

Minutes*

Faculty Consultative Committee
Thursday, September 25, 2008
1:00 – 3:00
238A Morrill Hall

Present: Emily Hoover (chair), Gary Balas, Nancy Carpenter, Carol Chomsky, Shawn Curley, Dan Dahlberg, William Durfee, Janet Fitzakerley, Marti Hope Gonzales, Michael Hancher, Kathryn Hanna, Jeff Kahn, Judith Martin, Michael Oakes, Nelson Rhodus, Martin Sampson, Cathrine Wambach, Becky Yust

Absent: Carolyn Hayes, Brian Isetts

Guests: Dean John Finnegan (School of Public Health and Chair, Twin Cities Deans Council), Dean Mary Nichols (College of Continuing Education), Interim Dean James Parente (College of Liberal Arts); University Librarian Wendy Lougee, Vice Provost Arlene Carney, Jon Binks (both Office of the Provost), Greg Brown (Office of the General Counsel); President Robert Bruininks

Other: Kathryn Stuckert (Office of the President)

[In these minutes: (1) discussion with representatives of the Twin Cities deans; (2) copyright ownership policy; (3) discussion with President Bruininks]

1. Discussion with Twin Cities Deans

Professor Hoover convened the meeting at 1:00 and welcomed Deans John Finnegan, Mary Nichols, and James Parente. She noted that members of the Committee had met earlier this summer with a group of the deans and that this meeting continues the discussion. It was agreed that the discussion would be partially off the record.

Dean Finnegan began by saying that the deans welcomed the interaction with the Committee and want it to continue, because this is a partnership to advance the interests of the University. It is in the spirit of a partnership that they raise concerns, some of which may be critical of the status quo.

At their last meeting, he and the Committee discussed data that he had gathered since the University was operating with the new budget model. He noted that there are approximately 38,000 tables of financial data available, but deans need dashboard indicators—red, yellow, and green lights—to inform them how their units are doing. There is no single measure of the health of a college nor will the indicators be the same across colleges. Although there was some contention about the usefulness of his original set of data tables, Dean Finnegan reported, Vice President Pfutzenreuter has agreed to work with the deans to provide the red, yellow, and green lights that the colleges need.

* 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.

The production of dashboard indicators could lead to questions and comparisons among the colleges, Dean Finnegan acknowledged, but he said the deans do look beyond their own silos to the welfare of the institution. They can also recognize the University will make investments in different areas. The indicators, however, could nonetheless be controversial and raise policy questions. Their interest is primarily in obtaining data that are useful in helping understand decisions made, ramifications of those decisions today and for the future, and to improve decision-making.

The Committee and the deans discussed at some length the Enterprise Financial System problems. Among the points raised were these:

- There is a need for accountability (on how the task was framed, whether there were enough resources provided to do the job of implementing the new system, the capital outlay, the loss of productivity, and statements made during the process that now appear to have been inaccurate).
- There needs to be a postmortem—and it should include finance people. One suggestion that appeared to receive nodding support was that the post-mortem should be conducted by the Office of Internal Audit.
- The question of workload in the colleges needs to be examined: has the system created more work than the system it replaced?
- Something must be done now to support the staff who are under pressure now. The post-mortem and accountability questions must come later. The inability to provide needed help has been a significant problem, and the long-term lost productivity may also be significant. Increasing assistance cannot be a nickel-and-dime approach but must be substantial.
- The Committee should, if it is able, bring up the two major problems (technical and human resources) with the President.
- One can expect problems with complex systems such as this; one question is whether the University can do it better (probably) and another is managing expectations (which was not done well).
- Does the leadership understand that the system is going to melt down if these problems are not addressed? (The consensus was that it does understand.) Then given that understanding, the leadership needs to do whatever it takes, and spend whatever is required, to get the system fixed.

Dean Finnegan said he would welcome a representative from this Committee when the deans meet with Vice President Pfitzenreuter and Mr. Volna. It was agreed that Professor Martin would serve as the representative.

Professor Durfee then inquired about the transparency of budgets and information between the deans and department chairs. The Committee has discussed repeatedly the need for transparency between the central administration and deans, but what about within colleges? Deans Finnegan and Parente said they provide the entire college budget to all department chairs (the College of Continuing Education does not have departments in the way that other colleges do). Dean Finnegan observed, however, that things are only transparent if one understands the information that has been shared.

Professor Hoover thanked Deans Finnegan, Nichols, and Parente for joining the meeting.

2. Copyright Ownership Policy

Professor Hoover next welcomed Messrs. Binks and Brown and Ms. Lougee to the meeting to discuss the draft administrative policy on copyright ownership. Ms. Lougee co-chaired the Provost's copyright committee (to draft the policy) with Professor Okediji from the Law School; the copyright committee, which included four faculty members, received support from Messrs. Binks and Brown. Professor Hoover turned first to Professors Dahlberg and Hanna for a report from the Senate Research Committee and the Senate Committee on Faculty Affairs (SCFA), respectively.

Professor Hanna said that SCFA had a good discussion and there was support for moving ahead with the policy. Two issues came up that SCFA members had reservations about. One, in the case of directed work (commissioned by the University), a number of SCFA members objected to the lack of a requirement for a written agreement. Two, there was concern about creating a separate dispute-resolution process solely for copyright (through a committee appointed by the Provost) when there are already conflict-resolution processes in place. The bigger issue, with the second objection, is whether the University will start propagating separate dispute-resolution procedures. What guidelines will determine when a separate process is required? Why here? Copyright is complex but the faculty need to question the establishment of dispute-resolution procedures that are outside the current conflict-resolution processes.

Professor Dahlberg reported that the Senate Research Committee approved the policy. Professor Ruggles, who, Professor Dahlberg recalled, had been among the more vocal critics last year, commented that this policy looked fine.

The Committee held a lengthy discussion about the dispute-resolution process established as part of the new administrative policy. A number of points were made.

-- There had been talk of an advisory panel or governance subcommittee, with expertise, that would provide oversight as the new copyright is implemented. The panel could be a source of information for faculty members, staff, and students who may have questions about how the policy does or should operate in their units, and could track questions and issues over time and make recommendations for changes in policy. If there were such a group, some members should be named by the faculty and some by the Provost. It would help for members to have legal expertise in copyright, but they would also need to know how the University operates, its internal rules, an understanding of administrative and faculty voices, how relationships work across departments, and it should not focus heavily on the legal issues. Such a panel or subcommittee would not consider or resolve individual cases, which would be left to some form of dispute resolution.

Ms. Lougee reported that the Provost had agreed to the request to require a written agreement for directed works, so that issue should be put to rest. And a written agreement is legally required to transfer copyright ownership. The copyright committee also made recommendations to the Provost about infrastructure, including expansion of copyright services at the Libraries and establishment of a faculty advocate who could provide counsel on copyright questions.

With respect to dispute resolution, she said, the copyright committee intended to require some expertise, individuals who could weigh statutory requirements as well as internal policy. Because

disputes could involve students, student representation would be needed. The process also needed to be expedient because quick decisions are sometimes needed. The Provost thus believes that a standing committee is required.

Ms. Lougee said it could be a challenge to find a faculty member willing to take on the faculty-advocate role. Alluding to the earlier suggestion of a faculty advisory panel, she noted such a panel of experts could advise on difficult issues, along with legal counsel from the Office of General Counsel. She thought it interesting to think of a panel with an advisory role as suggested.

-- This Committee has been looking at the University's budget recently, including data over time. It seems like every good idea comes with costs; in this case, staff in the libraries and a faculty advocate. Ideas come up, there is a belief the University must do something, and then there is an entire new budget line to support without weighing institutional priorities. One good model might be the Student Behavior Committee, which does not carry additional cost but which has a committee membership large enough to call together a panel when needed. Copyright is significant, to be sure, and central to what the University does, but what will not be done as a result of allocating funds for these purposes?

-- The dispute-resolution mechanism set out in the administrative policy should not be a part of the Senate action approving the policy at the next meeting. The idea of an advisory committee, distinct from a dispute resolution body, should be explored and more conversation on what a dispute resolution process should look like before adopting a provision establishing such a dispute resolution mechanism.

Professor Balas said he believed it would be beneficial to have a group of colleagues well-versed in copyright issues who will be on a dispute-resolution body for awhile. He expressed doubt whether it would be a good idea to put this dispute-resolution process under the jurisdiction of the Office for Conflict Resolution (OCR). Professor Chomsky maintained that if a dispute does not involve tenure or academic freedom (which would be heard by the Judicial Committee), someone can go to OCR and use informal mechanisms first, and then go to a dispute-resolution panel (in OCR or elsewhere) if the informal mechanisms did not lead to a solution. One concern, she said, is that if one calls the mechanism a dispute-resolution process, that ups the ante, and it would be better if faculty could go somewhere with questions and concerns. Her vision, she said, is a faculty oversight group, people someone could talk to about issues. Expertise and continuity would be important and it would help to have faculty, administrative, and legal views.

Another way to approach it would be to modify the current OCR procedures, Professor Hanna suggested, so that a special panel can be established to deal with copyright issues.

Ms. Lougee said that a lot of questions addressed to the Libraries are about use of copyrighted materials rather than about copyright ownership of material created by University employees. The discussion here takes things in different direction, and one must not forget that student representation must be included because there will be student issues. Asked how many times copyright ownership question arise, Mr. Brown estimated less than 24 in a year. Professor Dahlberg, who asked the question, said that sounded like a lot to him. Mr. Brown then pointed out that most of the disputes concerned the development and ownership of software.

Professor Martin endorsed the idea of a standing subcommittee, perhaps appointed by SCFA and the Senate Research Committee. That seems reasonable and could be made to work. Mr. Brown

surmised that since the Provost has accepted the recommendation for written agreements for directed work, there may also be fewer cases in the future. If there is such a subcommittee, Professor Chomsky suggested, it should not play a dispute-resolution role, because it would not be designed to deal with individual disputes and resolve them. But it could hear from OCR (about what kinds of disputes are arising), and could draw expertise from the Office of the General Counsel, and hear from individuals about their experience. It could handle a broader piece of copyright, not dispute resolution, but assist OCR and have the expertise that is needed.

Ms. Lougee said this had been a useful discussion and said she would take back to the Provost the ideas that had been expressed at the meeting, and would mention the possibility of separating expertise, consultation, and dispute resolution. Mr. Brown said there were three functions being discussed: advisory and informational (for faculty members with questions), which the Libraries can provide; oversight (a faculty governance function to review how the policy is implemented, perhaps the joint subcommittee of SCFA and Research that would not adjudicate disputes), and dispute resolution (to provide a process that could decide copyright ownership disputes, appeal from which would be to Minnesota district court processes).

Mr. Brown said OCR is geared to employment disputes and violations of University policy, which is not what these disputes would be. OCR is also structured to replace the first level of fact-finding that would otherwise take place in district court. Copyright is a federal issue and the copyright committee that drafted the administrative procedure recommended replicating the OCR process: have an informal first level, and if that fails, empanel a group to hear the dispute. Such a process would NOT judge academic freedom, conflict of interest, and so on.

Professor Chomsky said the disputes would generally not be about federal copyright law, they would be about who, between groups, owns something under the University policy. This is not employment law but an employment dispute over the application of the Regents' copyright policy. She said she was unsure why OCR could not handle the disputes. They are about policy and employment relations. But it IS a conflict, Professor Yust said. It can go to OCR even it is not treated like every other dispute, but OCR can frame the process based on the issue. The problem is that it is so difficult to find out at the University where one should go with a problem that proliferating dispute-resolution mechanisms is not helpful.

Professor Hancher asked how large the anxiety about directed work looms. Ms. Lougee said the major concerns that have been expressed are about issues within the online environment, such as online course modules that have teams developing them—and new genres of academic works.

The Committee voted unanimously to endorse the administrative policy on copyright ownership but to withhold endorsement of a dispute-resolution procedure pending further discussion and conditional on the addition of the requirement that all agreements about directed work will be in writing. In the absence of a dispute-resolution mechanism in the policy, Professor Chomsky said, the default position would be recourse to OCR. Dr. Carney said the Provost would need to review the motion on the Senate floor before he could accept or reject it.

It was agreed that Professor Chomsky would work with Mr. Brown and Ms. Lougee to make the language changes on the policy and perhaps develop an advisory and dispute-resolution procedures along the lines suggested in this discussion. [Note: subsequent to the meeting, the Provost agreed with the FCC

leadership that a dispute-resolution process could be developed and brought to the University Senate in December.]

Professor Hoover thanked Ms. Lougee, Vice Provost Carney, and Messrs. Binks and Brown for joining the meeting.

3. Discussion with President Bruininks

Professor Hoover welcomed the President.

The discussion turned first to the Enterprise Financial System (EFS). The President said he has been in meetings about EFS and there is now a detailed work plan and he will receive regular reports, and that people will get out into departments to work with financial staff on system problems. They will deal with the most pressing problems first and will likely start by resolving data integrity issues. He said that there will be a choppy ride the next few months but he said he believed there will be immediate changes as well as over the next six months.

Professor Balas said that for the heartburn felt by accounting people, six months was too long. The University has to provide support for them or a number will leave. The President said he understood and has asked that the support be provided. He said the system people will triage problems, will work on it all year, and that he will monitor the situation week by week and has asked the other senior officers to do so as well. Once the problems have been settled, there are considerable gains to be achieved in the system. Professor Curley asked if the Committee can be confident the resources have been provided; the President said it can, although he said that not all the problems will be solved immediately.

One difficulty, the President related, is that the University bought the "vanilla" version of EFS, which is more suited to the private sector than to a research university. The University is too complex and highly distributed, and in the private sector the system is run by CPA-level people in concentrated, central offices. The University will likely need some additional modifications to fit its environment.

The issue is managing expectations, Professor Balas said. There will be a lot more relaxation if there is a statement that they did not anticipate these problems and an apology is offered. Professor Kahn said that people have been run ragged, which seems to indicate that departments don't have sufficient excess staff capacity to handle a major system change like this one. It may show that the University is a good steward of resources, he added, but it needs to be sure it has excess capacity the next time it makes a system change like this.

Professor Chomsky pointed out that even once they get past the system problems, the system appears designed to take away the breadth of jobs, to narrow what employees can do in handling broad areas of responsibility, which could drive away capable employees who are then unhappy with the scope of their responsibilities. Professor Martin commented that the EFS security system makes the assumption that all University employees are criminals.

The Committee moved next to discuss the biennial budget and economic conditions in the state. Professor Durfee asked that the minutes show that the number one bullet point in the University's request is compensation for faculty and staff.

Given the University's current and pending budget context, the President also announced that he could not support the proposed tuition benefit for dependents of employees but that he has asked about the use of flexible benefits. He said a letter would be coming to the Committee on that subject.

Professor Hoover thanked the President for joining the meeting and adjourned it at 3:50.

-- Gary Engstrand

University of Minnesota