

Minutes\*

**Senate Research Committee  
Monday, May 6, 2013  
2:00 - 4:00  
238A Morrill Hall**

Present: Linda Bearinger (chair), Jerry Cohen, Susan Everson-Rose, Benjamin Fuller, Greg Haugstad, Goran Hellekant, Brian Herman, Brian Johnston, Seung-Ho Joo, Frances Lawrenz, Richard Leppert, Hinh Ly, Suzanne Paulson, Federico Ponce de Leon, Kathleen Thomas, Thomas Vaughan, Kyla Wahlstrom, Karen Williams

Absent: Arlene Carney, Maria Gini, Tucker LeBien, Lynn Zentner, LaDora Thompson

Guests: Professor Karen Miksch (Committee on Academic Freedom and Tenure)

Other: Jon Steadland (Office of the President)

[In these minutes: (1) update on committee statements; (2) areas of University research strength; (3) Office of the Vice President for Research priorities; (4) Minnesota Government Data Practices Act requests and scholarly work]

**1. Update on Committee Statements**

Professor Bearinger convened the meeting at 2:00 and provided an update on the disposition of the Committee's statements at the Faculty Senate meeting the previous week.

The Faculty Senate adopted without discussion the statement objecting to the ban on NSF funding for political science research unless approved by the NSF director as falling into certain categories.

The discussion at the Faculty Consultative Committee about the statement on training grants was around the cost pools, Professor Bearinger reported. The question at the Faculty Senate meeting was why the Committee is worried about training grants when it should be worried about research funding. She said she responded that they are not mutually exclusive but there is need for attention to training grants. She also pointed out that training-grant funding relieves demands on other college funds for graduate students.

Before turning to Vice President Herman, Professor Bearinger extended thanks to outgoing members of the Committee, including Mr. Fuller, Professors Cohen and Okuyemi, and Dr. Haugstad. She noted that Professor Gini will chair the Committee next year and reported that she (Professor Bearinger) has resigned from the Committee in order to take up the responsibility of faculty legislative liaison.

**2. Areas of University Research Strength**

Professor Bearinger turned next to Vice President Herman.

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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.

Dr. Herman recalled that he had spoken previously with the Committee about the opportunity for faculty all across the University to contribute to what its research strengths are institutionally. He has asked the Council of Research Associate Deans (CRAD) to appoint a committee to work on the question. The outcome will help people understand what the top 7-10 research strengths are institutionally, i.e., what people believe the University is known for. When he first asked this question upon arriving on campus, he found that people could tell him about strengths in their areas but not for the entire University.

He will also be asking this question as part of the strategic planning process in his office as they survey faculty and students. They will also look at impact factor, agency funding, and private/non-public funding to determine what the University should be known for. He noted again that he heard almost nothing about Minnesota while he was at Texas, but upon arriving here he learned it is among the top ten public institutions in research funding. Something is awry when a university has that much impact but no one knows about it.

So there are three processes at work: in his office, with CRAD, and with this Committee. Dr. Herman said that he hopes to have the identification of strengths sorted out by fall.

Professor Cohen asked Dr. Herman if he had some rubric for figuring this out. Professor Bearinger commented that money is only one metric; she suggested first asking students and faculty what their opinion is about the top 5-7 areas. It should be a collective view of faculty and students, including graduate and undergraduate students.

Dr. Herman said the elements of assessment might include where funding comes from, the H factor of faculty publications, and the potential number of collaborations and interdisciplinary papers. He said he has no final rubric but the goal is to use a number of metrics so the judgment is reasonably informed.

Professor Bearinger said that they could also, within a field where the University has a presence, ask the people in that field where they would rank the University vis-à-vis other institutions. Known by whom? The University could sell itself short if it relies only on where it is ranked in terms of research grant funding. There is also the risk of comparing apples and oranges, such as in funding; some colleges and areas of scientific inquiry have access to very little external research funding while others have a lot. She said she was nervous about how this will be done. Professor Cohen cited biofuels as an area that is important nationally but that might not rise to a level of recognition that Dr. Herman is talking about.

Dollars are a piece of the measure, Dr. Herman said, and one can normalize it on FTEs and agency funding, and so on, to get rid of some of the biases. He said he does not know what the University's reputation rests on; it is up to the faculty and students to help inform him.

Public universities that receive a great deal of external funding tend to develop metrics that write out the liberal arts, Professor Leppert commented. This phenomenon has occurred since the Reagan administration; the focus is on funding and jobs. To the extent the University plays that game, the liberal arts are written out of the metrics. Professor Leppert also inquired what the relationship is between the metrics that Dr. Herman plans to use and the National Research Council rankings. Will they produce modifications of the NRC rankings?

Dr. Herman said he did not know the impact on the NRC rankings. This is intended initially to be an internal document for discussion within the University. He said he would like to capture all relevant

information, including where, for every person who responds, the University's research in his or her field ranks. No survey has been designed yet.

Dr. Wahlstrom said it is important to think about "to what end?" That needs to be clear to whomever answers the questions. Vice President Herman needs to find out; is this also a public disclosure? Or will it have anything to do with the legislature down the road? It is all of those things, Dr. Herman said: how to better articulate to a broad group, including the public, donors, the legislature, the political leadership, and so on. What is the University good at? It will help articulate the answer more clearly to all the stakeholders as well as highlight the value the University has and why continued investment is important.

Professor Cohen said the faculty know that historically the University has not sold itself well; even though it does a lot of first-rate work, no one knows about it. He said he was glad that Vice President Herman is making this effort and said he hoped that Dr. Herman would advocate nationally for whatever the University is good at.

Professor Thomas said she was struggling with two problems. On the one hand, the University is bad at promoting what it is good at; within individual programs, however, people are very well known for what they do. Professor Cohen said that if one compares across universities, one of the other Big Ten schools had seven lobbyists in Washington while Minnesota has one. It is not promoting itself. Professor Thomas said that Dr. Herman wants 5-10 hallmarks, areas the University is good; it could be difficult to take some small area of excellence and fit it into overarching themes. It is very collaborative, but to say "medicine/pathology" does not cover a lot; the trick is to identify over-arching themes that are not meaningless.

Professor Bearinger returned to Dr. Wahlstrom's question: what is the aim? Off the top of her head she could identify areas of excellence across the University. She said that University Relations, under the leadership of Diana Harvey, has been focusing on areas of excellence. There is a concern that these areas could be too broad or too narrow and could miss specialist areas.

Vice President Herman said he is data-driven and likes data. This is not a one-time process; it will be iterative. But without data it is difficult to say anything, so he proposes to collect broadly and carefully and analyze the data to see if there are major areas where the University has top programs that deserve recognition and support. Often universities do this themselves, Professor Cohen said; ground-up recognition could allow more focus in some areas.

Professor Bearinger asked what role the Committee should play. She suggested any survey be done in September, when the 9-month faculty are back on campus. She also inquired if its efforts are separate from those of CRAD. How can the Committee best contribute? Dr. Herman said he did not wish to be prescriptive but suggested that it could think about the best way to assimilate the information that is gathered; he would like advice both from CRAD and this Committee.

Dean Ponce de Leon commented that when the survey is administered, units will be competing with each other. The elephant in the room is whether resources will go in the directions identified by the survey as areas of strength. A third eye is much better; he said he would promote the idea of using a consulting group to evaluate where the University is good and where there are clusters of research. He said he offered that as a thought; this project will not be a simple discussion across a table. (For example, in agriculture, the consultant found that microbiology was part of many different fields.) Dr. Herman said

the agriculture study was a good one; microbiology broadly is a University strength. The institution needs to think about practicality in the current atmosphere.

Professor Cohen said it would be possible to get away from competition in interdisciplinary areas of strength that are not necessarily the top in the country; it isn't necessary to rate one program against another but instead the effort can identify areas to promote.

### **3. Office of the Vice President for Research Priorities**

Dr. Herman next outlined priorities for his office.

1. They have consultants reviewing the Research Animal Resources program from top to bottom and he is looking forward to receiving the report.
2. The Itasca Project (<http://www.theitascaproject.com/overview.htm>) consists of top CEOs around the state and has existed about 10 years; it offers views on what it is important for the state collectively to do. One is that it needs a better economic development model; another was a subgroup that focused on innovation and entrepreneurship. The latter identified two conceptual elements, people and ideas; because many people are trying to commercialize intellectual property and because students want to be more entrepreneurial, they created a task force (that Dr. Herman chairs) to look at student entrepreneurship programs at the University and at industry needs. The hope is to leverage what the University has and to improve connections between the University and industry.
3. Something that has been on the list a long time, renovation of outdated policies and procedures that are barriers to research; Dr. Herman said he expects that by May they will have identified what they can do to get rid of barriers.
4. They are thinking about the best way to manage core facilities across the institution. They see a lot of people asking for money to do the same thing, sometimes in different parts of the University. The University needs to think more creatively about how to support core facilities.
5. An outstanding research recruitment fund has received support from the president and the Foundation; he will talk to the deans about moving forward on it. The idea is to recruit exceptional faculty to the University by creating a pool of funds to do so. Deans, chairs, and center directors could ask for money to recruit and present evidence for the need. The applications will be peer-reviewed outside the University for the quality of the individuals proposed for recruitment. A department would hire the individual and the administration would provide a bolus of funds to make it more attractive for the person to come to the University of Minnesota. There would be no restrictions on field; the appointments could be across the institution. Anyone proposed for recruitment would have to be a nationally-recognized figure.

Professor Thomas asked how the external review of such candidates would be managed. That is usually a private process. External reviewers would be sworn to secrecy; they would ask the opinions of prominent people in a field. Would these be searches or targets of opportunity, Professor Leppert inquired? All ranks or full professors? Dr. Herman said it would be all ranks, although it can be difficult to judge national standing for assistant professors. One of the aims is to get more recognized scholars? Professor Bearinger queried. Dr. Herman said it is; they have looked at the number of National Academies members in the state; there are 31, 30 of whom are at the University. The good news is that

the University has most of them; the bad news is that there are not very many. Professor Everson-Rose asked for context; are there larger numbers in Texas and California? There are, Dr. Herman said; probably hundreds in those states. Committee members discussed briefly the nominating process for members of the national academies and the need to nominate more University faculty members—as well as the problems in getting the nominations made.

Professor Bearinger thanked Dr. Herman for the discussion and said that the Committee needs to identify how it can be involved in the strategic planning process in his office. The Committee, she observed, represents diverse voices.

#### **4. Data Practices Act Requests and Scholarly Work**

Professor Bearinger welcomed Professor Miksch to the meeting to continue the discussion on Minnesota Government Data Practices Act [**for these minutes, DPA**] requests and scholarly work.

Professor Miksch recalled that the last discussion included the scope of the DPA, which provides that all work-related emails, social media postings, smart phone texts, and so on are subject to the open-records (DPA) law but anything private is exempt. Minnesota does not have a "scholarly privilege," which would shield research notes, scholarly correspondence, etc. A few states, including Utah, have an exemption in the state open records law for scholarly work (UTAH CODE Ann. § 63G-2-305(40(a)(West 2010)(exception for faculty, staff, employees, or students scholarly work). She said she would be glad to provide the Committee recommendations from her research with colleagues nationally and hear Committee members' views on openness and transparency.

Professor Leppert asked if what Professor Miksch is working on codifies what state laws say or is it evolving to an attempt to change them? Both, Professor Miksch said. They are laying out the current legal environment and seeking to identify the impact on faculty work and research (and on that of postdocs and doctoral students). They are also thinking about changing the way the laws work so that faculty members do not have to be concerned about limiting their work because someone may have early access to it.

Professor Leppert asked if there are parallel discussions with MnSCU. They have not talked with MnSCU, Professor Miksch said, but the suggestion is an excellent one. The laws affect (1) how faculty do their work and (2) whether they can promise confidentiality to research subjects. The IRB and faculty need to continue to be aware that the DPA allows anyone to ask to see research work and the courts generally do not put limits on what can be requested. She has seen incidents where information could not be obtained in an ongoing court case but was then obtained through a freedom-of-information request. One major concern is not breaching responsibility to research subjects.

Professor Leppert asked how many such data requests the University receives—are they daily? Or are they rare? Professor Miksch said she did not know. When the Committee on Academic Freedom and Tenure spoke with Tracy Smith from the General Counsel's office, it learned that more of the requests are about coaches in athletics than other subjects. Her sense is that they are fairly common but it would help to have that information.

Professor Bearinger asked if the person who's the subject of a DPA request knows it. Professor Miksch said that the Office of Information Technology indicates that no one has done a DPA search without sitting down the individual who is the subject of the request (in order to separate personal/private

items from job-related items). There have been incidents at the University related to criminal investigations (e.g., use of a University computer for illegal purposes) and in those instances, the individual under criminal investigation may not have been aware until after a warrant was issued.

Professor Leppert inquired if, when individuals delete emails, they remain on the server. Do they never disappear unless the technology changes? Professor Miksch said that Tracy Smith told the Committee on Academic Freedom and Tenure that the University will not go into records of emails that were deleted long ago; they are considered transitory. There are some items that the University must retain; in those cases, the recommendation is the units/individuals print them out (if it is reasonable to do so) and then delete the electronic version. And there are some things that should NOT be on a computer.

Professor Cohen said that one should assume that any email one sends will exist somewhere.

Professor Bearinger asked what recommendations Professor Miksch has for the Committee. Professor Miksch said that from the earlier discussion and from discussion with her colleagues in the field, one centers around the IRB and continuing education at the University around ethics. For people in certain research areas, with certain types of human subjects (e.g., vulnerable populations), this is very important. She noted that safeguarding these populations is already included in the protocols for conducting such research. In other areas, or in new research areas, one must be concerned if one can keep data confidential if there is a court or DPA request (e.g., work with undocumented immigrants; climate change, etc.). There are a number of areas where faculty do research and where outside groups or individuals would like to have the data.

Professor Miksch said the Committee might think about this from an educational standpoint for the IRB. In her research using case studies, she has obtained permission to use names when it is obvious who they are (e.g., the University of Michigan affirmative action case). In another case, she needed to keep names out of the public eye; she did so but there was nothing to bar anyone from seeking the names. When one works with vulnerable populations, or with HIPAA-governed data, there are rules; when not, the IRB can help people think through possible DPA requests and how to protect the confidentiality of research subjects.

Dr. Wahlstrom said she did a large study of the leadership of school boards and superintendents—and the participants would never have told them what they did without a guarantee of anonymity. If a researcher possesses damning information, one wonders if it could be subpoenaed. Theoretically it could be sought under the DPA, Professor Miksch said, and it would be impossible for some outstanding and important research to be done if the names of the participants cannot be kept anonymous. That is her concern.

Associate Vice President Lawrenz observed that in certain cases, information can be redacted on the basis of an attorney-client privilege. There is a big exception for attorneys, Professor Miksch agreed, including those who work in the Office of the General Counsel, under a work product privilege. They have been thinking about something similar for scholarship and work products.

Mr. Johnston asked about the extent of the reach of the DPA: what about material on non-University computers? If something is work-related, the device or account does not matter, Professor Miksch said; it can be obtained. Only personal items are not subject to the DPA. Professor Bearinger pointed out that if one leaves a voice mail message, and erases it, but it is not recorded over for some time, it can be obtained. Telephone messages are not protected. Nor are phone records protected,

Professor Miksch added; there have been high-profile investigations of Division I coaches and whether phone calls were made that violate NCAA rules. In at least one case, a court ordered that a list of phone numbers from a coach's private cell phone be provided to a news outlet.

Professor Cohen said he was more concerned about confidentiality in professional work or people who participate in studies than he was about email messages. The lack of confidentiality in the former cases inhibits one's ability to function as a researcher. Professor Miksch agreed. People who receive federal funding should already be aware that their research data may be requested. In 1999, the Data Access Amendment (DAA) to the Freedom of Information Act (also known as the Shelby Amendment) mandated accessibility of federally sponsored research data that grantees maintain. This provision allows the public to access the data from publicly-funded research for independent reviews. However, if one conducts research that is not funded by the federal government, many researchers cannot imagine how anyone could obtain access to their data if they promised confidentiality to research participants. But under the provisions of the DPA, someone can request research data and unless an exemption applies, they will be considered public. She said she worries about controversial research: one must decide either to give up the information requested or get in legal trouble. It would be better to have a scholarly privilege and she suggested the Committee work with the General Counsel and the IRB to develop a proposal.

Professor Bearinger said that this is an interesting topic for the Committee, and there should be forums on campus about how to handle these types of issues; she surmised that they would likely draw a large number of people. Professor Miksch agreed and said the colleges and the libraries and Responsible Conduct of Research (RCR) sessions could also provide more information on the DPA. Dr. Lawrenz suggested that it would be possible to organize a seminar on this subject and receive RCR credit.

Professor Cohen said he has seen confidentiality agreements with corporations and wondered if they could be fulfilled if contested. Professor Miksch said there is a "trade secrets" exception in Minnesota law. The agreements can be upheld.

Professor Bearinger inquired if the Committee wished to recommend that there be a forum or series on data privacy that deals with a variety of issues. The Committee voted unanimously in favor of the recommendation.

Professor Miksch said that the Committee on Academic Freedom and Tenure would be willing to help. Professor Everson-Rose asked if Academic Freedom and Tenure might be interested in the whole set of confidentiality issues.

Professor Bearinger thanked Professor Miksch for joining the meeting and adjourned it at 3:45.

-- Gary Engstrand