

FACULTY CONSULTATIVE COMMITTEE (FCC)

April 21, 2016

Minutes of the Meeting

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

[In these minutes: Free Speech Discussion Continued; For-Cause Investigations Related to Research Compliance Concerns, Discussion with Provost Hanson, Faculty Senate Docket Approval, Update on Election of 2016 – 2017 FCC Chair, Other Business]

PRESENT: Colin Campbell (chair), Jigna Desai (vice chair), Catherine French, Linda Beringer, Dan Feeney, Gary Gardner, Kathleen Krichbaum, Scott Lanyon, George Trachte, Heidi Barajas, Dale Carpenter, Janet Ericksen, Greta Friedemann-Sanchez, Joseph Konstan, Karen Mesce, Chris Uggen, Jean Wyman

REGRETS: Oren Gross, LaDora Thompson, Susan Wick

GUESTS: Provost Hanson; Sarah Waldemar, research director, Research, Education and Oversight Office; Pamela Webb, associate vice president for research, Office of the Vice President for Research

OTHERS ATTENDING: Brian Edwards, Minnesota Daily reporter; Nicholas Goldsmith, president, Council of Graduate Students (COGS); Chuck Turchick, Continuing Education student

1. **Call to order:** Professor Campbell convened the meeting and welcomed those present.
2. **Free speech discussion continued:** Professor Campbell called on Professor Carpenter to provide some opening remarks regarding the two additional free speech documents, the Addendum and Recommendations. Since these documents were initially distributed in January 2016, noted Professor Carpenter, he has received a number comments on them, and has modified the original documents to reflect these comments. With that said, he made a motion that the committee provisionally approve these documents pending further review by President Kaler, Provost Hanson, the Academic Freedom & Tenure (AF&T) Committee, the Office for Equity and Diversity (OED), and the Student Senate. Professor Campbell seconded this motion, and opened the floor for discussion.

Professor Uggen said he would like to talk about the COGS written response to the Four Core Principles document before moving on to the Addendum and Recommendations. Professor Carpenter commented that he thought the COGS response was interesting and thoughtful, and was happy that they also think the University needs a free speech statement. Having said that, part of their concern centers around a misunderstanding of constitutional law (principle 3), which deals with not regulating speech based on power. This is not a contested matter of constitutional law, and did not start with *Citizens United v. Federal Election Commission* in 2010 as their response states. The Core Principles, as provisionally approved by the FCC,

makes it clear that the University can consider and should take steps to ensure there is a diversity of opinions on campus and it should devote resources to making these voices heard. There is also a conceptually interesting point made in the COGS response about civil disobedience, but it is outside the realm of the document. Therefore, Professor Carpenter believes it would be helpful for COGS and the rest of the University community to have the Addendum because it explains what promulgated the Core Principles, etc. The misapprehension in the COGS response could likely be swayed by the additional context contained in the Addendum. COGS also mentions in its response how uncivil or hateful speech can hurt people, and, as a result, did not want this language included. The added provisions in the Core Principles document are provisions that explain why the University does not condone such speech, but, nevertheless, has a constitutional obligation to protect it. Professor Carpenter said he does not agree with COGS that this language should be taken out of the document. The COGS response is exactly what has been missing in the sense that it is a thoughtful reply to the Core Principles statement and approving the Addendum and Recommendations today would actually help facilitate more discussion.

In Professor Konstan's opinion, the Addendum and Recommendations should be circulated but as supplemental material only to help facilitate the free speech discussion. He added that the point of the free speech statement should not be to articulate the law, but to articulate the values of the institution, many of which are consistent with and backed by law. Finally, while the COGS statement about civil disobedience is interesting and deserves discussion, it should not prohibit these other documents from being circulated. In conclusion, if the University community does not support what the constitutional rights say, said Professor Konstan, they do not need to be parroted in a document, but rather the University's values need to be articulated, recognizing that the degree to which they are enforceable will be constrained by law.

Professor Campbell said he was thrilled that COGS drafted such a thoughtful document. It was clear COGS put a long of work into their response, which was a clearly argued and articulated document.

What is the FCC going to do with the responses it receives to the Core Principles document, asked Professor Barajas? Professor Carpenter said hopefully more thoughtful responses like the one COGS drafted will be received and he is hoping the FCC will hear from a variety of constituents. Professor French agreed and said often discussion prompts more discussion; it is so important the FCC gets this right. Professor Campbell said he will ask COGS if the committee can post their response on the FCC website.

Professor Konstan reiterated that the minutes need to make it clear that the FCC is releasing additional supporting materials (Addendum and Recommendations) to facilitate the free speech discussion, which hopefully will result in a resolution that will be brought to the Senate for action.

Professor French said she does not like the verbiage in the motion that Professor Carpenter articulated earlier about "provisionally approving" the documents. She supported their distribution as additional background information to further facilitate discussion by the broader University community. She suggested the motion should contain language reflecting that the

documents contain additional information about how the Core Principles came to be. Professor Carpenter said when the committee provisionally approved the Core Principles document it was clear that the document was approved for the purposes of consultation only, and the same would apply to these documents. Professor French noted that provisionally approving the documents gives greater weight from the FCC to the documents in their present form—that the committee supports them as written. She opposed their provisional approval but supported their distribution for further discussion among the broader University community.

Professor Lanyon agreed that perception as it relates to this statement is really important. He said based on the conversation he senses that members agree that this is not a final statement and that they want the documents out in the public realm to encourage further dialogue, but the language in the motion does not actually state that. With that said, he suggested modifying the language slightly so it is clear that the documents are being distributed to encourage more dialogue in an effort to get to a University-wide statement. Professor Campbell said the verbiage of the motion matters because the committee will be voting based on the wording. Professor Campbell asked Professor Carpenter to restate the motion. Professor Carpenter restated his earlier motion, which was that the FCC provisionally approves the Addendum and Recommendations pending further consideration by President Kaler, Provost Hanson, AF&T, OED, and the Student Senate. After the motion was restated, Professor Campbell called the question and the motion failed. In response, Professor Konstan moved that the FCC welcomes the submission of the Recommendations and Addendum, approves distribution of these documents to the aforementioned parties (AF&T, OED, the Student Senate, provost and president) and the University community broadly in order to further a productive discussion that will eventually result in a University of Minnesota statement on free speech. Professor French seconded the motion and then Professor Campbell called for further discussion.

Professor Desai said for her the Addendum helps clarify the Core Principles, but the Recommendations, to a degree, puts the cart before the horse and she would like to see a separation of these documents. The Addendum provides context for the Core Principles in a different way than the Recommendations. Professor Konstan said he agrees, but with one exception. Whenever a statement of principles is issued, people's first reaction is what will it mean if the principles are actually adopted, and having a draft of how these Core Principles might be implemented through the Recommendations would further that discussion. Professor Carpenter said he would support Professor Konstan's motion as a backup to his first motion. Professor French noted that she appreciated Professor Desai's earlier comments and would like it made clear that the Recommendations are a draft.

Before calling the question on the second motion, which Renee Dempsey, Senate staff, read aloud from her notes, Professor Lanyon commented that what he liked in Professor Konstan's motion was the fact that there would be a product in the end, a University of Minnesota statement on free speech. Professor Campbell then called the question on the second motion, and it passed unanimously.

On an unrelated note, but before moving on to the next scheduled agenda item, Professor Campbell announced that the unionization forum would be on Monday, April 25 from 4:00 – 5:30 in Coffman Memorial Union Theater, and that he hoped that FCC members would attend.

He also requested that members go to the forum website and submit two questions. Professor Desai added that a lot of work has gone into making this a balanced, informational forum and encouraged members to let their colleagues know about it.

3. For-Cause Investigations Related to Research Compliance Concerns policy: Professor Campbell welcomed Sarah Waldemar, research director, Research, Education and Oversight Office, and Pamela Webb, associate vice president for research, Office of the Vice President for Research, who asked to come before the FCC to consult on a new policy titled For-Cause Investigations Related to Research Compliance Concerns. Before launching into their presentation, Professor Campbell called for a round of introductions.

Associate Vice President Webb began by noting that the policy relates to for-research compliance, a mechanism for conducting for-cause investigations. Next she turned members' attention to a flow chart that outlined the process for for-cause investigations. The intent of the policy is to have a tool for anyone engaged or connected with research at the University to be able to report a compliance concern. Another goal of the policy is to create timelines around when reviews occur because up until now there has been a lack of consistency in this area. This policy came about as part of the advancing human research protection efforts.

Following her explanation of how and why the policy came to be, Associate Vice President Webb solicited members' comments and questions. She also noted that comments are being collected online through April 29, 2016. This policy is scheduled to go before the Policy Advisory Committee (PAC) in May, and so every effort is being made to collect as much input about the draft policy as possible before it goes to PAC. Assuming everything goes as planned, the policy will go into effect on July 4, 2016.

Professor Mesce said she has a problem with the term "for-cause," which she does not find intuitive and she is concerned others may have the same problem. There were a couple reasons this terminology was chosen, explained Associate Vice President Webb, and these include:

- The need to differentiate between issues that arise during the normal course of business that need to be looked into versus more intense and systemic issues.
- The Office of Internal Audits suggested that this language be used.
- The language is commonly used by other universities in this kind of policy.

It is important to distinguish between post-approval monitoring (PAM) of activity and this policy so the intent behind this language was to make people aware they could do both.

Professor Gardner suggested removing "for-cause" out of the title and name the policy Investigations Related to Research Compliance Concerns.

Professor Konstan said having a policy on this is very important. His concern, however, is that except through indirect mechanisms such as service on a regulatory committee, there is nothing in the policy that has a role for faculty in this process. He wondered whether the investigative panel should have as part of its required composition at least one University faculty member.

Professor Lanyon said the policy's procedures put a lot of emphasis on the Designated Research Compliance Officer (DRCO), but it does not outline how that person is selected. Associate Vice President Webb said as currently written she serves as the DRCO, but as the

office grows over time, the procedures say she is responsible for assigning the DRCO. Professor Lanyon said he would like to see something in the policy that would protect the University from putting the wrong person in this position. While there is already a control in the policy that says the DRCO cannot be conflicted, said Associate Vice President Webb, she will think about what other control(s) might be added to the policy to address this concern.

Professor Bearinger suggested in the administrative procedure portion of the policy that talks about the Research Compliance Office notifying a complainant that an investigation has been completed should be reworked so it is consistent with the language in the actual policy on *Reporting a Concern*, which provides a confidential web link - <https://secure.ethicspoint.com/domain/media/en/gui/9167/index.html>. Additionally, Professor Bearinger questioned whether someone who files a confidential complaint would feel adequately informed if they get a generic response saying a report has been completed. Can there be a mechanism for informing the complainant about the dispensation of the investigation? Associate Vice President Webb replied that the intent is to provide the complainant with a summary of the investigation process, findings and outcomes; however, if it is a personnel matter, this information cannot be shared. The intent is to share information when it is appropriate to share. Professor Bearinger suggested including language to that effect in the procedures. Finally, in response to Professor Bearinger's question about retaliation protection for faculty or staff, Associate Vice President Webb said that all faculty, staff and students have protection.

Because Responsible Conduct of Research (RCRs) are no longer a mechanism for general education, Professor Gardner suggested including topics at symposiums that are of interest outside of human subjects yet critical to the issues addressed in this policy.

In thinking about procedural protections for principal investigators (PIs), Professor Uggen asked if there is a way to convey that notification and consultation with the PI will occur, e.g., due process. Does the PI have a right to know what is going on? Yes, said Associate Vice President Webb, and this is outlined in the investigative panel portion of the procedures, but agreed that it probably would be a good to explicitly include it in the policy as well.

What level of faculty involvement has there been in drafting this document, asked Professor Campbell? Associate Vice President Webb said there has been faculty involvement throughout the process. Professor Campbell said he was glad to hear this.

Professor Wyman said she served on the Implementation Team and that group wanted it made perfectly clear and obvious how to report a complaint, e.g., information on consent forms, brochures. Professor French agreed and said attention needs to be paid to marketing how to file a complaint. Associate Vice President Webb agreed and said, to date, much attention has been spent on creating the policy and making it understandable and not as much work has gone into marketing it; this is a great point.

Professor Bearinger suggested that before the policy goes live that scenarios be run to make sure the reporting process works as intended. Associate Vice President Webb agreed that it will be important that people can navigate the process smoothly.

Hearing no further comments, Professor Campbell thanked Ms. Webb and Ms. Waldemar for the information and a good discussion.

Before welcoming Provost Hanson, Professor Campbell reported that he received an email from Dr. Sophia Vinogradov, the next head of the Department of Psychiatry, indicating her interest in working with and consulting with the FCC. Professor Campbell indicated he plans to invite her to an upcoming meeting.

4. Discussion with Provost Hanson: Professor Campbell welcomed Provost Hanson to the meeting, and turned the floor over to her. Provost Hanson began by providing the committee with the following updates:

- All decanal reviews are on track.
- A change that was made this year was to include more faculty from the unit on the final review committee. In future years, she plans on adding additional questions related to advancing academic priorities of the colleges.

Regarding the decanal reviews, Provost Hanson said she would like to hear the FCC's thoughts on changing the decanal review timeline. Instead of conducting reviews every three years, Provost Hanson proposed doing reviews earlier in a dean's tenure, e.g., after the first year and then have the next review at four years, and thereafter, assuming all is going well, conducting the reviews every five years. In Provost Hanson's opinion, it makes more sense to do an initial review early on, focused on early input and development.

The last time the FCC talked about the decanal review process, noted Professor Bearinger, it seemed like there was a lot of variation from school to school when it came to how faculty were selected to serve on the review committee, e.g., deans select, faculty select. There should be more standardization across the schools. In response, Provost Hanson said she has never asked deans who are being reviewed to choose who serves on the review committee. She said while the deans can review who has been suggested to serve, it is her understanding that it is usually each school's consultative committee that selects the people who serve.

In addition to receiving the review survey/questionnaire that is sent to faculty whose dean is being reviewed, noted Professor Friedemann-Sanchez, it would be helpful to get information about the review process itself, the names of the faculty who have been selected to serve on the review committee, etc. Provost Hanson briefly explained the current process, but noted that she wants to modify the current process to make sure procedures are in place that make sense.

The deans primarily have two major functions, said Professor Gardner, managerial and intellectual leadership. He said his worry is that there is not enough emphasis on the intellectual leadership function. It is important that the deans be pushed to provide intellectual leadership. In Provost Hanson's opinion, the survey/questionnaire that is used to collect input on a dean's performance can be enhanced. She welcomed input from the FCC or other governance groups in doing this.

Professor Krichbaum said she would like to see some accountability coming out of the review process. The reviews do not, in some cases, have any effect on the behavior of the person being reviewed. While she understands reviews are a personnel issue, there should be some accountability if a dean receives a less than satisfactory review such as having to be reviewed again the following year. Provost Hanson said she is open to input about the review process in general, but, without going into detail, she said that there are and have been consequences for unsatisfactory reviews.

Related to accountability, said Professor Desai, while equity and diversity are on the deans' priority lists, they never seem to make it to the top. Can equity and diversity be a metric that the deans can be pushed on? Yes, said Provost Hanson.

Regarding timing of the reviews, asked Professor Bearinger, is there anything that would trigger an early review? She also suggested a subcommittee be formed to look at the decanal review process. If problems arise between reviews, noted Provost Hanson, they can be addressed. In terms of forming a subcommittee, she would welcome input of faculty interested in looking at and proposing changes to the current decanal review process. Professor Campbell asked Renee Dempsey, Senate staff, to solicit volunteers from the FCC who would be interested in serving on a decanal review subcommittee, which will come up with recommendations for Provost Hanson.

Recognizing decanal reviews are personnel matters, and knowing that the deans are encouraged to provide their review feedback to the faculty, Professor Wyman suggested developing some sort of statement encouraging deans to meet with their faculty to discuss the goals identified in their reviews. Faculty need to get a sense of whether the review process is making a difference or not. Provost Hanson noted that she does discuss this issue – the need to close the loop – with the deans at the conclusion of the review, and she encourages direct communication between the deans and the unit about the review and its outcome.

Moving on, Provost Hanson asked for the FCC's help in thinking about how to alleviate the demands on faculty of color given the tremendous possibility for burnout and being overburdened. Some kind of structural solution for this problem needs to be identified. One possible solution, said Professor Lanyon, is for department heads and deans to speak up on behalf of their faculty of color and say that they already have enough on their plate. Instead of putting faculty of color in a position of constantly having to say no, administrators should step up and do it on their behalf. Provost Hanson agreed.

Professor Desai said in addition to hiring junior faculty of color, schools need to hire senior faculty of color because when only junior faculty are hired, this puts an unfair burden on the senior faculty. In addition, if the department chair happens to be faculty of color, then they have no protection. There seems to be a reluctance to recognize the distribution of where faculty of color are and the differential impact this has on small versus large units. As a result, in policies that appear to be neutral/fair, they often have unequal effects depending on the size of the unit.

One way that the University can support faculty of color, said Professor Friedemann-Sanchez, is to sign on to the National Center for Faculty Development and Diversity - <http://www.facultydiversity.org/>. She then took a few minutes to talk about some of the programs they offer.

Professor Gardner commented that more faculty of color need to be hired so the burdens associated with being a faculty of color are distributed among more people; however, this seems to be an unfunded mandate. There should be a way to fund course relief for faculty who take on additional responsibilities and this money should come from central administration. The University spends a lot of money on diversity initiatives, said Professor Gardner, but he does not think that money is being used to make changes at the local level.

Professor Barajas said the Keeping Our Faculty VII symposium was moving in multiple ways. What struck her was the number of faculty who were concerned about being recruited to an institution and then experiencing bait and switch. Often scholarship of engagement is not valued the same as traditional scholarship. Another concern raised, said Professor Barajas, was caring for and appreciating faculty colleagues and students of color.

Professor Uggen suggested developing a one-page explanation to department chairs about the differential burden on faculty of color, which he thinks they would find helpful. Some faculty have no problem saying no to service obligations without understanding that someone else will have to pick up that slack.

Provost Hanson also reported that she and Vice Provost for Student Affairs and Dean of Students Danita Brown Young recently received a white paper on student mental health, an issue that needs long-range solutions.

Lastly, Provost Hanson said she received a copy of the letter from COGS responding to the free speech statement. She noted that she also has reservations about the statement, some of which are the same as the graduate students, and thinks that thought needs to be given to next steps. Recognizing that the First Amendment is the law of the land and that academic freedom is among the constitutive ideas of the University, there is much in the statement as it is currently written that elides a number of other considerations that need to be brought to bear on the issue of how freedom of speech is understood on a college campus. The University exists to educate, develop students, engage in research, etc., and there are things that facilitate doing this better than others. While it is true that hate speech is protected, thought needs to be given to what that means for college classrooms. There are a number of practical considerations that need to be brought to bear on the free speech statement. Professor Campbell noted that the free speech statement will be up for discussion at the May 5 Senate meeting and encouraged Provost Hanson to attend and listen.

Before moving on to the next agenda item, Professor Campbell reminded Provost Hanson about the informational unionization forum that will take place on Monday, April 25, and encouraged her to attend if she is available. With that said, Professor Campbell thanked Provost Hanson for her time and a good discussion.

5. **May 5, 2016 Faculty Senate docket:** Professor Campbell turned members' attention to the May 5, 2016 Faculty Senate docket, and asked for a motion to approve it. Professor Konstan made a motion to approve the docket, which was seconded, and then the committee unanimously voted to approve it.

6. **Election of 2016 – 2017 FCC chair:** Professor Desai said that a decision has been made to conduct the 2016 – 2017 FCC chair election electronically. Members were encouraged to vote in a timely manner once they receive the electronic ballot.

7. **Other business:** In the few remaining minutes, the discussion returned to the topic of decanal reviews. In Professor Campbell's opinion, what is wrong with the current process is 1) the one size fits all, lengthy survey/questionnaire, and 2) the inconsistency in how reviews are conducted from school to school. Professor Konstan said the idea that a periodic review is the solution to a serious problem is a mistake. There needs to be a process or mechanism outside of a formal review, e.g., a no confidence vote, to tie the provost to her/his support of a dean if a college comes forward and says there is a problem. In Professor Lanyon's opinion, having a system in place to conduct a no confidence vote is great, but it is one that should be used as a last resort because in the end everyone loses. There should be an intermediate step whereby the dean is informed that a problem exists, and the provost steps in to help before a vote of no confidence is taken.

On a different topic, Professor French reported hearing from faculty that they do not see themselves fitting into the Grand Challenges. She suggested the FCC bring this up for discussion with Provost Hanson. Professor Konstan said part of the challenge around the Grand Challenges has been the communication. To say the Grand Challenges are focused and everyone can participate misses the point that while everyone may be able to participate, not everything fits into the Grand Challenges. Professor French said that while the Grand Challenge areas appeared to broadly fit most of the faculty, now that there are 12-person interdisciplinary work groups for each Grand Challenge, the focus areas of those faculty seem to more narrowly define the focus of the Grand Challenges.

On yet a different note, Professor Krichbaum asked if there is a central place that houses information about how each school determines merit increases. It would be interesting to see how other schools are doing this. Members did not know of a central repository for this information but agreed they could ask for it.

8. **Adjournment:** Hearing no further business, Professor Campbell adjourned the meeting.

Renee Dempsey
University Senate