staff, who have emphasized academic performance.

Professor Leo reported on a number of activities in which he and Professor Brady have been engaged, including meeting with constituents on campus with the new athletic director and with new members of the administrative team in athletics. He noted that Mr. Teague has a quite different style and emphasis from his predecessor; there will be a greater focus on success in the revenue-producing sports. At the national and Big Ten level, the talk about conference expansion has stopped; unfortunately, one of the new Big Ten schools, Rutgers, has been in the news quite a lot. There will be a retreat of Big Ten Faculty Athletics Representatives in July, at which time one topic will be the "clustering" of student-athletes in certain majors; they are seeing more athletes in the College of Education and Human Development and that phenomenon requires attention. This is an issue in the Big Ten, not just at Minnesota. At the national level, there appears to be diminishing support for NCAA president Mark Emmert, and he has backed off many issues he proposed at the beginning of his presidency.

Professor Brady noted that hockey will now be a Big Ten sport, so they will monitor scheduling closely (especially with respect to prime-time games) and conflicts with class times.

Professor Ben-Ner said he had two questions about academic achievement. One, is there any way to expand the success of the McNamara Academic Center to the general population of students, and two, with change in the orientation of the athletic director, will that academic success be at risk? Professor Leo said he did not see how the McNamara Center's success could be transferred to the general student body without additional resources. The staff in the Center sees students 2-3 times per week and holds them accountable. The Center advisers all know the students, Professor Brady added, who are also often in the building. That level of support would be difficult to duplicate.

As for the second question, Professor Leo thought not. There are reporting lines in place (the McNamara Academic Center to the provost, the compliance office to the general counsel) that are necessary for the independence of those units.

Professor Ben-Ner suggested it would be a great contribution if they were able to account for the key elements of academic successes in athletics—and let others worry about the money.

Professor May said she was concerned about the fundamental unfairness in the treatment of student-athletes compared with that for other students. Student-athletes are privileged with access to resources and also disadvantaged because they cannot take the classes or majors they want. There is a fundamental unfairness, and advantages and disadvantages for students who are athletes. Professor Brady said that student-athletes understand they have extra responsibilities and must be more organized, and they love what they do. Professor May responded that there is a difference with student-athletes; many students have pressures on their time but do not have the support that student-athletes do. She added that

she would prefer to get rid of the term student-athlete. There are many students who could benefit from having tutors and advisers who know them. The situation is not fair.

Professor Leo commented that issues such as cost of attendance may be increasing the differences even more. There is a lawsuit in progress, *O'Bannon v. NCAA*, could be a game-changer because student-athletes now do not receive a cut of the revenues from the sale of their image or likeness. There is also continued discussion of adding \$2000 to the cost of attendance for grants-in-aid for student-athletes to cover miscellaneous expenses.

Professor Luepker noted that there has been considerable discussion about student debt and working; do student-athletes have debt when they leave? That varies by sport, Professor Leo said. In the sports where students receive a full ride, they do not; in other sports, where students may receive only partial aid, they face the same debt problems that non-athletes must deal with. When grants-in-aid are awarded, do real dollars change hands or is it a bookkeeping transaction, Professor Luepker asked? Professor Leo said that the athletic department pays to the University the cost of tuition and fees.

Professor Lanyon said that one problem seems to be that student-athletes have a restricted choice of major because of the times of their practices. That is a more general issue, he said, because faculty member decide on their teaching schedule without any information on when students want classes.

In terms of coaches looking after students to get advising, Professor Bearinger said she calls that good advising. As someone who was the parent of a Division I athlete, she said she was glad to know students are getting good advising. In terms of advantages and disadvantages, the University may need to offset the disadvantages by looking after students in athletics in other ways because of what they contribute to the institution. Professor Brady said that the athletics facilities plan could help address the problems because new facilities will allow practices to be more spread out—if teams (i.e., men's and women's) could practice simultaneously, that could allow students more flexibility in choosing classes and mitigate the demands on their time.

Professor Pacala asked if there is a process in place to monitor the atmosphere for student-athletes; he noted the allegations of abuse against a coach at Rutgers. Do they solicit feedback from student-athletes? In the Medical School, they administer a questionnaire every year to obtain information about atmosphere; what is in place to balance latitude for the coach versus providing a protective atmosphere?

Professor Brady said they do audits of teams every year and ask student-athletes about other issues—and have found problems that they have dealt with. They also do exit interviews and the two of them have passes so they can drop in any time on practices and other activities. There are eyes on the atmosphere, she assured the Committee. There were eyes on the situation at Rutgers, too, but something in the culture there seems to have forestalled reporting. Students are a good source of information and they do open up, especially those who are juniors and seniors.

Professor Pacala said it is a tough problem but it must be dealt with. Sometimes coaches with the best graduation rates may be the most abusive. Professor Leo concurred but said that situation is not limited to athletics; it has been discussed in graduate education as well, for example.

Professor Hancher asked if the team audits are coordinated with Associate Vice President Klatt's office (the Director of Audits). They have been for the last two years, Professor Leo said. And for the last eight years, the Faculty Academic Oversight Committee for Intercollegiate Athletics has conducted audits of each team. If there is an issue, and the seniors understand that the audits are confidential, as faculty athletics representatives they learn about it. Professor Brady observed, however, that their audits are not the same as those of Ms. Klatt; they conduct academic audits. Professor Hancher commented that Ms. Klatt is interested in risk management and the audits of the teams could overlap with her concerns.

Professor Bearinger asked who oversees summer youth camps. Mostly the coaches, Professor Leo said, but they need approval from the compliance office and they are monitored.

Professor Bitterman asked what the next step is if they conduct exit interviews and determine there is a problem. How is faculty governance involved? If it is a problem of athletics, it goes to the athletic director, Professor Brady said, and if it is an academic problem, it goes to Ms. Dzik in the Office of Student Academic Integrity and to Vice Provost McMaster. Have they had to go to these individuals to address a problem, Professor Bitterman asked? They have, on both sides, Professor Brady said, and they get them resolved. They also keep the president's office apprised. Professor Bitterman said that information should come to the governance system, and it would be useful to know that issues are being resolved.

Professor Bitterman asked if Professors Brady and Leo were satisfied that if something like the Rutgers situation arose here, it could not be ignored. It is a delicate matter, Professor Brady said, because people must be accorded due process. They meet with the athletic director monthly and bring up problems. And if it rose to a high level, it would come to the president's chief of staff and the chair and vice chair of this Committee, Professor Leo said.

Professor Kohlstedt thanked Professors Brady and Leo for their report and thanked Professor Brady especially as she completes two terms as Faculty Athletic Representative. Committee members gave her a round of applause.

4. Policy on Background Checks and Verifications

Professor Kohlstedt now welcomed Ms. Rafferty from the Office of Human Resources to present proposed changes to the policy Background Checks and Verifications.

Ms. Rafferty explained that changes to the policy are being proposed because of four circumstances. One, the University is part of the CIC, which has formed a purchasing cooperative for this purpose, and the CIC has selected a new vendor for background checks that reduces the price. Two, there have been changes in the Fair Credit Reporting Act requiring some updates in forms. Three, there is greater concern about the safety of minors resulting in a need for alignment of administrative policies. Four, there is increased national and federal scrutiny of background checks. These circumstances and the office's strategic imperative to simplify policies and procedures led the University to examine what it is doing.

There is an inconsistency in the current policy, Ms. Rafferty said. One college might require a background check for a position; the same or similar position in another college might not be subject to a

background check. There is a need for consistency, so under the new policy there will be a standard background check on all new non-student employees (new hires or someone transferred between positions) and in cases where a background check is legally or contractually required or can be justified by a legitimate business need. A "standard" background check includes a criminal background check.

Professor Kohlstedt inquired what the difference would be between the number of background checks required by the revised policy compared to the number of background checks made under the existing policy. They would be for all new employees, Ms. Rafferty said, whereas now they are done generally for senior positions, those who have fiscal management responsibility, or where state or federal law requires a check.

Professor Hancher asked if the checks are outsourced to a company (they are, through the CIC vendor contract). Is there competitive bidding? There is, Ms. Rafferty said. What is the per-capita cost, Professor Hancher asked? Each check will cost less under the new CIC contract, Ms. Rafferty said, so even doing them for all new employees will involve only a modest cost increase, about \$50,000.

If the company conducting the background checks makes a mistake, is it legally liable, Professor Luepker asked? Ms. Rafferty said that situation is covered under the Fair Credit Reporting Act, which provides many safeguards. In Minnesota, if one has "paid your dues," a crime does not serve as an automatic bar to employment.

Professor Bearinger asked whether, if she hires a civil service employee laid off elsewhere in the University, a background check would be required before she could hire the individual. It would be if the person has not had a background check in the last year, Ms. Rafferty said. But background checks will not be conducted on current employees in their current positions.

Professor Cramer asked if postdocs are covered by the policy. They are, Ms. Rafferty said, as well as professionals in training. Many postdocs are international, Professor Cramer observed. Ms. Rafferty said the University already does some background checks on individuals from outside the U.S.

Professor May said that there has been considerable scholarship on the impact of race on arrest and incarceration rates, showing that people of color are much more likely to be arrested and imprisoned for offenses. Many of these offenses were reclassified from misdemeanors to felonies. The result is that many people of color become felons for minor offenses such as possession of drugs. After serving their time, they are marked as felons, making it nearly impossible for them to obtain employment. How will the criminal background check put into place affect job candidates in this situation? Is it likely to make it more difficult for the University to hire people of color with these sorts of records, thereby harming otherwise qualified job candidates, and also hindering the University's efforts to achieve diversity? Ms. Rafferty agreed that is a concern but said that it should not dissuade anyone from applying for a job because applications do not solicit conviction information up front—and Minnesota law is a leader in allowing people to get jobs once they have paid their dues. She said it is rare that the University turns away a selected finalist because of results from a background check. Professor May asked if the University makes public what will count against hiring. The new policy outlines how criminal convictions are reviewed, Ms. Rafferty said. What is an unsatisfactory background check, Professor May asked? Ms. Rafferty said one example might be a felony conviction for fraud if a person is applying for an accounting position. It sounds subjective, Professor May said; what are they trying to accomplish?

The background checks should be conducted because there are criminals who should not be working at the University, but how will the University work out potential problems?

Professor Hancher asked if this is an "approve/disapprove" situation. If so, it is unlike the instance where there is a range of credit scores one might have. Professor Kohlstedt noted that the policy calls for Human Resources staff to conduct individualized assessments that take into consideration a number of factors. She suggested there should also be language that takes into account Professor May's point and allows for an appeal. Ms. Rafferty said every employer deals with these questions and the University's refusal rate is low. They work with the Office of the General Counsel to determine the relevance of any criminal convictions. But there is nothing in the policy to provide recourse if someone contests the fairness of a decision, Professor Kohlstedt pointed out. Ms. Rafferty said that the procedures and forms that accompany the policy provide for appeals.

Professor Hancher said that some information could be wrong; does the employee have to apply to correct it? They do, Ms. Rafferty said. What is the error rate, Professor Hancher asked, and if there is a large number of cases over many years, can it be fixed? It can be fixed, Ms. Rafferty said, but she does not believe the University has experienced many cases where the information has been challenged. The Fair Credit Reporting Act has strong procedures, and she reiterated the point that the University has very few instances of unsatisfactory results indicating no hire into a position. Decisions are not made lightly, she said, and agreed that while there is a concern, there are safeguards about the use of information.

Professor May said it sounds as if the internal process is thorough and sensitive, but there should be thought about potential disincentives to apply for people who have something in their background but who would make good employees. Ms. Rafferty said these are important concerns that she will convey to the job center.

Professor Kohlstedt thanked Ms. Rafferty for joining the Committee.

5. Replacement for Professor Kohlstedt

Professor Kohlstedt noted that she will serve as Acting Vice Provost and Dean of Graduate Education beginning September 1. While she could remain on the Committee (because it is an acting appointment), she said she believed it would be best if she were to step aside—and the time commitment to remain on the Committee would be too great. So the Committee needs to replace her for next year.

The Committee voted unanimously to invite Professor Jigna Desai from CLA to serve.
[Professor Desai subsequently accepted the invitation.]

Professor Kohlstedt adjourned the meeting at 3:00.

-- Gary Engstrand