

Minutes*

**Assembly Steering Committee
Thursday, November 4, 1999
1:00 – 4:00
Room 238 Morrill Hall**

- Present: Fred Morrison (chair), Sabeen Altaf, Linda Brady, Mary Dempsey, Meggan Ellingboe, Roberta Humphreys, Jed Ipsen, Leonard Kuhl, Reid LeBeau, Joseph Massey, Paula Rabinowitz, Jason Reed, Chaz Rice, Aaron Street, Mark Uszenski
- Absent: Stephen Gudeman, David Hamilton, Mary Jo Kane, Judith Martin, V. Rama Murthy, Tiffany Stedman, Kerstin Trimble
- Guests: Professor Norman Chervany (Faculty Representative, Men's Intercollegiate Athletics); Professor Kathryn Sedo (Chair, Assembly Committee on Intercollegiate Athletics); Professor Sara Evans, Ms. Betty Hackett, Ms. Julie Sweitzer, Mr. Mark Rotenberg (Task Force on Sexual Harassment and Domestic Abuse); Professor Burton Shapiro (1992 ad hoc Committee on Intercollegiate Athletics); Regents' Professor Tom Clayton (Special Senate Committee on Student Academic Integrity); Vice President McKinley Boston; Susan Brorson, Jeff Ratliff-Crain
- Others: Maureen Smith (Institutional Relations); numerous representatives of the local media

[In these minutes: recommendations of the Special Senate Committee on Student Academic Integrity (intercollegiate athletics); recommendations of the Task Force on Sexual Harassment and Domestic Abuse]

Professor Morrison convened the meeting at 1:05 and welcomed Professor Norman Chervany, athletic faculty representative for Men's Intercollegiate Athletics. He noted that the Committee had at hand the report from the Special Committee on Student Academic Integrity (provided to the Committee at this meeting from a committee chaired by Regents' Professor Tom Clayton, hereinafter the Clayton report), and noted the executive summary of its recommendations, which were as follows:

1. Academic Counseling and Student Services for Intercollegiate Athletics should report to the office of the Provost.
2. The Vice Presidency now concerned with Student Development and Athletics in future should be concerned solely with Student Development.

* 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.

3. The Athletic Directors should report to a senior central administrative officer who reports directly to the President and could be assigned ad-hoc, a person with authority, institutional support, and unquestionable integrity.
4. The Director of Compliance should report to the Auditor.
5. Coaches are responsible for students' athletic performance and their public behavior as athletes, for recruiting academically capable students for their teams, and for fostering a culture of academic progress as well as of athletic success.
6. Coaches' contracts should include significant incentives for improving the academic performance of the students on their teams.
7. Academic Counseling and Student Services for Intercollegiate Athletics should be responsible for counseling and special tutoring, and for integrating their activities as far as possible with department and collegiate advising and instructional programs.
8. Students in athletics, like other students, are responsible for their own academic performance and personal conduct.
9. Departments and colleges should be responsible for assuming as much responsibility for students in athletics as they do for other students, but no instructor should ever regard it as part of his or her responsibility to help maintain athletes' eligibility.
10. The faculty is responsible for enforcing the University's academic standards and for reporting infractions.
11. Any contact between athletics and admissions must be limited to written exchanges.
12. All contact between athletic officials and faculty members, teaching assistants, or civil service staff must be through academic counselors.
13. Athletic officials, including coaches, should be encouraged to share in the activities of the wider University community as far as they can and wish to.

[NOTE: The full report is available at
<http://www1.umn.edu/usenate/reports/saicreport.html>]

The Committee also recommended that a Faculty Academic Oversight Committee on Intercollegiate Athletics, to be composed of 12 faculty members, be established to replace the Assembly Committee on Intercollegiate Athletics.

Professor Chervany began by saying that as the Committee deliberates what happens in intercollegiate athletics, he wished to offer his observations and answer questions. He said he had looked briefly at the Clayton report. He said that the key to a stronger system is the people in it, their skills and attitudes; organizational changes are important, and an improvement, but people are key.

The recommendation that Academic Counseling report to the Provost makes sense, Professor Chervany said; he would recommend that the Compliance office report to the same person, because the compliance office plays an educational and collaborative function as well as an auditing function, and the goal should be to make a team of support people.

In addition to having good people, those people must talk to one another regularly. The chair of the Assembly Committee on Intercollegiate Athletics (ACIA) and the faculty representatives should meet regularly with the President. If one puts people who talk in a good environment, good things will happen. A change in organizational relationships is less important. The Committee and the President must weigh these issues.

Professor Chervany then inquired if there were any questions of him.

Professor Morrison said he had never fully understood what the faculty representative did. What responsibilities does he have to the athletic department, to the NCAA, to the University, to ACIA, etc.? Professor Chervany began by noting that he is a member of ACIA and serves by virtue of his position. He is the faculty voice/perspective on the committee. He is also faculty advisor to athletics, providing a faculty voice through the athletic director; he is a faculty resource for the athletic director and his staff, someone whom they can ask questions. He is also the faculty contact for student-athletes, through their advisory councils.

Externally, Professor Chervany told the Committee, he (and the women's faculty representative, Professor Mariah Snyder) takes the faculty perspective to the Big Ten and WCHA. There are three points of contact with the conferences: the President, the Athletic Director, and the Faculty Representative; he is the voice of the faculty as legislation is debated that affects the University and its student-athletes.

Professor Morrison asked if he also represented the University to the NCAA. Professor Chervany said he did, but the NCAA is run through committees, where the faculty perspective is reduced. He is not now on any NCAA committees, although many faculty from other institutions are.

Professor Kuhl noted that Professor Chervany uses the term faculty representative; how does he become the faculty representative, how does he represent the faculty voice, how does he learn what the faculty want? Professor Chervany said the appointment varies across universities; at Minnesota, one is appointed for a six-year term. There is a search committee (appointed by the chair of ACIA, Professor Sedo reported) which solicits names and then forwards a slate of candidates to the President. The faculty control the selection process; the President makes the appointment. President Hasselmo appointed him. He serves at the pleasure of the President.

How does he know what the faculty think? He learns the faculty perspective through discussions at ACIA and discussions with other faculty across the campus; there is no mechanism to obtain faculty views for the entire campus. He is a faculty person who brings a faculty perspective, mostly through ACIA. He represents a faculty voice, not all the nuances of faculty views across the campus.

How many people are on ACIA, Professor Kuhl inquired? Professor Sedo reported that there are six faculty appointed by the Committee on Committees plus the two faculty

representatives. [There are also three students, two of whom are chosen by the men's and women's student-athlete advisory councils, and one student chosen at large.]

As faculty representative, to whom does he talk regularly, Professor Humphreys inquired? His colleagues on ACIA, the Athletic Director, the Associate Athletic Director, the Director of Academic Counseling, the Director of Compliance, Professor Chervany explained. There is an ongoing exchange of ideas and discussion, he said.

How common is it to have two faculty representatives, Professor Morrison asked? Professor Chervany said that there are two at Illinois, Purdue, and Wisconsin; Iowa had two until very recently. He said is often amazed that one person can do the job for a university, because there is much to do. It makes a lot of sense to have two, because there are many different issues that the faculty representative must be involved in.

Professor Massey asked for examples of the kinds of decisions in which he had been involved. Professor Chervany cited the recruiting process for the Director of Academic Counseling, the creation of the life-skills program in Academic Counseling, searches for the three revenue-sport coaches in the last three years, recommendations for an exemption from the policy concerning the number of permissible class days missed for post-season competition, legislative recommendations, and involvement in the recommendations concerning men's basketball.

Ms. Altaf asked Professor Chervany to reflect on his relationship with the Academic Counseling office. He said that he met frequently with the previous director, and with the current director, to talk about general issues as well as about specific teams and better reports. He also gives advice to student-athletes when called upon to do so by an academic counselor.

Mr. Street inquired if there are any non-athlete students involved in the process. Professor Chervany said he did not believe so. Did he, Mr. Street asked, have any sense why such participation did not matter to the athletic programs? There are a lot of decisions that affect student-athletes directly, so they need representation on ACIA. He agreed, however, that students at large also needed representation. He said that student-athletes do not mirror non-athlete students at the University, but added that the VAST majority of student-athletes are very good students. Athletics is an extra-curricular activity requiring long hours, and most student-athletes do well both athletically and academically. The student-athlete representatives have been very good representatives and are very accomplished students.

Asked about the composition of ACIA, Professor Sedo said that in addition to the eight faculty (two women, six men), a female athlete, a female student, a male athlete (to be appointed), three alumni (two males, one female), and one civil service appointee. The alumni tend to be former athletes who have knowledge of what it is like to be a student-athlete.

Professor Humphreys recalled that Professor Chervany said that people are key. Professor Chervany said that the organizational structure helps, and can improve things at the margins, but

more important are the skills and attitudes that the people bring and an environment that encourages ongoing communication.

Given that, Professor Humphreys said, and given his relationship to Academic Counseling, when the story broke, as he looks back, what could have been done differently to avoid the problems? Professor Chervany said he has thought about that for the last eight months, and that he was not sure, short of having someone on the shoulder of every student-athlete and every administrator, what could be done to prevent people who want to do wrong from doing wrong. ACIA has said that men's basketball was not where it should be, academically. One can have a system that diligently pursues accusations about inappropriate behavior and be sure they are communicated widely. The secret is in how is hired and who is brought in as a student-athlete. Things went wrong because of some of the student-athletes who were brought in and because of the people with whom they were in contact. There is not an easy answer.

People have been disturbed by the separation of academic counseling for men's basketball from the Academic Counseling office, Professor Morrison observed. Did ACIA participate in that decision? Would he say, in retrospect, that that was a wise decision?

Professor Chervany said ACIA did not participate in the decision; it was seen as a personnel matter. It is an interesting question whether it was appropriate to pose it that way. The report will likely show that academic fraud occurred before, during, and after that change in organization; he said he thought the change had little do with academic fraud. But it is absolutely clear that the change should not have been made. It had little do with what happened, however; it had a lot more to do with the people in academic counseling positions.

It was determined to be a personnel matter, so there was no faculty participation, Professor Morrison inquired? His first question was about ACIA, Professor Chervany pointed out; he WAS asked, as faculty representative, to look at the situation. It was clear that Elayne Donahue (now-retired Director of Academic Counseling) and Coach Haskins did not work well together. They would both agree. The University wanted to keep both people; what was to be done? On an experimental basis, it was agreed to move counseling for men's basketball not to the basketball program, but to reporting to the Associate Athletic Director, to see if the process would work better. It was determined that academic performance was not improved, so academic counseling for men's basketball was moved back to the Academic Counseling office within two years. ACIA was made aware of the decision, but was not involved in it.

So, Professor Morrison concluded, he was saying two things: personnel is a key issue, as is communication, and personnel is none of the business of the faculty. Professor Chervany said no, only that the question was not posed to ACIA. Should it have been? The question is, was this a personnel change, to accommodate the lack of a working relationship between two key individuals, to accommodate academic counseling needs? That was not posed to ACIA.

Professor Kuhi said that Professor Chervany was saying that people are important. What was his role? What authority does the faculty representative have? Does anyone pay attention to

what the faculty representative does? Professor Chervany said he had no authority to make decisions. His authority comes from the quality of his ideas, the give and take of discussion of ideas within ACIA. There ARE places where he does have authority, at a level of more detail. For example, a student-athlete must be in a major by his third year. If an athlete switches majors, and is short one course, he can look at the record, working with Academic Counseling, and can say that the athlete is doing what he should.

Professor Morrison thanked Professor Chervany for joining the meeting.

2. Discussion with Professor Evans and Others

Professor Morrison now welcomed Professor Evans, Betty Hackett (Director of Student Judicial Affairs), Ms. Sweitzer (Director of Equal Opportunity), and General Counsel Mark Rotenberg. He told the Committee that these four individuals had served as a Task Force on Sexual Harassment and Domestic Abuse, appointed by the President after certain allegations arising from the events in men's basketball had been made. They had worked through the summer and prepared a report (copies of which were provided during the meeting).

The Committee was also provided a one-page concurring opinion by Mr. Rotenberg; in that opinion, he called for reform of the student disciplinary systems, because they are not only complex, they are "needlessly multi-layered, slow, unpredictable, easily manipulated, unhelpful to victims, with few satisfied users." He endorsed the task force's call for a "comprehensive analysis" of the procedures associated with the Student Conduct Code and related disciplinary systems. Professor Evans commented that the task force did not disagree with Mr. Rotenberg's memo.

Inasmuch as the Committee had not received nor read the report, Professor Evans provided an overview. The specific charge to the task force was to determine if current disciplinary procedures were adequate to deal with allegations of sexual misconduct and domestic abuse and whether or not the procedures needed to be changed. They also had specific questions to answer dealing with behavioral contracts, individuals present at interviews, and so on.

The task force does have recommendations to make, Professor Evans said, but nothing that constitutes policy changes that must go through committees and to the Senate. It may be that they are setting in motion issues that Senate committees will take up, but their recommendations do not require legislative action.

The task force was told to consult broadly and given a list of individuals with whom it should speak. It interviewed a wide variety of individuals. It started with an outline of what happens when a sexual assault is reported; the system is complicated, depending on whether the incident occurred in a dorm, between two students, between a student and a non-student, and so on. The task force interviewed people about procedures, and about what works and what does not.

The task force set out guiding principles. They reinforced the value of no tolerance for sexual assault, called for allegations to be resolved promptly, said the confused nature of the process

must be made clearer, and said that responses to sexual assault must be highly professional and must protect the legal rights of those involved.

Often sexual assault allegations involve legal challenges or parallel proceedings by other agencies; there can be a police role and criminal charges. In the past, when this has been the case, University procedures stop so there has been no contamination of a legal case. The University should enforce its own values, Professor Evans said; it should not contaminate legal proceedings, but should take action as swiftly as possible.

The recommendations of the task force are: (1) the University process should start independently of criminal or civil court actions and the University should feel an obligation to respond, because these actions are serious wounds on the community; (2) the process of responding should be quicker and more professional, and any report of sexual assault should go directly to Student Judicial Affairs immediately rather than through multiple levels; (3) many victims go to the Sexual Violence Program, some of whose counsellors have a legal obligation to protect confidentiality, but when there is a formal report, the matter should go to Student Judicial Affairs; and (4) when sexual assault is alleged, it is a rule in athletics that a student-athlete is immediately suspended from participation on a team.

With respect to the last, the task force asked how a suspension is lifted. In the past, it has been by the Director of Men's Intercollegiate Athletics; the President shifted that responsibility to a panel of three faculty members. The task force recommends that the responsibility be given to some senior University officer; the decision must be made quickly and wisely by someone who does not have a large stake in the outcome. The pressure on the athletic director is too great, given athletic competition; a committee of three can take too long. The decision must be swift and disinterested.

On what basis would the decision be made, Professor Kuhi asked? There could be serious criminal charges; HOW would the individual decide? Professor Evans said she only give the Committee her impression, which is that the decision to lift a suspension could be made if the prima facie case to prosecute were weak. Would the senior officer have access to police reports, Professor Kuhi inquired? Mr. Rotenberg said the recommendation is that the senior officer, in all cases where it is feasible, rely on the advice of an investigator, but they do NOT recommend the senior officer conduct his or her own investigation.

In terms of process, Professor Evans continued, the task force assumes that Student Judicial Affairs is charged to decide what the next steps would be. Allegations vary in seriousness and the nature of the evidence. At present, most investigations and resolutions are informal. There may be a hearing which can be intrusive, which can re-victimize the victim, and which can get into side issues. IF investigation is warranted, the task force recommends a model used in other places: have someone who can conduct an investigation by interviewing the relevant parties, someone who must be expert in investigation and knows legal issues, and who is also aware of unique sexual assault issues. Such a process is used at Carleton, and most allegations are resolved without a hearing (which decision itself can be appealed). If a good investigation is conducted, the investigator can

advise Student Judicial Affairs whether to impose sanctions. The investigator would be authorized by Student Judicial Affairs, would serve as an officer of that office, and work in Ms. Hackett's office. This would make the process quicker and more professional and allow Student Judicial Affairs to develop expertise and to make decisions. From that point there would be an appeal process.

This proposal will require investing money to hire someone who can be an investigator and do the job well, who can serve both the victim and the interests of the University. Their great concerns, Professor Evans said, are the amount of time involved in an investigation and the harassment of victims.

The task force also looked at the Campus Committee on Student Behavior (CCSB), the hearing panel that hears appeals, and has recommendations concerning its practices. Those who conduct the hearing must be well-trained if the issues involve sexual assault, and must be sensitive to issues that arise in connection with sexual assault. Scheduling must be better organized. Hearing panels should not be of indeterminate size; at present, there is a quorum, but sometimes others also appear. Given the very personal issues involved in sexual assault, the panel size should be fixed.

CCSB should consider limiting its review to documentary evidence. The most difficult stories the task force heard were of people being interviewed by individuals not well-trained and who do not know what is off-limits. Any chair should have specific training.

There is also a need for good facilities for hearings, so that adversaries do not have to sit next to each other while waiting and so that confidentiality is ensured. Hearings should also not last into the wee hours.

Professor Evans then reviewed other issues the task force had taken up. (1) Behavioral contracts should not be outlawed, but should be within a procedure recommended and monitored by Student Judicial Affairs; other parties are not set up to enforce them. (2) Who should be present at interviews? The task force did not presume to tell the police how to conduct investigations, but in any other proceedings, the victim and the accused should be allowed to have a non-participating support person with them. (3) What additional mechanisms should there be to ensure adequate coordination and communication? The task force would like to see an administrative policy on sexual assault which would clearly set out applicable policies, University values, and the procedures. This would not be new policy, but would pull together everything in one statement. (4) There needs to be a central computerized repository for student disciplinary records. This is a complicated institution, and students can break rules in different places. There is need for a complete record of a student's disciplinary history so appropriate and consistent action can be taken. Students must be held accountable if they have multiple violations. (5) All students should be treated alike, and there should not be separate rules for student-athletes. Athletes should be treated no more, and no less, stringently than all other students. AS student-athletes, they may be subject to other rules, such as those imposed by a coach, but the UNIVERSITY should treat all students the same. (6) The task force agrees with President Yudof's prohibition on athletic staff contacting victims. (7) As the General Counsel has indicated, the task force is concerned about the complexity of the student

discipline system, but was not charged to review it, so urges that this question be on the table and that the Senate and MSA committees take it under advisement.

Mr. Rotenberg then told the Committee that his statement makes clear he agrees with the report of the task force. His central point is that there is such a plethora of policies, and they are so overlapping, that they manifest many of the worst features of bureaucratic law in the late 20th Century. These policies deal with people's dignity, rights, self-understanding, but can be manipulated, present opportunities for delay and allow people to make a pest of themselves (which features can be pejorative or positive, depending on one's perspective). The procedures can be streamlined and made clearer, and in cases of sexual assault, can better protect both the victim and the alleged perpetrators. People have a right to a speedy resolution, not months of uncertainty. The University can do a better job, he told the Committee.

Ms. Hackett said that to the extent students and staff have confidence in the system, they will be encouraged to report to it. She said she wants a process that is sensitive and fair. People should not be inclined to keep cases OUT of the process.

Can an accused bring a lawyer to hearings, Professor Dempsey asked? CCSB rules permit their presence and participation, Ms. Hackett said. The issue concerns investigative interviews early in the process, Professor Evans said (when individuals may have a support person, but not an advocate); the intent is not to take away anyone's legal rights.

Professor Massey said it appeared that there could be two investigations going on, and there could be a danger that the University investigation could go faster, and interfere with due process. Mr. Rotenberg said this is a sensitive issue. In the past, the University deferred to the police, for that reason; it did not want to prejudice the rights of anyone. He and the task force agree that if an investigation is handled professionally, and respects legal rights, the courts and district attorneys will not see the University process as interfering. There may be instances when it COULD interfere; that is why it must be professional, or the University could be accused of prejudicing a criminal case.

Ms. Sweitzer said the task force recommends flexibility, so that if it is necessary to wait, the University could wait. But the task force believes it inappropriate to say that the University should always wait or should always go ahead.

Professor Kuhi asked whether, in light of Mr. Rotenberg's comments about student disciplinary procedures, the task force had any recommendations for improving them. Ms. Sweitzer responded that the recommendations they have made should help; there will be a more efficient system for sexual assault incidents, but all kinds of discipline need to be evaluated. The problem is that there is a lot of overlapping jurisdiction, Professor Evans added; some group must map the jurisdictions out and identify ways to make the process simpler.

Some of the problems result from relying too much on amateurs, Professor Morrison maintained. People who are not well trained learn after they have fouled up an investigation. The University does this in many ways.

Professor Evans concluded her remarks by noting again that the task force made recommendations to the President and the Committee. It would be helpful to have the support of the Committee for the recommendation to hire an investigator, if the Committee concurs. The mission and values of the University require that it deal with these cases appropriately.

Professor Morrison thanked Professor Evans and her colleagues for joining the meeting. He promised that the Committee would look at the task force recommendations in the near future and would make recommendations to the President.

3. Discussion with Professor Shapiro

Professor Morrison now welcomed Professor Burton Shapiro, chair of an ad hoc committee on intercollegiate athletics in 1991-92. He noted for the Committee that Appendix III of the Clayton report was a copy of the report (the Shapiro report). Professor Morrison said the Committee wished to hear his reflections on the Clayton committee recommendations, and what he saw seven years ago that seems to have gone wrong again.

Professor Shapiro recalled that he had told the Clayton committee that while he appreciated the recent accolades for the report in 1992, he was not sure that the changes they recommended then would have made a difference. Then, at the meeting with the Clayton committee, he learned that ACIA had heard rumors about the recent problems in men's basketball, and he now suspects that there WOULD have been a difference if the 1992 recommendations had been implemented: if ACIA had become an all-faculty committee, as his committee had recommended, it would perhaps have been more sensitive to the rumors. One will never know.

While he would like to believe that the 92-1 vote in favor of the 1992 report was a reflection of its virtues, in fact a student who had berated him for not including the students' names on the report played an important role. He had been very apologetic when Professor Shapiro explained that the students had never attended, so their names were not on the report, and stood up and gave the report a ringing endorsement on the floor of the Assembly. The only reason the report bylaw was not adopted was because it required 96 affirmative votes. No action had been taken on the remainder of the report, and it was not brought up again, Professor Shapiro speculated, because NO ONE was happy with it. The report recommended that alumni not have seats on ACIA, and that students and the civil service staff also not be appointed; it also recommended that the faculty representatives not be voting members. To implement the report might have meant grief for the President, so there was no pressure to bring it back to the Assembly, Professor Shapiro concluded.

What caused his committee to be appointed, Professor Morrison inquired? Professor Shapiro said there had been a predecessor group, the Page-Merwin committee, which had made a series of recommendations about students in athletics. Professor Warren Ibele was chair of SCC at the time, and believed that the Page-Merwin committee did not take up some items that needed addressing, and there was also a sense of unease about the issue of faculty control of athletics. The

ad hoc committee had long sessions, discussed options, interviewed a lot of people, and addressed the questions that were perceived to need answers.

Who was responsible for implementing the report, Professor Dempsey asked? Professor Shapiro said the report came to this Committee in 1992 and was forwarded to the Twin Cities Campus Assembly, at which time the 92-1 vote occurred. The report came back to the Assembly Steering Committee but was not acted upon.

It is in part because of the rule requiring absolute majorities for bylaw amendments that he wishes the issue brought to the Assembly while interest is still high, Professor Morrison. He said he did not wish it to go stale again.

Professor Shapiro said he endorsed the Clayton committee report. Professor Morrison thanked him for joining the meeting.

4. Discussion with Regents' Professor Clayton

Professor Morrison next welcomed Regents' Professor Tom Clayton to the meeting, and commented that he had responded to a call to chair the Special Senate Committee on Student Academic Integrity. The committee had been given a broader charge (to deal with student academic integrity generally) and a narrower charge (to deal with academic issues associated with the athletic programs and to make recommendations concerning them).

Regents' Professor Clayton began by saying that it helped to have a coherent and workable charge and a hard-working committee; this one was one of the best he had ever worked with, and EVERYONE on the committee had contributed to the report. He also complimented the staff to the committee (the author of these minutes) more effusively than necessary.

Professor Clayton described the Shapiro committee report as exemplary and said that they were delighted to make it a part of their report. He then reviewed the third charge to the committee:

3. To make recommendations regarding the appropriate relationship (if any) between the Athletic Departments and the special academic assistance program for student athletes. Concern has been expressed that the administrative relationship of this program to the Athletic Departments may have enhanced the possibility of inappropriate conduct by students. Are other administrative structures preferable? Should limits be imposed on contacts between coaches or other administrators and individual faculty members with regard to student performance?

The committee addressed these questions by talking with people who could inform it and by consulting the appropriate documents. The committee met every Friday during Fall Semester. The committee did not consider itself an alternative investigative body, and did not deal with personnel matters, but looked at structural matters.

The individuals who visited with the committee almost to a person said that it is the people who matter more, and structure matters less, Professor Clayton reported, and the committee agreed. If one starts with a bad apple, one will not get a prize-winner at the State Fair. Some administrative arrangements more tempting than others, however, and can more easily allow things to go haywire. There is NO DOUBT one must have the right people, but the right structure and reporting responsibilities can help to make things less likely to go wrong.

The faculty should take an oversight role, through a reconstituted committee that consists of 12 faculty and 3 students ex officio. The responsibility of the committee being recommended is for academic oversight only, and it is not directly connected to the athletic departments as such, but more with Academic Counseling.

The one reporting line the committee was most concerned with was that of Academic Counseling. The office of the Vice President for Student Affairs was converted to the Vice President for Student Development AND ATHLETICS, and that, in retrospect, seems to have been a mistake. The committee thought that the appointment of someone principally affiliated with athletics was problematic. There is no implication of a lack of integrity in this observation, only that long affinity with athletics would lead the individual to have less concern about other elements of student development. As a result, the committee recommends changing the office of the Vice President for Student Development and Athletics back to Student Development.

Before the change in responsibilities, Academic Counseling report to the Provost, but was subsequently switched to the Vice President for Student Development and Athletics; this, in effect, subordinated Academic Counseling to the vice president responsible for athletics. The committee recommends that Academic Counseling again report to the Provost, and that the Provost's office recognize the need to take the reporting line seriously. Professor Clayton also reviewed the other recommendations from the committee.

The report contains four appendices: two of them contain the necessary revision of the bylaws to create a new oversight committee, and the charge to it; the other two contain the earlier scripture of the Shapiro committee report and a set of recommendations from a recent meeting at Drake University concerning the governance of athletics that deserve serious consideration.

Professor Clayton noted that none on the committee had anything in for the men's athletic department; most committee members are interested in athletics and may support one sport or another. The committee was not interested in punishing anyone, but wanted to be sure to render to academics things that are genuinely academic, to athletics things that are genuinely athletic, and that the twain shall meet only in a way that respects the values of the University.

The committee had a keen sense of the problems of student-athletes, Professor Clayton said, and believes they have a difficult time academically during their playing season. They were sympathetic to the problem, and would have made recommendations on the point, except for NCAA and Big Ten rules that preclude amelioration of the problem. The committee want student-

athletes to be a part of the University community, and to share the student experience, and want coaches and athletic staff to also be a part of the University community.

Professor Kuhi asked Professor Clayton to amplify on how he thought the new committee would work, and its membership. Professor Clayton noted that ACIA at present has alumni, student (including student-athlete), and faculty members, and for that kind of group to agree on anything, it must be a matter of no consequence. They have tried to improve the committee, and have made it all-faculty.

One ACIA function has been to perform a supervisory function for the academic programs of student-athletes, Professor Morrison said. The Drake conference recommended a review of every student-athlete's transcript every term, for evaluation whether he or she is making progress toward a degree, or toward getting into a major, rather than simply accumulating credits and meeting minimum standards.

Regents' Professor Goldstein observed that Minnesota is not in a unique situation in terms of the interaction between athletics and academics. Did the committee look at other institutions that the University admires? The committee obtained information, not in great detail, from other schools, Professor Clayton said, but it also drew much on its own wisdom and that of the Shapiro committee report.

Professor Goldstein then asked about recommendation #11, concerning contact between the athletic program and admissions. (The committee recommendation called for written contact only from athletics to admissions.) The recommendation seems to assume that athletics could have no impact on admissions, he said. He noted that many small, private, very prestigious schools, athletics are a consideration in admissions. This would make Minnesota unique. Professor Clayton said that was not what the committee recommended; he said they sought to ensure that athletic officials would not seek special favors. The committee was not concerned about admitting people with athletic ability. Professor Morrison suggested the committee could clarify its intention; his reading, he said, was that any contact between athletics and admissions should be documentable.

With respect to recommendation #10, to whom are the faculty to make reports of infractions, Professor Humphreys inquired? That will be made clear in the second part of the committee's report, Professor Clayton said. The committee will now turn to general questions of student academic misconduct, with an emphasis on integrity and promoting it, as well as addressing matters of punishment. That part, Professor Morrison added, is to set forth the process that any faculty member would use to deal with any allegation of academic misconduct.

What if she received a call at 10:00 at night from someone in athletics, Professor Humphreys asked? She should report such a call, Professor Morrison declared. He said that he was prepared to say that he wanted to know if anyone anywhere in the University received such a call, and that this Committee (the Consultative Committee) would put a stop to such calls.

Professor Massey asked Professor Clayton if he were convinced that the recommendations were neither overkill nor underkill, and that they would have helped to prevent what happened, had they been in place earlier. Professor Clayton said that if they did not think so, they would not have made the recommendations. If the Shapiro committee recommendations had been implemented, there would have been no need for his committee.

Mr. Reed asked, apropos the proposed new committee, how the ex officio students would be appointed? The proposal sets forth how faculty would be appointed, but not students. Professor Clayton said that matter would be left to the committee. Mr. Reed also said that at present there are three students with a vote; under this proposal, they would be stripped of their vote. Professor Clayton disagreed; he said that this would be a faculty committee. The faculty representatives would not vote, although their counsel would be heard and their effects felt. There was a suggestion that there be NO students on the committee, but his committee felt strongly there should be a student presence. (Professor Sedo pointed out that the athletic department representatives have never voted, and that the three student representatives share two votes; the same is true for the three alumni members. The voting membership of ACIA consists of 8 faculty, 2 students, 2 alumni, and 1 civil service staff.)

Professor Morrison thanked Professor Clayton for his report, and noted that he was invited to return next week, when the Committee would deliberate over the recommendations in more depth.

5. Discussion with Vice President McKinley Boston

The last guest of the meeting was Vice President McKinley Boston, whom Professor Morrison now welcomed. In terms of what comes next, he said that the Committee would hear from Vice President Boston at this meeting, next week it would hear from members of the Assembly Committee on Intercollegiate Athletics, Men's Athletic Director Mark Dienhart, Regents' Professor Clayton again, and would then perhaps have time to take up whatever recommendations it wished to make to the Assembly and to President Yudof. If not on the 11th, then on the 18th.

Vice President Boston began with prepared remarks, which follow.

I can't honestly say it's not a pleasure to be with you. I can say, however, it is important that the University, through its shared governance relationship with the faculty, enter into this debate how best to insure that what we're going through now as a community does not happen again.

I quote from an article in the 10/15 publication:

Recent articles in the *Chronicle* and other publications report a seemingly relevant increase in the level of cheating among college students. The article went on to say that research supports the conclusion that cheating on campuses is pervasive. There is no doubt that our student-athletes implicated in the scandal did cheat, and there is no doubt that we not only

need to address the scandal but as an institution become active in the national debate to address what the *Chronicle of Higher Education* refers to as the declining culture of academic integrity in higher education.

Several years ago upon my arrival at the University of Minnesota for a second time (the first as an undergraduate and the second as the Director of Men's Athletics), I read two major reports on intercollegiate athletics -- the Page/Merwin Report and the 1986 Report of the Task Force on Intercollegiate Athletics. The 1986 task force was created, and I quote, "in substantial part as a result of the incident involving the men's basketball team in Madison and the Big Ten Report on Male Athletic Graduation Rates." That topic has a familiar ring to it. I found both reports interesting, but I especially found the 1986 Dunham/Madison Report of the Task Force enlightening because as it turns out there is not one issue the athletic community in higher education hasn't grappled with over the past ten years that was not identified in the report, including freshman ineligibility.

Under the section, Role of Intercollegiate Athletics at the University of Minnesota, the task force had identified one overriding concern about the role of intercollegiate athletics programs at the University of Minnesota. That concern was that programs are not well integrated into the overall structure and mission of the University.

I agreed then and today that Athletics need to structurally and practically be integrated into the mainstream of campus life.

Although I have not had a great deal of time to review the Clayton Report, I will offer some initial thoughts on the recommendations.

Recommendation 1. Academic Counseling and Student Services for Intercollegiate Athletics should report to the Office of the Provost.

I am supportive of this recommendation although perhaps for different reasons than the committee, and I several months ago shared that perspective with Provost Bruininks. I am supportive for the following reasons:

- In order for the Director of Academic Counseling and Student Services to do his job effectively he has to work in a cross-functional manner with:
- Admissions Office (to certify initial eligibility, as well as be a liaison between coaches and Admissions people in the recruiting process)
- Office of Financial Aid (reviewing as well as monitoring all aspects of the awarding of scholarships)
- Registrar (related to registration for eligibility)
- Deans and Associate Deans (monitor continuing eligibility)

All of these areas currently report to the Office of the Provost. I believe the move could clearly provide for management efficiencies to occur.

Comments on

Recommendations 2 and 3. To divide the current responsibility.

I would be the first to say from a design perspective that you should not necessarily design a position for an individual. But because of several unique occurrences, we have a management model at Minnesota that in all candor is somewhat unique to the University of Minnesota, in part because of a retention offer, a personal as well as professional relationship with a past President, unique academic credentials and professional experiences that include significant experience in student affairs, athletic management and teaching. There are not a lot of people with backgrounds similar to mine.

The Knight Commission Report, under the leadership of former Senator Bill Bradley and Congressman Jim MacMillan, stated that the role of Presidents in oversight of college athletics needed to be reaffirmed. I suspect that Michigan State issues surrounding President DiBiaggio and the University of Oklahoma incidents were examples of questionable presidential control over college athletics. In order to be proactive in support of that notion, there are, I would guess currently 20 different management models providing oversight of college athletics. In the Big Ten alone there are at least four different approaches.

Upon my arrival at the University in 1991, the management model had the Men's and Women's Athletics Directors reporting to the President. The Director of Compliance reported to the President, and the Director of Academic Counseling reported to the Provost.

The challenges for communication, planning and management synergy were exacerbated as issues because of separate Athletics Departments and I can assure those management challenges were real, difficult and challenging. I felt the model also reinforced professional isolation. The question I often asked when I was the Athletics Director, was who are my professional peers. The location in Dinkytown didn't help. As a Director, other than a monthly ACIA meeting, you were essentially alone and isolated other than your relationship with staff, coaches, donors and student-athletes.

We say we desire Intercollegiate Athletics to be integrated into the mainstream of campus life, but I believe it is made more difficult in a direct reporting line to the President.

Professionally, I'm at a point where I do not view this recommendation as a turf issue for me. But I can assure you the nature of the beast is that wherever it resides there will be three or four issues a year that will become significant and possibly embarrassing to the University. There are roughly 700 men and women student-athletes, over 70 coaches and hundreds of staff whose standard of conduct by working in Athletics is held higher by the media than their peers or colleagues. I'll offer you an example. When was the last time you saw a person who was arrested for solicitation on the front page of a major newspaper? That incident, and other related stories, reflected the "lightning rod" that is associated with major college athletics. Another example is that sometime in the past year or two at an off-

campus party over 100 students were issued violations for either public drunkenness, noise violations, or open container. The only students whose names were mentioned in the media were the student-athletes.

I say this because while I strongly agree the role the President's Office in the management of college athletics should be significant, the President's role as a University leader could become eroded very easily in a short time because of the high profile public embarrassment associated with college athletics. Scandals will happen. The law of averages would suggest social issues in a community of this size will happen and probably will be proportional or in some cases disproportional to the population at large. Director Dienhart and I used to speculate that no matter how hard we tried there were going to be three or four public embarrassments every year and in a number of cases there would be allegations not findings of guilt.

So the bottom line. I am not opposing the recommendation, but there are serious issues to be considered as it is debated. At this point in my professional career I do not need or desire to debate this recommendation as a turf issue. There is no magical structure to make the challenges of managing college athletics or providing oversight to athletics go away. It is a very difficult and challenging job.

Recommendation 4. The Director of Compliance should report to the Auditor.

Again, there is no perfect way to view the compliance role and the management challenges associated with that office. Because of the regulatory nature of the NCAA and its members who believe you can legislate integrity and also create a level economic playing field through excessive regulatory effort, you can't.

I think one could build a case that the Compliance Office should report to the General Counsel's Office. Probably as I stated to President Hasselmo in 1991, there is no magical way to guarantee compliance with NCAA rules; what you hope is that over time a culture of integrity can be created and a byproduct of that culture will be self-policing. People who desire to cheat and act immoral will do so despite controls and rules. Your controls will eventually catch them and you respond appropriately.

Recommendation 5. Coaches should be held responsible for students' athletic performance and their public behavior as athletes, for recruiting academically capable students for their teams, and for fostering a culture that promotes academic progress as well as athletic success.

I believe currently as a group within both programs there are outstanding coaches who are teachers and leaders of young men and women. Some are certainly better than others at what they do. If you were to ask them, I believe that they would say that is what they do.

Recommendation 6. We note that there are clauses in at least some coaches' contracts that include incentives for improving the academic performance of the students on their teams. We endorse that practice and urge that incentives be made greater than they are at present.

We were already moving in that direction, and it makes sense.

Recommendation 7. Academic Counseling and Student Services should be responsible for counseling and special tutoring, and for integrating its activities as far as possible with department and collegiate advising and instructional programs.

It is a good recommendation, but in my opinion, the unique needs of some athletes and the extraordinary time demands on student-athletes will challenge the viability of this recommendation.

Recommendation 8. Students in athletics, like other students, are responsible for their own academic performance and personal conduct.

I agree, but I believe the reality is that they are held to a higher standard of accountability. In fact, that point is made very clearly for them in the Student-Athlete Handbook which they all receive at the beginning of the academic year. On the other hand I know of student-athletes who will not wear their letter jackets to class because they are afraid that they will be judged by faculty as less serious students because they are athletes. Yet if you examine graduation rates, student-athletes as a cohort consistently graduate at a higher rate than non student-athletes. For example, from the 1992-93 entering class all students graduated at a 49% rate and student-athletes at a 56% rate and male athletes at a 52% rate.

Recommendation 9. Departments and colleges should be responsible for assuming as much responsibility for students in athletics as they do for other students, but no instructor should ever regard it as part of his or her responsibility to help maintain a student's athletic eligibility.

I would have hoped this is the case.

Recommendations 10, 11 and 12.

In the vernacular of students - "a no brainer."

Recommendation 13. Athletic officials, including coaches, should be encouraged to share in the activities of the wider University community as far as they can and wish to.

I believe this recommendation to be very significant, but I believe it is very difficult to achieve in a Division 1A Athletics Program. How can coaches and administrators be

integrated into campus life while at the same time we are acknowledging a lack of trust in their professional agendas and them as people? We say we want them integrated while at the same time we say they can't talk to professors and other professional categories of people while they exercise their professional responsibilities. I understand the need for a recommendation such as this, but unfortunately you can't have it both ways. We will isolate them, they will feel isolated, and we will say we want them to feel a part of the community. They will not.

[End of Dr. Boston's prepared remarks.]

Professor Morrison inquired about the extent to which the work of the compliance officer is investigative and the extent to which it is keeping track of dotting the "i's" and crossing the "t's," to be sure everything is accounted for. The over-regulation by the NCAA has been described; how much time is devoted to obtaining compliance and how much to policing bad conduct?

There are three areas the compliance officer must address, Dr. Boston said: the education of student-athletes, coaches, and alumni about the rules; monitoring (e.g., so that summer camps are run consistent with NCAA rules); and investigative work, find facts, assess whether violations have been committed, and make recommendations for sanctions. In any year, the three could be divided equally; this year, perhaps 50% of the time has been spent on investigation. The NCAA requires an outside audit of intercollegiate athletics; they have found, in the last six months, that there has been more contact with the General Counsel's office than the auditors.

Professor Morrison said he asked the question because of the recommendation about the reporting line for the compliance officer. Reporting to the auditor makes sense if the compliance officer is to be an independent enforcer of the rules. If an internal person, ensuring that the rules are followed, it would make more sense for the compliance person to be within and related to the athletic departments. It appears the office fulfills both functions, and it is not clear how they could be split. Dr. Boston said that NCAA expectations mean they cannot be split.

Professor Rabinowitz maintained that Dr. Boston could not have it both ways, in terms of publicity. On the one hand, if a party gets busted, it is the names of athletes that are in the paper. But they are also in the paper because of their athletic performance. It is not fair to say that athletes are just like other students; other students are not in the paper and not public figures. It is said they are held to a higher standard; what does that mean? High publicity is not a standard. Two different things seem to be conflated; should they be separated?

Dr. Boston said that perhaps 5% of 700 student-athletes earn \$1 million as professional athletes—it is a VERY small number. Over 95% do not fall in that category and they mostly look like other students and perform like regular students. There are high time demands in intercollegiate athletics, and athletes are not held to the same standard of behavior as other students (if there is an altercation in a dorm between two students, nothing happens; if one is an athlete, the event is in the media). Highly visible athletes are told they must be extra-careful about how they carry themselves so they do not embarrass themselves, their coach, or their program. That admonition is also in

writing in the student-athlete handbook; they are told they are held to a higher standard and to act accordingly.

Professor Rabinowitz said she was disturbed that the Committee had to spend so time thinking about 700 students out of 30,000. They should NOT be held to a higher standard, she said; students should all be held to the same high standards.

Dr. Boston said he understood the complaint, and would love it if the newspaper had an education section that reported the good work of professors and researchers doing work that supports the quality of life in Minnesota. Unfortunately, the newspapers have a sports section, which has created a different culture and exposure to college and professional athletics. He said he was not BLAMING anyone, but that is the reality.

Professor Kuhi asked if Dr. Boston had any comment on the recommendations to change the structure of ACIA, doubling the faculty and changing the voting members. Dr. Boston said he liked the current structure of ACIA and said he believed that it has worked fairly well. A larger group leads to a more difficult management process; if ACIA is to be changed, he said he hoped it is for the right reason, and because someone has identified how the current system is flawed and how more faculty will make it better. He said he hoped that no one thinks that more faculty equals more faculty control. Faculty governance responsibilities are appropriate; when the Big Ten bureaucracy is added, and the faculty representative acts as the conscience of the athletic department, more is not necessarily better.

Professor Morrison asked if Dr. Boston had any suggestions about how to prevent a recurrence of recent events. Dr. Boston said that the NCAA created a certification program, similar to accreditation, with principles and policies setting forth minimum operating standards. The University had a certification visit within the last two months. There are controls in place that have been identified as good, he said. One cannot legislate integrity. As he read the report, he thought about the report of a faculty member who said that a student could not have written a paper, but who still gave the student a grade. This is not about control, it is about judgment, about integrity.

Professor Morrison thanked Dr. Boston for his remarks, and adjourned the meeting at 3:40.

-- Gary Engstrand