

Faculty Consultative Committee (FCC)
October 20, 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:** Shield Amendment and Academic Freedom & Tenure Committee Updates; Possible Topics for this Year's Intellectual Futures Discussion; Update on Subcommittee to Think About How Best to Communicate the University's Finances to Interested Faculty and Staff; Unionization Forum Update; Discussion Regarding November 3, 2016 Senate Meeting; Approval of November 3, 2016 Senate Docket; Nominating Subcommittee]

PRESENT: Colin Campbell (chair), Joseph Konstan (vice chair), Catherine French, Kathleen Krichbaum, Monica Luciana, George Trachte, Robert Blair, Shawn Curley, Janet Ericksen, Ruth Okediji, Amy Pittenger

REGRETS: Dan Feeney, Michael Kyba, Susan Wick, Greta Friedemann-Sanchez, Peggy Nelson, Peter Tiffin

GUESTS: Teresa Kimberley, co-chair, Academic Freedom & Tenure (AF&T) Committee

OTHERS ATTENDING: Olivia Johnson, Minnesota Daily reporter

Professor Campbell convened the meeting, and welcomed those present.

1. Shield Amendment and Academic Freedom & Tenure (AF&T) Committee updates: Professor Campbell welcomed and introduced Professor Teresa Kimberley, co-chair, AF&T, who was invited to provide the committee with a status update on the Shield Amendment as well as an update on what AF&T is working on this year.

Professor Kimberley began by saying that the last time the Shield Amendment came to the FCC was in 2014. She explained that the Shield Amendment is a proposed amendment to the Minnesota Government Data Practices Act (MGDPA), which is a state law that controls how government data are collected, created, stored (maintained), used and released (disseminated). The MGDPA, explained Professor Kimberley, creates legal obligations and requirements on governmental organizations and other individuals to whom the MGDPA applies, which includes the University of Minnesota. A number of faculty have been asking for this change in the law for several years now. The resolution that was sent out along with the agenda was the result of extensive discussion with committees of interest and Tracy Smith in the Office of the General Counsel (OGC), and has been approved by AF&T, the Senate Research Committee (SRC), and the FCC. After being approved by these committees, the document went to the OGC where it stayed for a long time perhaps because Tracy Smith left the University. Periodically, AF&T members would try to get status updates on the document from that office, but to no avail. This year, AF&T decided that it did not want all the time and effort that went

into this document to be for nothing, and so moving this document through the proper channels has become a priority for the committee.

According to Professor Kimberley, the administration's willingness to move this document forward seems to have shifted in favor of pursuing it because there is a better understanding of the benefits of why having such a document is necessary. Professor Kimberley explained the rationale behind having a Shield Amendment and noted if a researcher is in the midst of data collection, for example, that person does not want someone asking for their preliminary, unpublished data or manuscript, which through the Freedom of Information Act (FOIA) they would have to turn over given the University is a public institution.

Professor Kimberley went on to say that last night, Dan Herber, an attorney in the OGC whose expertise is in data practices matters, called her about the Shield Amendment. He provided her with input on the wording of the document. For example, he suggested not using the word 'shield' and clarifying other parts of the document. He offered to edit the document whenever AF&T would like him to do so.

As was already noted, while the Shield Amendment was approved by AF&T, SRC and FCC, it never went to the Senate, said Professor Kimberley. Therefore, the first question is should the document go to the Senate as is or should it be edited first? Professor Konstan suggested bringing the edited version to the Senate, and doing so relatively soon. Professor Campbell proposed bringing the current document to the November 3 Senate meeting for information and discussion, and then bringing the edited version back in the spring for action.

In Professor Okediji's opinion, as currently written, the document is problematic. She asked for clarification on the kinds of data that would not be available to the public under a FOIA request. Professor Kimberley explained that for researchers who are in the midst of a study, they should not have to turn their data over to someone else until it is done. The document as currently written is the essence of what a number of faculty want, said Professor Kimberley, but realizes it needs to be edited by legal counsel first so the phrasing is inline with the legislative act. In Professor Konstan's opinion, this document could be problematic for some legislators as well as some members of the Board of Regents. Professor Okediji echoed Professor Konstan's comments in that the language as currently written is too broad and needs more clarity. She added that when this document goes to the legislature, the University needs to be in a position to defend it. Professor Konstan suggested rather than outlining in the document what kinds of requests should be excluded from FOIA, to explain that the intent is to protect the public's ability to scrutinize the business of the University while protecting things that should be protected such as student records, human resources records, etc. The purpose of the Shield Amendment is to protect scholarship that has not yet been made public in all of its forms, e.g., research proposals, research projects, the incomplete notes of research, as well as information that is intended to be kept confidential such as participants' names, etc.

Professor Konstan said he is not certain there is agreement on the spirit of the Shield Amendment. For example, based on his reading of the document, it does not seem to protect a draft syllabus or course materials that a faculty member later decides not to use. The document specifically talks about research and sponsored research, but it does not talk about things that

have any other academic purpose. Professor Okediji said she is not concerned about the wordsmithing that the document needs, but the principle underlying the document because it is not clear. She suggested attaching something to the document that articulates its core principle so when people read it they are able to contextualize it.

Professor Campbell reiterated his earlier proposal to bring the Shield Amendment in its current form as a discussion item at the November 3 Senate meeting and have Professor Kimberley and maybe another member of AF&T introduce it. Then, after the Senate meeting, AF&T could incorporate items that came out of the Senate meeting discussion into the draft document in an effort to give it more clarity. Professor Campbell said that something needs to be done with the document now because, if not now, when? Professor Konstan also suggested inviting a couple people who have encountered this type of infringement to attend the Senate meeting and clearly articulate the issue so senators understand why such an amendment to law is necessary. Professor Campbell made a motion to this effect, and members unanimously voted to put the Shield Amendment on the November 3 Senate docket for discussion.

Before moving on to the next agenda item, Professor Kimberley briefly reported on the other major items that AF&T is working on this year, and that is a review of all the collegiate personnel plans for individuals with teaching functions (administrative policy: Academic Appointments with Teaching Functions - <http://policy.umn.edu/hr/teaching>). According to the AF&T charge, AF&T is supposed to review the use of contract and non-faculty instructional appointments in all departments and colleges, and make recommendations to the Faculty Senate and the appropriate senior academic administrators. The primary issue is what is optimal delivery of education in terms of tenured versus non-tenured faculty. Additionally, said Professor Kimberley, AF&T has had a number of discussions on the intersection between free speech and University policies, e.g., chalking policy. AF&T is also interested in looking at the University's response to civil disobedience within its student body, and how this intersects in terms of academic freedom and a student's ability to express himself/herself.

2. Possible topics for this year's intellectual futures discussion: Professor Campbell asked members if they had any thoughts on topics for this year's intellectual futures discussion. He noted that last year the topic was how the University of Minnesota could adapt to the increasing financial pressures it faces as it strives to pursue its mission of research and discovery, teaching and learning, and outreach and public service, and the year before that the topic was on shared governance. Ideas for this year's discussion that were mentioned included:

- The future of the bachelor's degree.
- The increased emphasis on external credentialing as a substitute for degrees.
- Liberal education.
- What is the University's vision for liberal arts education (undergraduate education) and how do the system campuses fit in?
- What is the right size enrollment (enrollment management) for the University of Minnesota?
- New models for teaching STEM (science, technology, engineering and mathematics) courses in light of limited capacity and resources.
- Incentivizing interdisciplinary education by fine-tuning the budget model.

Hearing no further ideas, Professor Campbell urged members to keep thinking about ideas for this year's intellectual futures discussion that will take place during spring semester.

3. Update on the subcommittee to think about how best to communicate the University's finances to interested faculty and staff: As follow-up from the October 6 FCC meeting, Professor Campbell thanked Professors Tiffin, Pittenger and French for volunteering to serve on a subcommittee to work with the Office of Budget and Finance on how best to communicate the University's finances to interested faculty and staff. He said he would also serve on the subcommittee.

4. Unionization forum update: Professor Campbell called on Professor Luciana to provide an update on conversations to date on holding another unionization forum. Professor Luciana said at the first Senate Committee on Faculty Affairs (SCFA) meeting this fall, the committee talked about partnering with other entities to facilitate another unionization forum. She added that she then brought this suggestion to Professors Campbell and Konstan, and while they all agreed it would be a good idea, the big questions that remain are who to involve and the timing. Professor Luciana reported that they have reached out to Professor Joel Waldfogel from the Carlson School of Management (anti-union) and Professor Mindy Kurzer from the College of Food, Agriculture and Natural Resource Sciences (pro-union), and plan to meet with them next week to begin a discussion about what a forum might look like. One idea has been to structure the forum as a debate. Regarding the timeline for a forum, while initially it was thought that a vote might be imminent, since then, it seems less likely that this will be the case, which will allow for more planning time. Professor Luciana also noted the Professor Campbell reached out to the Minnesota Daily to see if they would be interested in partnering again on this effort, but apparently there is no interest in doing so at this time.

Professor Curley asked about when the forum will likely be held. Professor Konstan said because the timing of the election is up in the air, it makes planning for when to have the forum more difficult. He said he has spoken with a number of people on both sides of the issue who feel it would be best to hold the forum just before the election. The reality, however, is that given the uncertainty about when a vote will be called, it is impossible to know when that will be. As a result, the plan moving forward is to hold a forum, and, if several months go by without a vote being called, maybe having another forum.

Professor French said she thinks holding another forum is a great idea and also suggested that there be a subsequent fact check of the presenter's responses because sometimes responses can be interpreted in multiple ways. In her opinion, it would be worthwhile to substantiate the claims that are made by the presenters. Professor Campbell said he liked this suggestion and will raise it at next week's meeting with Professors Waldfogel and Kurzer.

Professor Krichbaum wondered if there could be a role for the Bureau of Mediation Services (BMS) in this forum. Professor Konstan said while he thinks the BMS definitely has a role to play, the fact is that when attempts have been made to contact the BMS to get information, faculty governance has been ignored.

Getting back to when the forum will take place, asked Professor Curley, does the hindrance to later scheduling have to do with getting a space? Professor Konstan replied that the biggest concerns are adequately publicizing the event and finding a moderator. Professor Campbell added that the thought is to try to find a moderator from outside the University who will be perceived as neutral.

5. Discussion regarding November 3, 2016 Senate meeting: Professor Campbell began by saying that while the November 3 Senate agenda is very thin, because this is the only meeting scheduled for this semester, he and Professor Konstan have decided to hold the meeting. Having said that, the goal is to have a substantive meeting. Therefore, the decision was made to pick a topic that is timely and that will hopefully engage the faculty, and the topic that was selected is student mental health. He then took a couple minutes to explain the format for the discussion. Professor Campbell said the goal is to have a discussion about the role of the faculty, per se, in addressing this issue as opposed to what is the gratuitous advice that faculty have to offer the health care professionals. He asked that members who plan to attend help steer this conversation in the direction he has outlined.

Professor Campbell noted that the goal is to have a topic like this at every Senate meeting that will engage faculty and make for a meaningful and productive discussions. Professor French agreed while it is nice to have discussions, what would be the outcomes or should there be outcomes so the momentum is carried forward after the meeting is done. Professor Campbell agreed, but added that there has not been a culture of doing this; he hopes that by having these types of discussions eventually this will happen. For the student mental health discussion, said Professor Campbell, if nothing else the discussion will inform the 2016 Joint Taskforce on Student Mental Health. Other future Senate discussion topics that have been raised are sexual violence/sexual harassment and having another discussion about free speech.

6. Approval of November 3, 2016 Senate docket: Professor Campbell noted that from the discussion earlier today, the decision was made to have a discussion regarding the Shield Amendment in addition to the items outlined in the draft November 3 docket that members received along with the agenda.

Professor Konstan made a motion to adopt the November 3 concurrent University and Faculty Senate agenda as amended. The motion was seconded by Professor French and unanimously approved by the committee.

7. Nominating Subcommittee: Professor Campbell turned to Professor French, chair, of the Nominating Subcommittee to take over Nominating Subcommittee portion of the meeting. Copies of the updated list of possible nominees were distributed to members. The committee then proceeded to spend the remainder of the time allotted for this agenda item discussing the nominees, rank ordering them, and talking about potential collegiate pairings.

Professor French thanked members for their work. The next step will be to confirm that the ranked nominees are eligible to serve on the FCC, and, assuming they are, the committee will split up the calling responsibilities to see which of the nominees agree to stand for election in an effort to set the final ballot.

Professor French adjourned the Nominating Subcommittee.

Renee Dempsey
University Senate Office