

Minutes*

Faculty Consultative Committee
Thursday, May 16, 2002
1:15 – 3:00
238A Morrill Hall

- Present: Joseph Massey (chair), Wilbert Ahern, Muriel Bebeau, Arthur Erdman, Daniel Feeney, Richard Goldstein, Marti Hope Gonzales, Leonard Kuhl, Marvin Marshak, Judith Martin, Paula Rabinowitz, Jeff Ratliff-Crain
- Absent: Susan Brorson, Les Drewes, Marc Jenkins, Candace Kruttschnitt, Scott McConnell, Charles Speaks
- Guests: Executive Vice President Robert Bruininks; Professor Charles Campbell (for the Committee on Finance and Planning), Professor Laura Coffin Koch (Faculty Academic Oversight Committee for Intercollegiate Athletics); Professors Linda Brady and Richard Weinberg (Faculty Representatives for intercollegiate athletics); General Counsel Mark Rotenberg, Tracy Smith (Office of the General Counsel); Patricia Lenten (School of Dentistry)
- Other: Florence Funk (Office of the Executive Vice President and Provost)

[In these minutes: (1) discussion with Executive Vice President Bruininks (Rochester, waiting period for probationary faculty for participation in the faculty retirement plan, civic engagement); (2) letter on athletics from the Finance and Planning Committee; (3) discussion with the athletic faculty representatives; (4) USA Patriot Act (concerning electronic privacy and related matters vis-à-vis terrorism); (5) statement from the Tenure Subcommittee on voting on faculty personnel matters; (6) questions for provost candidates; (7) Dentistry Senate elections]

1. Discussion with Executive Vice President Bruininks

Professor Feeney convened the meeting, because Professor Massey had been detained at another meeting, and welcomed Executive Vice President Bruininks to the meeting.

Dr. Bruininks and the Committee spend a long time discussing issues associated with the campus in Rochester.

Dr. Bruininks urged that this Committee, and the Committee on Educational Policy, pay attention to the problem of "degree creep" (other institutions in the state offering degrees now offered only at the University of Minnesota). He also suggested that they be watchful about transfer credit quality.

Elimination of the waiting period for probationary faculty to participate in the faculty retirement plan was also discussed. The Committee unanimously endorsed the statement from the Committee on

* These minutes reflect discussion and debate at a meeting of a committee of the University of Minnesota Senate or Twin Cities Campus Assembly; none of the comments, conclusions, or actions reported in these minutes represent the views of, nor are they binding on, the Senate or Assembly, the Administration, or the Board of Regents.

Faculty Affairs urging the administration to drop the waiting period for probationary faculty. Several Committee members suggested that Dr. Bruininks make the change as one of his last acts in office. The resolution from Faculty Affairs will be brought to the Faculty Senate in the fall.

Dr. Bruininks spoke briefly about the Civic Engagement initiative.

2. Letter on Athletics from the Finance and Planning Committee

Professor Massey welcomed Professor Campbell to the meeting to represent Professor Speaks for the discussion of the letter prepared for the President and Board of Regents concerning funding for intercollegiate athletics.

Professor Campbell explained that the Finance and Planning Committee has been dealing with financial issues associate with intercollegiate athletics for several months, ever since Vice President Brown brought to it a report prepared for the Regents and asked for the Committee's advice. The Committee found the report shocking and sobering and sent forward recommendations in both December and January. It seemed to the Committee appropriate to make its views known on how the University was spending its money, since it consults regularly on the budget and the biennial request, and it was shocked to discover that \$10 million from O&M funds were being directed to intercollegiate athletics. This Committee, he noted, endorsed the December and January recommendations from the Finance and Planning Committee.

The impression gleaned from the most recent meeting of the Board of Regents is that it is acceptable to continue to spend \$10 million from O&M funds, Professor Campbell commented, and there appears to be a hesitancy to cut back in the next few years. It is the sense of the Finance and Planning Committee that the \$10 million could become the baseline funding for athletics; for that reason, it proposes to send the letter to the President and Board of Regents. The idea, he said, is that the Finance and Planning Committee has an overview responsibility to be sure that the University is spending its money in alignment with University priorities.

A first draft of the letter was sent to President Yudof, Professor Campbell reported, and it was revised to meet the concerns he expressed. The final version was endorsed unanimously by the Committee (at a meeting at which attendance almost 100% of the members were present). He recapped the contents of the letter for Professors Brady and Weinberg, the athletic Faculty Representatives who joined the meeting at this point. The letter read as follows:

Dear Regent Reed and President Yudof:

The Senate Committee on Finance and Planning reaffirms its previously adopted statements on Institutional Subsidization of Intercollegiate Athletics (December 6, 2001; January 22, 2002), copies of which are attached. Specifically, the SCFP believes that "the current practice of providing an annual subsidy to intercollegiate athletics from institutional operating funds should be evaluated in the context of other institutional priorities, financial obligations, and opportunity costs. University priorities are not in the right order when \$10 million is allocated to athletics while improvements related directly to the core mission languish because of a lack of funds." (December 6, 2001)

Restructuring intercollegiate athletics by itself is insufficient; there also must be a concerted effort to bring the athletic financial house in order, and that includes a strong effort—over time—to reduce the institutional subsidy of athletics. As Regent Keffeler said at the meeting of the Board of Regents on March 8, 2002, the appropriate level of subsidization is a policy issue, and the institution must decide what the target subsidy will be, how long it will take to reach that target, and what steps will be required to implement the policy. At the meeting of the Board on May 9, 2002, the Regents seemed prepared, in principle, to agree to continue the subsidy at its current level for another one or two years.

Comparisons of the size of this institution's subsidy with the subsidies provided to athletics by other universities are perilous and of uncertain validity, and they do not entirely get to the heart of the issue. The central focus should be how much financial support this institution should provide *in the context of other important institutional priorities and financial obligations*. Put differently, the level of institutional support for athletics should be considered in the context of opportunity costs. If the subsidy is continued for FY03, we do so at the same time that collegiate budgets are being cut by \$11-12 million. *Is that the priority statement that the University wants to make?*

As we contemplate continuation of the \$10 million subsidy, consider but four additional examples of institutional priorities that we believe should receive strong consideration for funding:

- \$3 million represents a 1 percentage point increase in tuition that no longer would be necessary;
- \$1 million would fund 2/3 of the \$1.5 million recurring that is necessary to sustain our classroom technology upgrade initiative;
- \$1 million would fund the salary and fringe benefits for 52 half-time graduate assistants; and
- \$1 million would fund the salary and fringe benefits (in CLA) for 13 new faculty positions as well as one P&A and one Civil Service support staff.

We have choices to make, and the investment decisions that we make should reflect our institutional priorities, rather than having the investment decisions establish our priorities. If the \$10 million subsidy for intercollegiate athletics continues, we are saying that athletics is a high priority of the institution. The decision to subsidize athletics does not focus on the situation that all students face; as a result of that subsidy, students will be confronted, for example, with larger classes, fewer faculty, or less-well-equipped classrooms. These seem to us also to be high priorities of the institution.

The faculty and staff will be alarmed, perhaps even angered, to learn that many valued academic initiatives cannot be funded as long as the \$10 million subsidy for intercollegiate athletics continues. Students will be alarmed, indeed probably angered, to learn that they face continued double-digit increases in tuition at the same time that the \$10 million subsidy for intercollegiate athletics continues; were the subsidy eliminated and no other institutional expenditures incurred the proposed tuition increase could be reduced from 16% to less than 13%. We believe that many faculty, staff, and students will probably accept—though most likely with reluctance—the reality of a modest, rational subsidy of intercollegiate athletics if the level of the

subsidy flows from a clearly articulated policy that is formulated following broad consultation. We further believe, however, as stated previously on January 22, 2002, that

- “we have no alternative to a recommendation that the University take action to scale back the use of institutional funds for intercollegiate athletics,
- we firmly believe that the University must do whatever is necessary, in the very near future, to reduce its present and projected financial commitment to athletics, and
- the magnitude of the subsidy, direct and indirect, should be brought into alignment with the subsidies provided by the other public institutions in the Big Ten and, in any event, should not exceed 10% of the total operating budget for intercollegiate athletics in any given year.”

We believe it is essential that the University act now to adopt a policy that specifies an acceptable target level of institutional subsidization for intercollegiate athletics and that specifies a time frame for reaching that target.

We understand that a pullback in institutional support will be painful for the University and for individuals—student-athletes, coaches, and staff—but it is our conviction that the University must put its priorities in order; as it does so, spending decisions must follow.

Professor Martin inquired if it is the norm for Senate committees to communicate directly with the Regents. Professor Massey said they could do so through President Yudof or directly. There have been such communications in the past.

Professor Marshak said he would not vote to endorse the letter. The Regents have already decided to freeze the subsidy at \$10 million for the next couple of years; now is not the time to try to change that when the University is recruiting a new athletic director. One hopes that the new athletic director would try to reconnect athletics with the University. Moreover, he said, \$10 million is a reasonable amount, in his view. The last state subsidy, for women's athletics, was about \$4 million; inflated since the special appropriation was folded into the O&M budget, it would amount to \$5 or \$6 million. The remainder is a result of misguided decisions to build facilities--the bonds have been sold and the buildings are there so they must be paid. To cut the \$10 million to \$5 million will mean dropping ten teams at \$500,000 each. The goal of this Committee should be to reconnect athletics with the overall University and it should be supportive of the new athletic structure. At the same time, he emphasized, the Committee should FIGHT to keep the \$10 million subsidy from increasing.

Professor Marshak added that he was not arguing against the evaluation contained in the letter prepared by Finance and Planning. The University sets its priorities by digging holes in the ground and paying debt service. It has done so other times and that problem should not lead to penalizing intercollegiate athletics.

Professor Kuhl noted that Professor Koch had sent a long email message to Professor Massey asking that FCC NOT endorse the letter from Finance and Planning and generally objecting to the contents of the letter as well as the appropriateness of it being sent. Professor Campbell noted that Professor Koch had been invited to the Finance and Planning Committee meeting as chair of the Faculty Academic Oversight Committee for Intercollegiate Athletics but raised none of the points at the meeting,

which was disappointing. He declined to engage in a point-by-point response to Professor Koch's message and said that the letter would be sent from Finance and Planning irrespective of the position taken by the Faculty Consultative Committee.

Professor Kuhi asked if there had been an effort by ANY committee to set spending priorities in order to reach a judgment about the appropriate level of subsidy for athletics. Professor Campbell said that Finance and Planning has been keeping the issue of priorities on the table and the impact of spending decisions on other priorities. The Advisory Committee on Athletics is also charged to look at athletic finances, which is appropriate, and presumably has done so.

Professor Erdman said he agreed with Professor Marshak. The University has contributed to the "arms race" in athletics and there is a level of commitment about which nothing can be done. The Committee SHOULD question the level of support but there must be caution about the number of letters that go forward from the governance system; if there are too many, they will not mean as much. With a search for the new athletic director in progress, there should not be too much bad news in order that the University can attract a good director. The premise of the letter is that there is a \$10 million subsidy; the Director of Men's Athletics, Mr. Moe, says it is not \$10 million, and he has not been invited to Finance and Planning or to this Committee. His argument is that the subsidy at Minnesota is not \$10 million above the subsidy at other institutions; when the numbers are analyzed, the subsidy here is similar to that at other Big Ten universities.

Vice President Brown has not retracted the figures, Professor Campbell responded. As the Committee interpreted the data, the University had the highest subsidy in the Big Ten and the average subsidy is about 10%, which would be \$4 million at Minnesota.

What were the concerns the President expressed, Professor Bebeau asked? One was that it appeared the Committee was asking that the subsidy be reduced immediately; the Committee clarified that it was not making such a request, which it agreed would be unreasonable, Professor Campbell said. The President also said the inter-institutional comparisons are of uncertain validity; that may be true, Professor Campbell said, but one must also make the assumption that Minnesota does a poorer job at hiding subsidies than do other institutions.

Is the Finance and Planning Committee fully committed to sending the letter, Professor Erdman asked? It was supported by a unanimous vote two days ago, Professor Campbell said. This Committee could ask that it not be sent. Professor Erdman said he was not sure what good it would do, given the four strong statements that have already been issued by committees and given the commitments the University already has made. Vice President Brown looked at cuts and the athletic budget has already been cut by about \$1 million. The University has already said it will do something, but there are not millions to cut.

Professor Feeney said it was his sense that a number of Committee members support the points made in the letter but that there is a question about whether it should be addressed to the Regents. Perhaps it would be better to address the letter to the President with copies to the Regents, which would still get the point across. Professor Speaks's concern is that the subsidy will continue without reconsideration; the letter emphasizes that it should not be. The President will have to make the call on the funding; there would be no problem if the letter went to the President with copies to the Regents.

Professor Campbell pointed out that by sending a draft to the President, the Committee was specifically trying to avoid an "end run," and the President had no problem with it being sent.

Professor Massey said the Committee could endorse the letter, ask that it be changed so it is addressed to the President with copies to the Regents, or it could ask Finance and Planning to reconsider the letter altogether. Professor Martin moved that the Committee recommend the second option. She said she was concerned about the number of groups speaking on this issue; the President may not be sure whom he should listen to. The President will make the decision, in this matter; the Regents will not. It is, however, appropriate for the faculty to let the President know how they feel about the money being spent.

Professor Marshak urged that thought be given to what the University could get for \$10 million-- what does it want from intercollegiate athletics to help build a better university? There could be a list; he has not seen one. Whose responsibility is it to develop such a list, Professor Campbell inquired? The Advisory Committee on Athletics, Professor Marshak responded. The Advisory Committee charge includes finances but it is focused on athletics, Professor Campbell said; these two committees (Finance and Planning and the Faculty Consultative Committee) are charged with overview of the entire University. He said he was confused about the questions that have been raised about the appropriateness of Finance and Planning reviewing and taking a position on the subsidy to athletics.

Intercollegiate athletics is a way to interact with the community, Professor Marshak said. Athletics could be more supportive of the overall mission of the University; most students have little to do with it, except for the participants. He said he would, for example, like to hear Glen Mason talk about the mission of the University.

The Committee voted 6-2 to ask the Finance and Planning Committee to direct the letter to the President and to send copies to the Regents. Professor Massey thanked Professor Campbell for joining the meeting.

3. Discussion with the Faculty Representatives

Professor Massey turned next to Professors Brady and Weinberg for their annual report. Professor Weinberg said they appreciated the opportunity to provide the report.

The Faculty Athletic Representative position is a unique role, one that he had never heard of before he was asked to fill it to represent the faculty on athletic issues. He said that he and Professor Brady serve on both athletic committees. He said he wished to provide the Committee with a sense of the days of their lives in their role as faculty representatives. In his 30+ years at the University, including as Director of the Institute for Child Development, he has never had a role as demanding as that of faculty representative.

They travel quite a bit: to four or five Big Ten meetings per year as well as serving on subcommittees; to faculty representative meetings where they meet with representatives from other institutions; to meetings of the Western Collegiate Hockey Association; to the meeting of the NCAA convention as well as to regional meetings. They also receive 4-7 mailings per week from the NCAA.

They also attend Advisory Committee on Athletics and Faculty Academic Oversight Committee for Intercollegiate Athletics meetings, they meet with President Yudof and Vice President Brown quite a

bit, and they also meet with the athletic directors. They have meetings with head coaches about once per month and oversee the student-athlete advisory committees. They have meetings with the academic counseling staff, on coach certification, eligibility meetings for every sport, banquets, serve on search committees, and deal daily with individual student-athlete problems.

They have the most contact with the compliance director, probably five days per week, and sign every request for a waiver from the rules and every financial aid form for 700 student-athletes.

The job is livable and interesting, Professor Weinberg concluded. The greatest part is working with the student-athletes, who are a great group. They are disciplined, committed to both athletics and their academic work, and they are fun.

Professor Brady next reported on major sets of issues they face.

First, the financial situation has had a tremendous impact. The merger of the departments will occur. As faculty representatives, they are concerned with student-athlete welfare and morale; the concern is with how the discussions of merger and financial exigency occurred and that they not lead to a lot of problems with student welfare. It also seems that people are trampling on each other's feet over jurisdiction for dealing with the financial situation and they do not know whom to turn to.

Second, they inherited a lot of work from the previous Assembly Committee on Intercollegiate Athletics because all of the existing policies need to be reviewed.

Third, there is a problem with mascots and the position the University takes, especially with Native Americans. They have been urged by the Native American community to make a strong statement.

Fourth, in the Faculty Academic Oversight Committee, they have been careful to monitor institutional control of athletics. She said she serves on a committee that is looking at other institutions in this regard; the groups judging the level of institutional control are not lenient. As a result they are looking closely at things like grade changes, missed classes, and who is being recruited. The University is making progress on these issues, but she cautioned that there will be no mercy shown if there is a lack of institutional control.

Fifth, they have spoken with Donna Shalala, who cut sports at the University of Wisconsin. She said the Committee should not underestimate the feelings of the people in the state for the intercollegiate athletic program. There is pride in the state in athletics (which does not mean the program should be funded with millions of dollars of University money, but there is pride in the program). Professor Brady also urged that the camera not be turned away from football; it should not be treated as a sacred cow.

Sixth, media treatment has hurt people in athletics, in particular Chris Voelz. The people writing about sports do have an agenda and there are a lot of leaks at the University. Meetings that are supposed to be confidential are not; someone talks. It has not been helpful to have the media fed information from the University all the time.

Professor Bebeau thanked Professors Brady and Weinberg and commended them for the important work they are doing. The points about the importance of athletics in the state need to be noted,

she said; she has come to appreciate what sports means to the citizens of the state. The faculty must be careful how they support athletics; they must ask good questions and be sure the house is in order. It helps to have people like them doing these jobs, she said.

Professor Weinberg thanked Professor Bebeau for the kind words. One of the interesting things about the faculty representative role they have learned, in talking with colleagues, is that they walk a fine line: they must have the respect of the athletic departments while also keeping their standards as faculty members. The two are not always disparate, he said. The new athletic director must provide "firm love," he said; he or she must be respectful but firm and not put up with anything that is unacceptable.

Professor Martin concurred with Professor Bebeau's comments about the work that Professors Brady and Weinberg are doing on behalf of the faculty. It will be critical that they and the new athletic director are "on the same page." With many grievances possible, they will have to make the best merger of the departments that they can. She moved that FCC acknowledge the work of the two faculty representatives and express its appreciation for their work. The motion was approved unanimously with a round of applause.

Professor Kuhi said he had one question: Why does college football need 100+ players when the professional teams make do with 45? They have been told, Professor Weinberg said, it is because all the other schools have 100+ players. This is part of the "arms race." The costs of programs, Professor Brady added, are people and scholarships. Why does it matter what the other schools do, Professor Kuhi asked? They only need eleven players on the field at once.

Professor Erdman said he hoped that Professor Feeney would look into the jurisdiction of the various committees when he became chair. Professor Feeney said there seemed to be an inordinate concern about whether there is conflict or discord between committees. He said he will look at jurisdictional issues, but there CAN be conflicts between committees. There were conflicts between FCC and other committees during the tenure debate. Everyone has opinions and there will be conflicts; they are not necessarily bad.

4. The USA PATRIOT Act

Professor Massey turned now to General Counsel Rotenberg and Ms. Smith, whom the Committee had invited to the meeting to discuss the implications of the USA PATRIOT ACT for the University. A summary of the Act, provided by a Washington, D. C. law firm, had previously been provided to the Committee and included the following information:

The following are key provisions of the USA Patriot Act that affect college technology systems. The law:

Permits federal authorities to obtain stored voice mail without wiretap authorization.

Compels Internet service providers to turn over to federal agents who have subpoena: subscriber's telephone connection records, the subscriber's identity, the length of service, and how it was paid for.

Allows federal agents to use a "trap and trace" device to obtain dialing, routing, addressing, or signaling data sent by wire or electronic communication.

Allows federal agents to install technological tools to intercept and collect information from Internet traffic.

Allows Internet service providers to call in federal agents, who do not have to have a search warrant, to help them intercept the communications of a computer hacker.

Increases penalties for computer crimes, including transmitting viruses. If the network damage exceeds \$5,000, the hacker may be sued.

Mr. Rotenberg noted that the law had been passed by Congress and that he would brief the Committee on two areas most likely to be of interest (although the law has other implications as well): (1) information technology and information disclosure implications for the University, and (2) disclosure about students.

In terms of information disclosure, the University has the authority to make voluntary disclosures in some circumstances. It would also be required to disclose information in the face of subpoenas, warrants, and the like. The Act also addresses Internet surveillance and hackers and trespassers.

The Act amends a number of existing laws, Ms. Smith said, and both expands surveillance as well as reducing the standards required for surveillance. In terms of voluntary disclosure, an Internet service provider (such as the University) can voluntarily disclose the contents of electronic communications to law enforcement agencies. Before the Act was passed, the University could reveal such communications if it discovered child pornography, for example; now it can disclose information if it has a reasonable belief that there is an immediate threat of death or injury.

Can the University randomly look at communications, Professor Rabinowitz asked? It can look either randomly or because it suspects a problem, Ms. Smith said. Without informing the person, Professor Rabinowitz inquired? Yes, Ms. Smith said, but the Office of Information Technology (OIT) has a strong culture of respecting electronic privacy and does not look randomly at electronic communications. Ms. Smith did not know of any time there has been random review of electronic communications.

Is there any Regents' policy that forbids OIT from looking at electronic communications, Professor Marshak asked? Ms. Smith said there is an administrative policy that guarantees privacy unless there is reasonable ground to believe a crime has been committed or a policy violated, or if necessary for system maintenance. Would the policy be stronger if it were Regents' policy, Professor Marshak asked? That would make it more brittle, Mr. Rotenberg said, and would hinder change. Professor Marshak said it would be reasonable for this Committee to consider recommending to the Board of Regents that it have a policy on privacy as far as the law permits.

The Board of Regents is free to adopt policy that restricts access up to the limit of the law, Mr. Rotenberg said--not beyond what Congress requires but it could restrict administrators. One concern is the dynamic nature of the law; the technology now being used would have been considered exotic ten years ago. If something is put in Regents' policy, it could become antiquated very quickly. That is not a

reason not to have a Regents' policy, but some believe that in a dynamic field, a Regents' policy would not work as well as an administrative policy.

If the law moved, it would be appropriate to move University policy to the limit of the law, Professor Marshak responded, and he urged that FCC take up this issue next year.

Professor Rabinowitz inquired about the difference between a crime and an emergency. Mr. Rotenberg explained that there is an exception for child pornography: a lay person could report child pornography without a warrant because a felony is apparent. An emergency is different; one might discover data on a computer about planting bombs. The information might not constitute a felony but it might constitute an emergency that should be disclosed. How will these be discovered, Professor Rabinowitz asked--will people be monitored? No one is doing so at the University, Ms. Smith said. OIT staff are most careful. She said she doubted that the new emergency exception would affect the University as it is not monitoring electronic communication.

Voluntary disclosure is least practical at the University, Mr. Rotenberg said. OIT people at the University do not now conduct surveillance--the University as an Internet service provider does not engage in activities that would lead to voluntary disclosure. The University does not know the contents of messages on the system because it does not look.

Is it a safe assumption that materials on one's computer are private unless some requests them, Professor Martin asked? It is, Mr. Rotenberg said. But the current administrative stance is PRACTICE, not policy, Professor Rabinowitz pointed out; the Regents could ask for surveillance. The University has a policy, Ms. Smith observed; there is a University-wide acceptable-use policy and various departments have their own operating policies and guidelines. Is that acceptable, Professor Rabinowitz asked? In their legal opinion, Mr. Rotenberg said, the University has established, under certain circumstances, an "expectation of privacy" concerning data in the system (with some exceptions).

In terms of required disclosures, the USA PATRIOT Act expands what the government can obtain, Ms. Smith told the Committee. It can obtain stored voice mail with a court order as well as who subscribes to, has been connected to (and times) of users of the University system, with a subpoena. The government also has enhanced surveillance authority and can use "trap and trace" devices to track Internet usage (but not the content of the usage). There must be a subpoena or a court order issued for it to do so. One such device that has been developed is called Carnivore, but Ms. Smith reported that the individual responsible for network security at the University does not know if it has actually ever been used, he has never seen it, and it is unlikely that it could be installed at the University without the University knowing about it.

Some of the provisions of the law have a 2005 sunset clause, Ms. Smith said.

In terms of trespassers and hackers, it was not clear previously if Internet service providers had the authority to monitor and track hackers; now they can work with law enforcement officials to do so. The law increases penalties for computer crimes.

Professor Rabinowitz asked if stored voice mail was gone once it was deleted from one's telephone or if it was stored somewhere else. Mr. Smith said she did not know; she said she did know that email may not be gone, depending on the computer system.

There are two changes in the law with respect to students, Ms. Smith said. One should have a minor impact: the standard for government to obtain a court order for student records has been lowered in terrorism investigations. The second change will have an impact on the University: It has always been required to maintain visa information on foreign, vis-holding students (those students waive their privacy rights); now there must be an electronic database in the Office of the Registrar from which the University must affirmatively report to the government who (foreign students) came and left the University.

Will this monitoring cover a student who comes to study English but changes to Computer Science, Professor Rabinowitz asked? What does that do to academic freedom and free speech? This is what the Act is about, she said. The INS or its successor agency will be able to obtain more information about foreign students and the courses they take, etc., Mr. Rotenberg responded, in order that it can be sure they are where they say they are (and have not flunked out, for example). The University is required to supply this information, Professor Rabinowitz asked? It is, Mr. Rotenberg affirmed. Professor Rabinowitz said she could understand the government wanting information about dropping out but that she found it disturbing that it would monitor the courses taken. Professor Martin said she could not imagine there would be such monitoring, but Professor Rabinowitz noted a recent article in the New York Times pointing that foreign students with illegal intentions might sneak into a university by saying he or she wishes to study English and then switching to biology.

Mr. Rotenberg commented that the USA PATRIOT Act interacts with other statutes such as the International Trafficking in Arms Regulations (ITAR), which regulates the access of foreign nationals to sensitive materials. The University and research universities in general are getting a more careful look from the government about the extent to which foreign nationals from state sponsors of terrorism have access to sensitive information. There could be an interface between the USA PATRIOT Act and the ITAR act in the disclosure required if a foreign student is on campus taking courses. But the USA PATRIOT Act is more about whether the student is at the institution and working on a degree

Will the Act have a chilling effect on foreign students applying at the University, Professor Rabinowitz asked? Mr. Rotenberg said he did not know. The AAU and other groups have been working on the issue; research universities are trying to achieve a balance. They want to cooperate in the fight against terrorism but they are also deeply committed to international education, so statutes that deter the free exchange of faculty, students, and research information are a threat to the research university agenda.

Professor Martin noted that this Committee and the Committee on Faculty Affairs have also talked about the federal and state laws governing what information people must turn over because the Committees thought the faculty should be aware of the provisions of the law. Mr. Rotenberg said he would be happy to provide whatever information was needed and agreed that people are often surprised to learn what they must disclose. There will be a statement from the Committee on Faculty Affairs, Professor Goldstein reported.

Professor Massey thanked Mr. Rotenberg and Ms. Smith for joining the meeting.

5. Statement from the Tenure Subcommittee

Professor Goldstein recalled that the Committee had asked that the statement from the Tenure Subcommittee be changed; it has been. Is it now acceptable? The Committee voted unanimously to approve it.

STATEMENT ON VOTING TENURE SUBCOMMITTEE

The Tenure Subcommittee was asked by the Senate Committee on Faculty Affairs to consider issues associated with voting on faculty appointments, promotions, and tenure. The Subcommittee takes the following position:

- Only tenured full professors may vote on whether to recommend a candidate for promotion to full professor with tenure. The tenured full professors may consult other tenured faculty, non-tenured faculty, P&A and term faculty, adjunct faculty, students, and any others they wish. The meeting at which the deliberations and vote take place, however, shall be open only to the tenured full professors in that unit.[footnote]
- Only tenured associate and full professors may vote on whether to recommend a candidate for promotion to associate professor with tenure. The tenured associate and full professors may consult other tenured faculty, non-tenured faculty, P&A and term faculty, adjunct faculty, students, and any others they wish. The meeting at which the deliberations and vote take place, however, shall be open only to the tenured associate and full professors in that unit.
- Only tenured faculty may vote on whether to recommend a candidate for tenure. The tenured faculty may consult non-tenured faculty, P&A and term faculty, adjunct faculty, students, and any others they wish. The meeting at which the deliberations and vote take place, however, shall be open only to the tenured faculty in that unit.
- Only the tenured and tenure-track faculty may vote on whether to recommend hiring a candidate for a tenured and tenure-track faculty position in a unit. The tenured and tenure-track faculty may consult P&A and term faculty, adjunct faculty, students, and any others they wish. Individuals other than tenured and tenure-track faculty members may serve on search committees; however, meeting at which the final deliberations and vote take place shall be open only to the tenured and tenure-track faculty in that unit. It is not required that all tenured and tenure-track faculty in a unit participate in the decision to recommend that a candidate be hired, but the decision to recommend hiring of a tenured and tenure-track faculty member shall be made only by tenured and tenure-track faculty members.

The Subcommittee will prepare appropriate language changes to implement these statements.

[footnote:] The provision in this and succeeding paragraphs that "the meeting at which the deliberations and vote take place, however, shall be open only to . . ." explicitly bars all others, including secretarial staff.

6. Questions for Candidates for Provost and Executive Vice President

The Committee agreed that it would develop a set of questions to be asked of the four candidates for Executive Vice President and Provost. Professor Rabinowitz and others suggested the questions include such subjects as view of educational quality, attitude toward faculty governance, commitment to investment in faculty development and improvement of working conditions for faculty as scholars (which have to do with students and libraries, among other things). What intellectual leadership will he or she provide? What support will he or she provide for interdisciplinary work? What support will he or she provide for the humanities (always the stepchild of the University)?

7. Dentistry Senate Election

Professor Massey turned to Ms. Lenten to discuss the Senate election held in the School of Dentistry. She explained that because she holds a P&A appointment that fluctuates between 100% and 80% time, she was told by the School of Dentistry that her Senate term was terminated because Senate rules require full-time appointments. There is a question about the definition of "full time": faculty members are considered "full time" if their appointments are 67% or more. The Senate, however, has had a practice (rooted in the mists of history) that P&A staff who serve in the Senate must have 100% time appointments. The Committee agreed that the Senate Parliamentarian should be asked for an interpretation of the meaning of "full time." [Subsequent to the meeting, Professor McGowan, the Parliamentarian, ruled that the term "full time" should be applied in the same way to faculty and to P&A staff. It was agreed that Ms. Lenten's Senate term should continue uninterrupted.]

Ms. Lenten also raised a question about the nominating process: All 52 of the P&A staff in the School of Dentistry were barred from being nominated for the Senate. Such an exclusion does not seem to reflect the spirit of the Senate constitution, she said.

The Committee agreed. The Senate and its committees, however, have not examined how colleges nominate individuals to serve in the Senate--for either faculty or P&A staff. Professor Feeney expressed the opinion that this Committee could step in if it were informed of irregularities in the process. It was agreed that he would ask for information from the School of Dentistry about its nomination process. There was sentiment expressed that the Committee should consider recommending minimum standards for the nominating process.

Professor Massey adjourned the meeting at 4:00.

-- Gary Engstrand