

FACULTY CONSULTATIVE COMMITTEE

May 14, 2015

Minutes of the Meeting

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 reflect the views of, nor are they binding on, the Senate, the Administration, or the Board of Regents.

[In these minutes: Discussion with President Kaler, Discussion Concerning April 30 Faculty Senate Meeting, Discussion with Provost Hanson]

Present: Rebecca Ropers-Huilman (chair), Chris Uggen (vice chair), William Durfee, Eva von Dassow, Linda Bearinger, Gary Cohen, Gary Gardner, Maria Gini, Kathleen Krichbaum, Susan Wick, Colin Campbell, Dale Carpenter, James Cloyd, Jigna Desai, Karen Mesce, Jean Wyman

Regrets: Joseph Konstan, Janet Ericksen

Others attending: Deb Cran, Allan Erbsen, Amy Phenix

Guests: Provost Hanson and President Kaler

1. Discussion with President Kaler: Professor Ropers-Huilman convened the meeting and welcomed President Kaler.

President Kaler began by providing a brief legislative update report. He began by saying legislators are still anticipating having the final higher education bill completed by midnight on Monday, May 18 when the regular legislative session is scheduled to end. He added that while there is little talk of a bonding bill, if there is a one, the University seems to be positioned well for a Veterinary Diagnostic Laboratory renovation/replacement as well as a turkey research lab. Typically when there is a bonding bill on an odd numbered year, it is smaller than those on even numbered years. President Kaler also reported he was told Governor Dayton's priorities continue to be the Medical School, state grant program, and fair and equitable support of the two higher education institutions.

Professor Gary Gardner added that in his role as legislative liaison he has observed that there appears to be a lack of understanding by some legislators about the amount of work the University does across the entire state. As an institution, the University needs to think about how to get this message out. President Kaler agreed. Professor Lyn Bearinger, legislative liaison, added that the Office for Public Engagement made a video of its community engagement search award, which she believes would be a great video to show when the University brings legislators to campus in the fall. The Office for Public Engagement has a story for every district in the state, which the University should be utilizing. President Kaler thanked her for the suggestion, and shared his ideas for an

“academic roadshow” to get the University’s message out to legislators and Minnesotans across the state. Professor von Dassow said the FCC discussed a similar idea with Regents Beeson and Johnson when they met with them on April 16. FCC members unanimously agreed they would be interested in partnering with the administration on these efforts.

Next, President Kaler reported he will soon receive a draft report from the Implementation Team that was charged with developing and overseeing an action plan to implement the external review panel’s recommendations as they relate to human subjects research protection. From what he understands, the report is well done and lays out clear action steps. The report makes a number of significant recommendations, which not everyone will like, e.g., the recommendation that an investigator may not receive any personal compensation from a company while participating in any research study funded by that industry sponsor. While this is a bold statement, in President Kaler’s opinion, it is necessary.

The estimated cost for the action plan, noted President Kaler, is a one-time \$5.5 million, primarily for an electronic IRB, and approximately \$2 million in on-going, annual costs. The University’s research cost pool is about \$23 million so this would mean approximately a 10% increase in research cost pool charges to colleges, assuming research cost expenditures cannot be reduced. [Note, the method of funding this expense has not yet been decided.] President Kaler asked Professors Wyman and Durfee, who served on the Implementation Team, if they had anything to add. Professor Wyman said another exciting recommendation in the report has to do with a greater emphasis on human subjects training curriculum and a recommendation for a community oversight board. Professor Durfee added that the recommendation that President Kaler mentioned earlier about an investigator not receiving any personal compensation from a company while participating in a research study funded by that industry sponsor was almost uniformly agreed upon by committee members as a necessary way to proceed.

Professor Cohen asked if there is anything in the report about having ongoing monitoring and oversight to ensure that problems that are identified do not get ignored. Clearly, there were failings in the oversight process in the past. Professor Durfee responded that the committee spent a great deal of time talking about this, and noted that recommendations were made to address this issue. President Kaler agreed that the current structure has not served the institution well. He added that the larger cultural issue that still needs to be changed has to do with the institution’s initial response to matters like this, which is legalistic in an effort to protect itself. Instead, the University needs to use ethics and values as it makes decisions in conjunction with rules, regulations and laws.

Professor Bearinger commented on the findings of the external review committee regarding inconsistent attendance by faculty at IRB meetings and, at times, a lack of expertise on IRBs. At issue is the amount of time demanded of faculty members who serve on IRBs. Having said that, she asked if the Implementation Team discussed this issue. Yes, said President Kaler, this was discussed, and the Implementation Team

recommended that IRB members be compensated, which has not been done consistently in the past. With this, however, will come the obligation for faculty to attend these meetings.

Professor Wyman noted that when President Kaler launched the strategic planning process he articulated values, and she suggested there be a similar document outlining institution's values. The University's values need to be made more explicit than they are now so they become part of the culture of the institution. NOTE: Following the meeting, President Kaler provided a link to the Strategic Plan where on page two the Foundational Commitments (values) are outlined -

<https://drive.google.com/file/d/0Bw9rfbrwA2NwVUxjR3U3emtzR0U/view?usp=sharing>

Professor Campbell said he was glad to hear that faculty will be compensated in some fashion for serving on IRBs. In the Medical School, the emphasis is on percent effort. President Kaler agreed with Professor Campbell's observation.

Regarding paying faculty to show up at IRB meetings, said Professor von Dassow, she said people's values cannot be changed by paying them to do the right thing. In her opinion, paying faculty for this work cannot promote a culture that emphasizes ethics and values. President Kaler said until faculty no longer have to fill out an National Institutes of Health (NIH) percent effort form to indicate how they have spent their time, there needs to be an allocation of protected time to do this work. Professor von Dassow urged that such service, like participation in governance, be regarded as part of the job. President Kaler noted he does not disagree, but faculty need support if serving on an IRB.

Professor Gardner said he believes staff should be empowered to deal with the lower-level IRB issues so faculty can focus on the substantive issues. There are instances where IRBs are dealing with matters they really should not have to. President Kaler agreed and said that this is the reason for broadly defining an adverse event; if defined properly, there will be a limited number that are important.

When will the report be issued, asked Professor Ropers-Huilman? The report will be issued on Monday, said President Kaler. Amy Phenix, chief of staff, added that the report will be put on the Human Research Protection Program website, and will be followed by a 10-day comment period (May 18, 2015 – June 1, 2015).

Lastly, regarding the Student Travel and Education Abroad: Health and Safety policy (<http://www.policy.umn.edu/Policies/Education/Student/EDABROAD.html>), President Kaler noted that he agrees with Professor von Dassow that there needs to be a way for faculty to talk to students about education abroad opportunities that does not create the potential for liability or violation of any laws (<http://www.ohe.state.mn.us/pdf/StudyAbroadReport.pdf>). Some regulation and registration is necessary because it is important the University know where its students are. Professor Cohen asked President Kaler whether someone has been tasked to look into this further. No, not yet, said President Kaler. He needs to think about how best to proceed before moving forward.

2. Discussion regarding April 30, 2015 Faculty Senate meeting: Professor Ropers-Huilman asked members for their thoughts on how to proceed with the FCC resolution that was brought to the Senate that was not voted on due to not having quorum. Based on conversations she has had with people, she is inclined to suggest the committee read the Implementation Team report that will be issue on Monday, and wait to decide if further action is needed. Members agreed that this was a reasonable way to proceed.

Professor Cohen raised a concern about senators who view the human subjects debate as an ‘us versus them’ dispute. Should the FCC talk about ways to heal these divisions or assuage hurt feelings? Professor Campbell, incoming FCC chair, said it is his intention at this point to sit back and let things settle down. He is not sure any action needs to be taken and will take a wait and see approach.

As FCC discussed over email, Professor Gardner said that Professor von Dassow made a good point that it was awkward having President Kaler chair that portion of the April 30 Faculty Senate meeting, and that it would have been better if Professor von Dassow, vice chair of the Senate, had chaired the meeting instead. In addition, if the meeting had been structured to allow for alternating perspectives, it would have been a more controlled discussion.

Regarding the question of whether there was ever quorum at the meeting, Professor Campbell said that this was never established. Senators voting versus senators present are not the same thing; there could have been senators there that did not vote. In the past when there was a call for quorum, all senators present raised their cards and that did not happen this time.

Professor Ropers-Huilman noted that at the docket meeting on April 29, there was a discussion about the possibility that Professor von Dassow may need to chair. Professor von Dassow clarified that this was only discussed in considering the possibility of a no confidence motion. There were a number of cases where Senate procedures should have been followed more closely in order to manage the discussion, said Professor von Dassow, which ultimately became problematic and adversarial. The Senate rules do not say anything about decorum or being on topic. Whoever is chairing the meeting can keep discussion on topic and rule people out of order who are not on topic; however, given the circumstances of this particular meeting, this was difficult, if not impossible, for President Kaler to do. Robert’s Rules of Order, said Professor Erbsen, has a germaneness requirement. The germaneness requirement, however, links back to the definition of the discussion topic. If discussion topic is not clearly defined, then everything would be considered germane. As he recalls, the topic was defined as questions for Dr. Brooks Jackson and Dr. Brian Herman, and so it would have been proper for a senator to say out of order because the comments were all about the Medical School. Professor Cohen said it all goes back to the fact it was awkward for President Kaler to avoid being seen as shutting down debate. President Kaler was put in a difficult position chairing this meeting.

Going forward, said Professor Ropers-Huilman, the April 30 Senate meeting was a lesson learned in terms of what needs to be thought through at the docket meetings. In her opinion, she believes President Kaler probably would have preferred not to chair this portion of the meeting. No one in the docket meeting thought about this as a possible scenario except Professor von Dassow who did not raise it.

Professor Krichbaum asked about the process for recusing oneself from chairing a Senate meeting. Professor Erbsen said a motion could be made from the floor asking the chair of the Senate to recuse himself/herself. He added there are no obstacles to running a Senate meeting as the body desires as long as the people who are being circumvented consent.

In order to facilitate conversations around sensitive issues such as the human subjects research protection discussion, Professor Ropers-Huilman said she believes Provost Hanson would be open to partnering with governance bodies to develop forums that were open to the entire campus community. As an example, she recalled the civility forum that was held last fall, which was a partnership event between governance and the administration.

Regarding the issue concerning how to make sure that there are enough senators present for a quorum, Professor von Dassow emphasized the importance of communicating to senators their responsibilities, which include staying for the entire meeting. While this message is delivered to senators at the beginning of the year, it needs to be reinforced throughout the year. There is no incentive for senators to take their role seriously. Professor Campbell added that when people receive a mass email about a meeting there is less of a sense of obligation and responsibility, and suggested identifying a responsible senator(s) in each school or college who would contact their colleagues encouraging attendance.

Professor Uggen said he had to send a proxy to the April 30 meeting and it was not clear/transparent how to do this. He doubts most senators know that if they cannot attend a meeting that they are responsible for finding a proxy. Professor von Dassow said this message is given to senators, but they are likely getting competing messages from others about how best to use their time.

Related to the Senate meetings, besides sending out the meeting schedule at the beginning of the year, said Professor Cohen, a reminder with the spring Senate meeting dates should be sent out to all senators again in January.

Before Provost Hanson arrived, Professor Ropers-Huilman reported that she has asked the provost to talk about two issues today 1) student learning outcomes (SLOs), and 2) freedom of speech/academic freedom issue as it relates to the report of the Office of Equal Opportunity and Affirmative Action (EOAA) concerning the advertising for the panel discussion – “Can One Laugh at Everything: Satire and Free Speech After Charlie” (<http://blog.lib.umn.edu/chgs/events/2015/05/a-review-of-can-one-laugh-at-e.html>). Professor Ropers-Huilman asked if members have seen the EOAA report regarding this

matter. Most members had only seen excerpts in blogs, etc., but not the whole report. Professor Carpenter said he had heard there were a number of emails that went back and forth about this issue, which *Inside Higher Education* reported were heavily redacted. He requested that the FCC receive the un-redacted emails associated with this issue. Renee Dempsey, Senate staff, agreed to contact the Office of the General Counsel and make this request.

Getting back to the SLOs, said Professor Ropers-Huilman, Provost Hanson had requested the FCC identify the specific issues related to SLOs because it appears there has been a lot of spinning around the SLOs. Professor Gardner suggested the FCC have a discussion at some point about what happens if a central policy seems reasonable, but individual colleges are implementing it in a way that was never intended. It is conceivable that the FCC in conjunction with the collegiate governance committees should take on the responsibility of responding if faculty in a particular college are unable to do anything about it. Professor Mesce agreed with Professor Gardner, and said there are huge disparities across the colleges, particularly as it relates to the SLOs. Professor Ropers-Huilman said when she became a member of the FCC it was her understanding that it is not the role of the FCC to deal with individual collegiate issues, but rather to focus on broader issues.

3. Discussion with Provost Hanson: Professor Ropers-Huilman welcomed Provost Hanson to the meeting. Before talking about the SLOs and freedom of speech/academic freedom, Provost Hanson took a few minutes to talk about the Student Travel and Education Abroad: Health and Safety policy referenced earlier. She said she met with a group of department heads/chairs yesterday who had concerns about the revised policy, which is apparently being interpreted to suggest that faculty cannot talk to students about study abroad opportunities. In Provost Hanson's opinion, there seems to be some miscommunication about these matters and this will need to be clarified/corrected. To be clear, faculty can talk to students about study abroad opportunities. While it is true there are new regulations about reporting study abroad incidents, it is not true that faculty cannot talk to students about study abroad opportunities that are not University-sponsored programs.

Professor von Dassow said she has been raising this issue for the past six months. She reported receiving an email message from the director of the Learning Abroad Center, confirming that all education abroad opportunities organized or promoted by units must go through the Learning Abroad Center, and, furthermore, faculty and staff may only promote programs that have been vetted for health and safety, and have contracts in place. Despite repeated requests for the specific Minnesota statute from which this change in policy grew, said Professor Dassow, the statute itself has not been communicated. In her opinion, the new policy not only violates the academic freedom of faculty and students, but undercuts an array of other institutional goals. Provost Hanson acknowledged Professor von Dassow's comments and said if a problem like this arises and something seems to convey something of a "gag order" to feel free to contact her directly to help straighten this out. She added that while the new reporting requirements are difficult yet important for the institution to do, she does not believe the policy

prohibits faculty from talking to students about education abroad opportunities. Professor Ropers-Huilman told Provost Hanson that she would forward her email communications with the Learning Abroad Center as well as Dean Coleman's communication to CLA faculty and staff so she can get a sense of what is being communicated about the policy. Professor Bearinger also volunteered to send information about implications of the law.

Regarding the SLOs, said Provost Hanson, to be clear, no department or college needs to use the SLOs that were agreed upon a number of years ago at a Senate meeting. It is true that student learning must be assessed in some way, a demonstrable, describable fashion, and this is not negotiable because this is a requirement for accreditation. She added that embedded in the campus SLO discussions are worries about other issues connected with liberal education, and this is indeed something that should be discussed. In her opinion, after the accreditation process this fall, it would be especially timely to begin rethinking liberal education requirements; we have also in fact committed ourselves to doing this as part of the Strategic Plan.

Professor Gardner said the issue seems to be how the SLOs are being administered within collegiate units and cited the example of measuring research productivity only by NIH/ICR dollars. Provost Hanson agreed, but said it is not true that campus expectations about assessment require one set of processes to be driven down to the course level.

Professor von Dassow said faculty in the two departments in which she works do not have a choice about what outcomes to assess. She said the SLO process has been extremely burdensome on CLA faculty, and produced a copy of a document to illustrate her point. She added that CLA faculty feel that they are in effect following the provost's orders with regard to the SLOs, and suggested that Provost Hanson clarify the instructions to CLA faculty. Provost Hanson asked Professor von Dassow to provide her with a copy of the message that CLA faculty believe she sent because without it she cannot respond or modify any miscommunication. She said she doesn't know what she is being asked to clarify when she knows of no such "orders" in the first place. She then reiterated her earlier comment that there is a specific expectation on the part of our campus accrediting body, the Higher Learning Commission, that we use assessment to improve our educational efforts. She added that accreditation is tied into students being able to get student financial aid from the federal government. Professor von Dassow referenced a document from the vice provost and dean of undergraduate education, which contains the mandates that CLA faculty are responding to. She said Provost Hanson already has all the documentation she needs to answer her question. Provost Hanson responded by saying she does not in fact see a directive pertaining to the campus-wide SLOs in any of the assessment documents, so it is still unclear what "directive" needs to be clarified.

Afterwards, Professor Ropers-Huilman asked members to articulate briefly how helpful and/or burdensome the SLO process has been in their school. Members went around the room and shared their impressions of the SLO process. The majority of members felt the process was neutral or helpful and at most minimally burdensome. Based on the responses, Provost Hanson said this appears to be an issue for some departments in CLA

and not a widespread issue across the University, so it would be most appropriate if this discussion takes place at the college level. Professor Desai said the impression for some CLA departments is that this is a top-down directive, and suggested Provost Hanson issue a statement urging departments to design their own learning outcomes and implement them as they see fit. Provost Hanson reported that this message has in fact already been clearly communicated to the deans and associate deans working with the SLOs. Given it would not be appropriate for the provost now to reach down past the deans to the department level to tell departments how to do something; she would not feel comfortable doing this.

Professor Ropers-Huilman recalled the memo that was distributed at the April 30 Senate meeting, which stipulated – “Each college had the flexibility to determine the level at which assessment would occur (collegiate or departmental), what courses or other curricular programs would be assessed, and how they would be assessed. Most units chose to utilize the seven campus-wide undergraduate Student Learning Outcomes as part of their assessment of student learning, but none was required to do so.” She also noted that the document from Vice Provost McMaster to each unit encouraged them to take the SLOs and make them disciplinary or department-specific or something to that effect. Based on this, it seems like departments have been given latitude to develop assessment processes that fit their needs. Professor Ropers-Huilman reminded the committee that the Senate Committee on Educational Policy (SCEP) will begin the process of reviewing the SLOs. She added there had been discussion earlier about having an open forum on this issue, but wondered whether it would be a University-wide forum or a CLA forum on assessment. Professor von Dassow agreed that after hearing members’ comments on the SLOs that it does appear to be more of an issue for CLA than for the entire University. She reiterated Professor Desai’s request to have Provost Hanson issue a statement urging departments to design their own learning outcomes and implement them as they see appropriate, and provide an example. Provost Hanson said it would not be appropriate for her to do this, but she would be happy to talk with Dean Coleman and his staff to ensure everyone is on the same page about the SLOs.

In light of time, Ropers-Huilman suggested that a group of FCC members could work with the Provost's office to determine appropriate next steps.

Professor Ropers-Huilman introduced the next topic of discussion with the provost, which has to do with the advertising of the panel discussion *Can One Laugh at Everything: Satire and Free Speech After Charlie,*” and the findings letter issued by the Office of Equal Opportunity and Affirmative Action (EOAA). Provost Hanson said she was interested in hearing members’ thoughts on this matter. She reported that she continues to receive email complaints about it. This is a delicate matter that the whole campus needs to think and talk about, and she suggested a symposium for next fall.

Professor Carpenter began by saying he teaches constitutional law, the First Amendment, and sexual orientation at the Law School. He believes first and foremost that it is important the committee have the relevant information on this issue, and suggested inviting someone from the EOAA office who can speak to the facts of the case.

Secondly, based on what he has read from various sources, the EOAA office apparently concluded that while there had been no violation of University policy, yet it recommended information about the panel be removed from various websites, etc. He said while it is legitimate for the EOAA office to investigate allegations of harassment, which is one-on-one, targeted verbal abuse as articulated in the First Amendment, he is concerned that the EOAA office overextended its jurisdiction/investigative powers when it made recommendations about climate caused by certain kinds of speech in terms of First Amendment law and policy at an academic institution. He would hope the University would never prohibit images from being displayed or speech used that is offensive to some people because practically all speech that has any use or value, for example, is offensive to some people. Having the EOAA office suggest information be removed from websites is disturbing. Professor Carpenter asked Provost Hanson her preliminary opinion about what the University should say or do about these kinds of issues. Provost Hanson admitted she still needs time to review the complaints that have come into her office from a number of sides involved in or affected by these events. Having read the EOAA report, however, she does not believe it includes anything like a recommendation to abridge free speech. She would certainly share Professor Carpenter's concern about such a possibility. Addressing climate issues, however, is also a matter of concern for EOAA. She does not believe EOAA is overstepping its bounds in commenting on climate issues or making recommendations related to improving climate. Professor Carpenter noted that different rules and policy considerations apply depending on the context. For a public university to try and regulate the climate of speech is problematic.

Professor Ropers-Huilman took a minute to read the following passage from the EOAA findings letter: "We believe that CLA leadership can defend the organizing faculty members' right to create and disseminate the Flyer and, at the same time, express disapproval of the faculty members' judgment in republishing an image that was highly likely to insult and alienate many in a religious community that is already often the subject of distrust and inaccurate stereotypes." Professor Carpenter said that statement bothers him tremendously. He added while the statement does not violate the First Amendment, to have a statement that strong coming from University administration about speech undermines the principle of free exchange.

Provost Hanson cited another passage from the findings letter, which centered on who can say what and when. As a matter of First Amendment law, according to Professor Carpenter, there is no difference in protection based on whether the person speaking is in a position of power or not. He added that he thinks it would be dangerous for the University, as a matter of policy, to put itself in a position of encouraging or discouraging speech based on University judgments of who is in power or not. Provost Hanson agreed, but noted that the issue here may not be one of policy, nor of a University judgment, but rather one of individual judgments about how best to teach, engage with students and colleagues, and so on. That is something we should be able to discuss freely together, with an expectation that a University policy is connected with the discussion.

Professor Erbsen said he thinks there is bigger issue that the institution should get out in front of, which has to do with the language in which objections to speech is being couched. Objections to speech are being couched as dissent in terms of climate, harassment and an inability to learn. The danger in this is that the University has a lot of documents that use this language, e.g., Student Conduct Code, and so opponents of speech are using words that exist in policies that were written without the authors ever thinking they would be applied in this kind of speech context. If the University does not get out in front of this, it will see students filing complaints against other students, faculty filing complaints about faculty, etc. These documents need to be reviewed and rewritten or redefined because it is in the realm of possibility that someone could claim that the existence of speech that they disagree with is inhibiting their ability to learn, for example. Provost Hanson said she agrees, and has initiated conversations around planning a forum around this topic as well. Professor Desai said it will be important to continue this discussion, which ultimately will have an impact on campus climate. How can the University ensure that students are not feeling alienated when they come to campus? Who gets to speak? What other conversations do we need to have as a University? How do we care about campus climate? She added that she believes students can be uncomfortable to learn, but discomfort is not the same thing as how this can feel like hate speech. This is about feeling unwelcome; arrogance of hiding behind the First Amendment. Professor Carpenter also noted that the principle of freedom of speech has a 'homeopathic' quality, which is to say the answer to the problems of climate and imbalance of speech is to not discourage free speech but to encourage it.

Professor Cohen said besides the issue of the First Amendment, there is also the issue of the pursuit of knowledge. The University would be in a bad place if it needs to issue trigger warnings to talk about topics that may make people uncomfortable.

Professor Uggen commented that EOAA is seeing the issue in a race, religion, and harassment frame as opposed to a free speech issue. It might be helpful to think about the racial, religious harassment and free speech issues in total. To be clear, said Professor Carpenter, there is no hate speech exception in the First Amendment. Provost Hanson said that while that is certainly true, and First Amendment rights would not be abridged at the University, we still have another campus issue: how do we create a welcoming environment for all.

Professor Carpenter reiterated his earlier request to invite representatives from the EOAA office to hear what they believe their limits are between what they can do in investigating a hostile climate and offensiveness complaints, and to hear from them about their role in encouraging more tolerant and respectful speech. He added that he is concerned about the issue Professor Erbsen raised as well, which is that the EOAA office is not sufficiently paying attention to the issue of free speech.

Professor Ropers-Huilman said she would extend an invitation to Kimberly Hewitt, director, EOAA, to have a conversation about this matter at an upcoming meeting. Professor Carpenter again requested to receive the un-redacted email exchanges related to this matter.

4. **Adjournment:** Hearing no other business, Professor Ropers-Huilman adjourned the meeting.

Renee Dempsey
University Senate