

**Faculty Consultative Committee  
Meeting Minutes\*  
Thursday, June 5, 2014  
Room 238A Morrill Hall**

\* 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.

Present: Will Durfee (chair), Linda Bearinger, Avner Ben-Ner, Colin Campbell, Jigna Desai, Janet Ericksen, Russell Luepker, Alon McCormick, Karen Mesce, James Pacala, Paul Ranelli, Christopher Uggen, Eva von Dassow, Jean Wyman

Absent: James Cloyd, Gary Gardner, Maria Gini, Tabitha Grier-Reed, Joseph Konstan, Ned Patterson

Guests: Karen Miksch

[In these minutes: (1) Shield Amendment - For action; (2) SCEP Interdisciplinary Subcommittee report; (3) Committee Business]

**1. Shield Amendment - for Action**

Professor Durfee introduced Professor Karen Miksch and explained that the Shield Amendment has been approved by the Academic Freedom and Tenure (AF&T), Faculty Affairs (SCFA), and Research (SRC) Committees.

Professor Miksch and colleagues researched other states' open records laws, specifically looking for any states that had laws that might apply academic freedom privilege. They were searching for instances when researchers, who had promised confidentiality, were asked for the names of participants in human subjects research. For example, researchers were asked for the names of undocumented students who were interviewed for a study. Professor Miksch referenced a case in which a Wisconsin Republican Committee requested all the emails of a University of Wisconsin faculty member related to criticism of the Governor's policy toward public unions. AF&T considered this issue from an academic freedom standpoint and SRC discussed how this affects research integrity.

Professor Miksch provided members a draft of the amendment and a PowerPoint presentation. There is concern that requests are made as an attempt to stop researchers from doing their work. She explained that in regard to the Minnesota's Government Data Practices Act (MGDPA), data refers to all mediums of records such as paper, email, smart phone data, data sets, etc. If there is not an exemption, and it is an ongoing exchange with colleagues, how can this be protected? Professor Miksch then opened the discussion for questions and comments:

- Professor Uggen has received requests and he asked if there have been repeated, similar requests to that in Wisconsin? He is most concerned by the political implications of these requests being used against researchers. Professor Miksch agreed with this concern and explained that there have been similar requests since the Wisconsin incident at other public institutions. Often, these types of the requests are from reporters or Political Action Committees or a variety of political groups. Sometimes a conversation can make compliance with these requests less invasive. Other times, the requests are an attempt to stop the research and this is one of the main reasons AF&T started discussing a potential shield amendment. In regard to the Wisconsin case, there were also, luckily unfounded concerns, that administrators would access emails and turn them over without the opportunity for a faculty member to remove personal correspondence.
- The Shield Amendment would not apply to all requests, specifically those involving court orders. In cases without a subpoena, the process involves collaboration and the removal of private information.
- Members discussed that this has resulted in more phone conversations. Professor McCormick noted that FERPA and other legal obligations prevent some information from being provided.
- Professor von Dassow said that the MN Data Practices Act is so broad that it appears to conflict with other rules or policies. In her opinion, the amendment should be carefully targeted. She added that the proposed amendment seems to identify publication as the dividing line for access to data. Professor Miksch agreed that this was true for certain types of data. She further remarked that there are no exceptions made for material originating in private institutions and agreed that it is problematic because a colleague at a private institution who emails her would now be covered by a data request. She explained that correspondence is not limited to people within your institution. There are also federal laws that require public institutions to provide data, therefore private institutions can request your data, but you cannot request theirs. Exemptions exist for information protected by FERPA and HIPAA, and the proposed shield amendment would protect preliminary drafts of work prior to publication. She added that it was important that they add that in a criminal and/or ethical investigation, it is understood that information would be surrendered. Professor von Dassow suggested that a less defensive name be used, such as “Courtesy Amendment.”
- Professor Luepker related that during the tobacco litigation, a request was made for all data on tobacco that was collected *by his unit*. However, there was a great cost associated with removing the names and identifiers from the data. Professor Miksch added that in most states, the court would weigh the factors of the need for the data in terms of the litigation and the cost. Sometimes it is easier to get information through the state’s process of an open records request, as opposed to the process through the litigation.
- Professor Ranelli asked if the ease of making the requests has contributed to their increase and how has this affected academic freedom. Professor Miksch said that the

courts in some states have said that smart phone records used for work related activities are also public. These rulings have been in cases that involved coaches and recruitment violations. In her opinion, they are seeing more of these data requests because it is easier to get the data. They have considered the effects on academic freedom and research integrity for those doing certain types of controversial research, such as coming up against a large corporation, or climate change. The requests, in some cases, have been “weaponized” and used as a deterrent to individual researchers. In most states the person making the request does not need to live in the same state as the researcher, nor do they have to give any reason why they want the data.

- Professor Bearinger asked if the confidentiality of critiques for accreditation and grant proposals, and reviews of candidates in search committees is also protected. Professor Miksch said that in her opinion, the critiques could fit under scholarly correspondence within the shield amendment. The current law already has exemptions for personnel files and that would encompass the reviews of candidates. Professor Miksch cautioned that the more specific the amendment, the more chances there are to leave out certain instances, which is why the current proposed shield amendment does not try to list every type of scholarly correspondence.
- Professor Miksch said in response to a question that the concerns for those conducting animal research involved safety and the release of their lab assistants’ names. Teaching was discussed with AF&T and the requests for teaching materials are more common at the K-12 level. FERPA prevents class grades and rosters from being released, but course materials could be requested, such as the syllabus.
- Professor Durfee explained that the OGC filters the requests to the University for data, but there is no policy stating the University’s interpretation of the law.
- Professor Miksch said that there is a tension between openness and shielding research that is not ethical. This is why she would not support making the University exempt from open records laws. She emphasized that people need to understand what it means when they promise confidentiality.

Professor Durfee called for a vote and the committee unanimously approved the Shield Amendment draft in principle.

Professor Miksch said that the next steps are still being discussed and it will be reviewed again by the OGC. Professor Bearinger added that she and Professor Gardner, legislative liaisons, would welcome the opportunity to be involved in those discussions.

## **2. SCEP Interdisciplinary Subcommittee Report**

Professor Durfee introduced the next item, a discussion of the report from the Senate Committee on Educational Policy (SCEP) Subcommittee on Interdisciplinary Education, approved by SCEP

on April 23, 2014. Professor McCormick, chair, SCEP, provided a summary of the report and highlighted the following points:

- The subcommittee chose to focus on issues related to cross-college interdisciplinary efforts at the undergraduate level.
- They recommended “the formation of an ad-hoc committee to examine initiatives that address structural and cultural barriers to undergraduate interdisciplinary programs and courses.”
- The following is a portion of the three initiatives outlined in the report:
  - Establishment of a central fund to support new cross-college interdisciplinary instructional efforts.
  - Investment in human capital by providing a percentage of FTE dedicated to cross-college interdisciplinary teaching for all new hires and/or as a replacement FTE funding for current faculty.
  - Mentoring for faculty conducting cross-college interdisciplinary instruction on how to present it within their Annual Reports and P&T documents as well as for faculty in departments who receive the dedicated FTE funds.
- The rationale was provided and consisted of the following four points:
  - There are numerous, important benefits to encouraging interdisciplinary undergraduate teaching ventures at the University.
  - The undergraduate classroom is a natural place to bring together people from a variety of disciplinary interests to benefit all undergraduates, regardless of postgraduate goals.
  - There is high demand from students, faculty, and employers for crossing historical disciplinary boundaries.
  - The University has created barriers to cross-college interdisciplinary instruction.

Members then discussed the report, asked questions, and made suggestions:

- Professor Durfee suggested that the ad hoc committee have a joint charge, therefore they would report to both SCEP and FCC, similar to the Special Committee on Graduate Education.
- In response to a question Professor McCormick said that the intent was to include Morris and Rochester eventually, but there may be different cross-campus issues in addition to cross-college issues. Members commented that since there are different disciplines within colleges, the language should reflect that.
- Some members felt that it does not seem entirely necessary to create another committee since the barriers have already been identified in the report.
- Members raised concerns about diluting disciplinary content and urged that it remains important for students to learn the disciplines, as well as bridging them.
- Professor Uggen noted that this aligns with the proposed grand challenges curriculum, and if this committee is formed, it could be included in the Strategic Planning process, rather than a separate effort.

- There has not been formal feedback from the deans.

Professor Durfee suggested that the committee revisit this issue at the June 19th meeting with the Provost and ask how the recommendation should be carried out.

### **3. Committee Business**

Professor Durfee began the discussion of general committee business and the following points were discussed:

- Professor Durfee announced that Professors Bearinger and Gardner have agreed to continue as legislative liaisons and asked for endorsement by FCC. Committee members supported the nomination, which will be forwarded to President Kaler for approval.
- Professor Durfee said that there are financial issues that might be part of the discussion with the President and Provost at the June 19th meeting. Members expressed interest in hearing about the FY15 budget.

Hearing no further business, Professor Durfee adjourned the meeting.

Jeannine Rich  
University of Minnesota