

Minutes\*

**Faculty Consultative Committee**  
**Thursday, April 29, 2004**  
**12:00 – 2:00**  
**471 Mondale Hall**

Present: Judith Martin (chair), Gary Balas, Jean Bauer, Susan Brorson, Charles Campbell, Carol Chomsky, Tom Clayton, Gary Davis, Arthur Erdman, Dan Feeney, John Fossum, Scott Lanyon, Marvin Marshak, Fred Morrison, Jeff Ratliff-Crain, Martin Sampson, Carol Wells

Absent: Emily Hoover, Marc Jenkins

Guests: Vice Provost Craig Swan; University federal lobbyist John Engelen

Other: Kathryn Stuckert (Office of the Chief of Staff)

[In these minutes: (1) "PickAProf.com"; (2) recording industry subpoenas; (3) Graduate School report; (4) various items (Regents' committee on naming buildings, Clerk and Parliamentarian, selection process for Senate committee chairs, information about reviews of administrators, the administrator review process, meetings on coordinate campuses, the IT and Graduate School dean searches; (5) federal issues; (6) items on the Senate docket]

**1. "PickAProf.com"**

Professor Martin convened the meeting at 12:05 and welcomed Vice Provost Craig Swan to discuss a request the University had received from PickAProf.com.

Dr. Swan distributed copies of a January 14, 2004, letter addressed to Susan McKinney, in the General Counsel's office, who is the University's records custodian and manager of requests for information under state and federal laws. The letter, from PickAProf.com, requests data for "all formal courses" for fall, 2003, including the following: "department abbreviation, course number, section number, instructor name, number of students completing course, number of A's given by professor, number of B's given by professor, number of C's given by professor, number of D's given by professor, number of F's given by professor, number of students that [sic] dropped." The request was specifically made pursuant to the Minnesota Government Data Practices Act.

Dr. Swan said he did not like having to respond to the request but the Office of the General Counsel advised him that the University must do so, subject to two caveats: the records for small-enrollment courses, where individual students could be identified, may not be released, and courses taught by graduate students may not be released. Individual grades are protected.

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\* 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 represents the views of, nor are they binding on, the Senate or Assembly, the Administration, or the Board of Regents.

This request has been made of a number of universities at different times; they have responded in different ways, depending largely on state law, Dr. Swan told the Committee.

Professor Martin asked whether the Data Practices Act provides that the University must give information to a private company, which in turn can sell it. Both Dr. Swan and Professor Morrison affirmed that that is the case. Professor Morrison noted that the University can charge for the cost of producing the data, but it must release it. For example, the University must also provide the email addresses of students if requested, Dr. Swan added, unless he or she requests that it be suppressed.

Professor Morrison said he was dubious about the requirement that the University provide the instructor's name. That is data about an individual. Grade distributions are part of a personnel file and are used to make decisions, Professor Campbell observed. The same is true of graduate assistants, Professor Fossum said. All of the faculty are evaluated by students and the results are available to the chair but not others unless part of a merit review process, Professor Martin said. Those, however, are not grades, but they are parallel. On the other hand, Professor Chomsky pointed out, in the Law School they post grade distributions by course; is that done elsewhere in the University? The practice is that they are not generally available, Dr. Swan said. The details are available, Professor Ratliff-Crain said, but the Data Practices Act does not require that the University provide publicly the detail that is used in personnel decisions, does it?

There are two questions, Dr. Swan said. What information do people want for evaluation and administrative practices? What information must the University share if requested? With the equipment now in use, the University can generate a report in a matter of seconds, even if the report is not one generally produced.

Professor Wells said she was unaware that the courses she teaches are public information; she thought only name, salary, etc., were public. Why not also grants? Those are materials that go into personnel files. The grants are public, Professor Balas noted. Not industry grants, Professor Wells said. What is collected for evaluation is private, Professor Campbell maintained. That is why there are battles over research data. There is a wide range of things that are public that people do not realize are public, Professor Campbell said, and this information is probably public.

Professor Morrison related that he just taught about Chapter 13 of this statute, which is where the Data Practices Act is located. There are only two questions. Is the instructor name personnel data? (The General Counsel thinks not). The remainder, if the University has the data, must be turned over, and at the cost of producing it if not in the format requested. There is really nothing to talk about. Moreover, Professor Campbell commented, the class schedule typically include the names of instructors for courses and anyone can look at the schedule. There is not any way the University cannot provide the information, Professor Morrison repeated, with the possible exception of the professor's name.

Professor Fossum inquired if it is permissible to charge for part of the cost of the infrastructure required to produce the data. If there is need for a programmer, every minute of his or her time should be included, Professor Morrison said, and the time of a supervisor, and the running time of the computers. Dr. Swan observed that Professor Fossum's question is about indirect costs.

Professor Martin said that if Committee members had any ideas about this request, they should provide them to Dr. Swan.

## **2. RIAA Subpoenas**

A related issue, Professor Marshak said, is that the recording industry (RIAA) is targeting two people at the University. A number of universities have said they would examine the subpoenas and resist within the limits of the law. Does this administration take the position that it will cooperate with RIAA? Does the Committee wish to take a position?

Professor Martin said the Committee might wish to think about the issue.

## **3. Graduate School Report**

Professor Balas recalled that Dr. Swan had chaired a committee that looked at the Graduate School. Dr. Swan said the report has been turned in to the Provost's Budget Advisory Committee and the Graduate School committee believes it is done with its work. Professor Martin reported that the Budget Advisory Committee has received all the reports it commissioned and will be making recommendations in the near future.

Professor Balas asked if it would be several months until anyone knows about the status of the Dean of the Graduate School. Dr. Swan said he expects the issues to be resolved shortly.

Professor Martin thanked Dr. Swan for joining the meeting.

## **4. Various Items of Business**

-- Professor Martin asked Committee members to suggest names for the Advisory Committee on Athletics, which will be provided to the President.

-- Professor Martin reported that Regent Metzen has asked for the names of two faculty members, preferably from this Committee, to work with two Regents to develop recommendations about naming buildings after past University presidents. Professors Balas and Marshak agreed to do so.

-- The Committee needs to nominate a Clerk and Parliamentarian for the Senate for 2004-05. The Committee agreed to nominate Professors Goldstein and Charles to continue in the roles.

-- One of the members of a Senate committee has indicated he does not wish to be reappointed because he is displeased about the selection of the individual who will serve as chair next year. He asked why the committee was not asked its opinion about who should serve as chair. Professor Martin said it has never been the practice to ask committees to express a preference for chair; the outgoing chair is asked for suggestions, and in the case of the chairs who serve ex officio on this Committee, the Faculty Consultative Committee chair is also consulted. This has not been a problem in the past.

Professor Morrison suggested that one could vote against the committee appointments when they are presented for action to the Senate in the fall.

Professor Martin asked if there was any sentiment to change the practice. There was none expressed.

-- Professor Marshak recalled that Professor Balas had suggested there be a web site listing administrative officers, when they were appointed, and when they will be reviewed. Committee discussion also suggested that the site include the date of the last review, the status of the individual in the position (e.g., acting, etc.), and to whom the individual reports. This would help to clarify questions about who is being reviewed, Professor Marshak commented. Professor Martin said the Committee could certainly bring the issue up with the President.

-- In general, Professor Marshak said, the administrative review process should be shortened; it is way too long. Professor Martin agreed; she said she is on one decanal review committee, which was appointed last October and will deliver its report in mid-May. It is a huge, cumbersome process; does it need to be as complex as it is? Is this the right kind of process? Professor Marshak said he believed the process is broken and should be streamlined.

Ms. Stuckert reported that Vice President Carrier does provide the list of administrators to be reviewed to this Committee and to Faculty Affairs. The administration agrees, however, that the reviews take far too long and use too many resources. It is also very political, because everyone wants to be on the review committees. Vice President Brown has pulled together a group to identify ways to expedite and streamline the process and also to make it more useful. The structure of review committees is complicated, Professor Martin concurred, and said that the one she is on may suggest that individuals from within the college (in the case of a dean) not be included.

Professor Feeney cautioned that when he was the chair of the Committee on Faculty Affairs, they worked hard to get a policy in place that actually said something. That was a big step. That policy should not now be bulldozed because it is said that some faculty do not like it. The Committee must be clear that it is not opposed to the policy but believes that it needs to be fixed, used, and followed. There is not enough attention paid to this subject by the administration, he commented. He said he would be glad to participate in any group that Vice President Brown established.

-- Professor Marshak recalled that at the last meeting Professor Brorson suggested that the Committee meet with the chancellors, a suggestion with which the Committee agreed. He would also like to suggest Committee visits to the other campuses each year. To help keep costs down, he suggests that only a small contingent of volunteers go, meet with campus faculty and administrators, and conduct a meeting with the remaining members connected through ITV from the Twin Cities campus. Some Committee members would have to give up some time.

Professor Martin said she thought this was a good idea. The Committee held its retreats on one of the other campuses in the 1990s, but the cost became a budget issue so the practice was discontinued. Professor Feeney also said the Committee should not mix up coordinate campus business and retreat business because it simply dilutes both.

It was agreed that these meetings would be scheduled.

-- The membership of the IT dean search has been announced. Professor Martin later reported that she had conveyed in strong terms the unhappiness of this Committee about the delay in the IT dean search to the Provost and the President. They heard the concerns, she said.

-- Professor Balas reported that the search committee for the Vice President for Research had had its first meeting with the search firm that has been retained. The announcement of the position should go out about May 15, the search committee will work through the summer, conduct interviews in late July, and hope to have three to five names for the President shortly thereafter.

Will all names come from the search firm, Professor Sampson asked? They will not, Professor Balas said; he has spoken with Professor Sullivan about best practices for using a search firm and has urged other search committee members to call other campuses and ask for names. He asked Committee members to provide him names as well.

Is there any role for this Committee in interviewing candidates, Professor Feeney asked? The protocol for involving committees in searches for administrators provides that this Committee interviews all candidates for all vice presidential positions (among others). Professor Martin noted that in some instances there have not been many Committee members who have attended interviews; if they are to insist on a role in the searches, they must show up for the interviews.

## **5. Federal Issues**

Professor Martin now welcomed John Engelen, the University's Director of Federal Relations, to discuss various higher education issues that are receiving attention at the national level.

Mr. Engelen said he would provide the big picture about what is going on in Washington and then take questions. There are, he began, two things that underlie everything the University worries about in Washington. One is the number of working days left in Congress (less than 30). As the clock ticks, the likelihood that anything controversial will get done declines.

The second is the budget. Normally the President proposes in February, the House and Senate adopt resolutions in March and April, and eventually appropriations bills are signed by the President before the October 1 start of the fiscal year. Last year, only two or three of the bills were enacted by October 1; the rest came in January. This year there is a \$2.4-trillion budget; Congress has say over only about \$800 billion of it and there is a \$500+-billion deficit. Both the Republicans and Democrats dislike the budget and are in a quandary about what to do. The House and Senate have passed budgets of about \$820 billion, of which \$475 billion is for defense; all other programs must be funded with the remainder. That is a problem, because no matter one's politics or philosophy, it is hard to fit everything into that remainder so Congress has ground to a halt. The Senate bill is slightly better for higher education, with increases for NIH, financial aid, etc., but it is not clear what will come out of Congress in the end.

The dispute is over budget-enforcement tools (to propose increased spending, one must identify a source of funds or the amendment fails) and there is a lot of debate over gimmickry. It is difficult to adopt appropriations when there are no guidelines on what is supposed to happen in the appropriations process, so the whole process has stopped. There has also been a focus on spending accountability--conflicts of interest, the return on the large investment in NIH, and so on.

The reauthorization of the Higher Education Act (every five years) is important to the University; it was last reauthorized in 1998. The reauthorization has been slowed down and Mr. Engelen said he was pessimistic that anything would happen. It is, however, a collection point for higher education controversies such as tuition rates, campus crime, accreditation, area studies, academic bill of rights, and

so on. The House has done little and the Senate has done nothing on reauthorization but he is staying vigilant about it. With respect to the McKeon bill, that would have penalized institutions that raised tuition more than the rate of inflation, the enforcement provision has been dropped but the authors want a mechanism to disclose tuition increases. Does someone think they are a secret, Professor Martin asked? There is a significant disconnect between Washington and public universities, Mr. Engelen replied; legislators have lost sight of the relationships these institutions have with governors and legislators. Congress operates as if there is no relationship. The University has talked with the Minnesota Congressional delegation about the fact that it does not operate in a vacuum. But there is that disconnect, so some in Congress believe that universities must be reined in.

The issue of politics and science has remained alive. There was the amendment to try to de-fund certain NIH grants; there was a hit list of 150 grants deemed controversial, and four of the investigators are at the University of Minnesota. That amendment, even though it failed by one vote, has created concern about the impact it will have on the NIH culture vis-à-vis controversial research. There has been an effort to educate Congress about research and there is a coalition working on an e-petition asking that the competitive peer review process work and pointing out that it was designed to prevent Congress from meddling in research.

Visa issues and international students also continue to receive a great deal of attention, Mr. Engelen reported. This is a "huge issue" for Minnesota and research universities in general. The University of Minnesota has been active on the issue; President Bruininks wrote to Congress about the University's experiences and raised the issue with the Undersecretary of Homeland Security when he visited the campus. They continue to work with the State Department and higher education groups. They are also sharing anecdotal evidence with the National Academy of Science so it can begin to develop fixes. In addition to the human problems, the data demonstrate that the United States is way down on international applications and students who take the TOEFL. This is a huge problem and great loss if students do not come to the United States.

Professor Martin reported that she had recently been at a CIC meeting where an FBI special agent (with a law degree) talked about the visa problem. He made the point that they want to catch the "bad guys" but they recognize that the vast majority of people coming to study are not terrorists, but the agencies are fearful they'll let someone in who will do great harm and they'll look bad. He told the meeting that they have not worked out the processes between the CIA and FBI. That is not a cheery conclusion, Professor Martin said. In addition, the University was forced to participate in SEVIS, the reporting system for foreign scholars, Mr. Engelen added. It was a nightmare, information was lost, it was costly to implement, and now there is evidence the federal government is not even using the information. There are both resource and bureaucratic issues that he said he hoped the National Academy of Sciences would be able to help with.

How did the discussion with the Homeland Security Undersecretary go, Professor Erdman asked? He said they understood the importance of international students and how vital they are to the United States; Homeland Security does not want to discourage students from coming here. He got the message, Mr. Engelen said. It is incumbent on universities to identify ideas that can make the system work. Professor Balas reported that he raised with the Undersecretary, in a visit to his department, questions about research secrecy; he favored funding basic research without restricted access.

Professor Sampson commented that for years passage of the US foreign aid bill relied heavily on representatives from districts with land grant universities, and he asked if a similar coalition can be put together among representatives of districts with public and private research universities to resolve the visa problems. Mr. Engelen said they have tried to do so more broadly. The University of Minnesota is the gem of the state, with a large number of foreign scholars, and the entire Minnesota Congressional delegation should have an interest in these issues. He has had positive responses on the policy issues and on behalf of students. The problem is the people in limbo--the GAO did a random sample study of visa applications and found people had been waiting for over a year without being told yes or no.

They were told at the CIC meeting that it can often depend entirely on the consular official one deals with, Professor Martin reported. Students denied in Beijing can go to Shanghai and get a visa. It is more difficult in some countries and less so in others. Mr. Engelen said that information needs to be gathered; if all the students from one country come through one consular office, they will know something is going on.

Professor Campbell said he has heard that there is an interest in revising the Bayh-Dole Act. People are coming from different directions on that, Mr. Engelen said. There is a provision for "march-in rights," he said: If federally-funded research has been patented but is not being used for the public good, NIH can void the patent and "march in" and take it. There was a case in the mid-1990s, but NIH declined to exercise its march-in rights. Recently, however, people have petitioned for exercise of the march-in rights for two drugs (one a major AIDS drug) on the ground that they are not being used for the public good. This will be a test of the law. Universities are concerned because if Bayh-Dole is opened up for debate, they could end up back where they were before the law was adopted. The view of technology transfer is different in the state and in Washington, Mr. Engelen related. Here, the Governor urges the University and Mayo to work together in ways to benefit the state through jobs and inventions. There is a lot of thought in Washington about whether these things are fair (much related to drug importation)--who makes the money when the basic research is funded by the federal government.

The Senate Research Committee should pay attention to this, Professor Erdman suggested. They have had a discussion about essential medicines, Professor Balas said.

What about tuition for Native Americans, Professor Ratliff-Crain asked? He is working on it, Mr. Engelen said, and they are trying to authorize the Bureau of Indian Affairs to recognize the tuition waiver at Morris as a federal mandate and figure out how to fund it. UMM was originally a private school run by nuns for the benefit of Native American students; the school then passed to the federal government and back to the state as an agricultural school, but all along it carried the mandate that Native Americans could attend for free. It is a great program but the University is arguing that this is a federal obligation.

If there is a continuing resolution for the reauthorization of the Higher Education Act, is there something they should pay attention to, Professor Bauer inquired? There is, Mr. Engelen said; in a non-traditional process, things can move very rapidly, and there is the opportunity for mischief in a 2000-page piece of legislation. With this Congress, at this time, it is necessary to be vigilant. There is a long history of troublesome legislation that is passed at the last minute.

Mr. Engelen reported that the Big Ten schools are working together more. They represent 8 states, 16 Senators, 130+ members of Congress, and are a potent political caucus. They are working on the presidents taking joint advocacy position and they do joint lobbying and carry the Big Ten banner.

Professor Martin thanked Mr. Engelen for his report.

## **6. The Senate Meeting**

-- The Committee next reviewed an item proposed for "New Business" on the Senate docket related to review of compliance with the contract between the University of Minnesota and the University of Arizona concerning the Mt. Graham telescope project and relationships with the Apaches. Committee members discussed how the intent of the item might be accomplished, if it did or did not receive the necessary 2/3 vote. Professor Marshak said that the Senate has the authority to inquire about contract compliance, if one looks at the Regents' policy language about the authority of the Senate; the question is whether this is a role its committees would want to take on or if the Senate wished to exercise its authority. He said in this case it should not do so because the item has been heard again and again. The questions are legitimate, Professor Feeney said, and should be treated seriously. Professor Morrison agreed and said the Senate would either vote to take up the item, in which case it could pass or fail, or it will not achieve the 2/3 vote necessary, in which case it will be referred to the Senate Consultative Committee. In any event, the judgment of the Senate must be exercised. The Committee concurred.

-- Professor Feeney reported briefly on the reorganization proposal. Professor Chomsky asked if the long constitutional and bylaws provisions did anything more than implement the reorganization. They do not, Professor Feeney said, except that there is some housecleaning that occurred, simply to bring language into alignment with long-standing practice.

Professor Martin adjourned the meeting at 2:00.

-- Gary Engstrand

University of Minnesota