

Minutes\*

**Faculty Consultative Committee**  
**Thursday, May 19, 2011**  
**1:00 – 3:00**  
**238A Morrill Hall**

Present: Kate VandenBosch (chair), Melissa Anderson, Peter Bitterman, Elizabeth Boyle, Colin Campbell, Nancy Carpenter, Carol Chomsky, Shawn Curley, Nancy Ehlke, Marti Hope Gonzales, Michael Hancher, Russell Luepker, Jan McCulloch, Michael Oakes

Absent: Thomas Brothen, Chris Cramer, Janet Fitzakerley, Caroline Hayes, Jeff Kahn, George Sheets

Guests: Professors Linda Brady and Perry Leo (Faculty Athletics Representatives); Vice Provost Robert McMaster

[In these minutes: (1) annual report from the Faculty Athletics Representatives; (2) clinical research; (3) context for grading on transcripts; (4) committee business (commendation to the Committee on Academic Freedom and Tenure, statement from the chair and vice chair on academic freedom)]

**1. Annual Report from the Faculty Athletics Representatives**

Professor VandenBosch called the meeting to order at 1:00 and welcomed Professors Brady and Leo to provide their annual report from the Faculty Athletics Representatives (FARs).

Professor Brady noted the handout they had provided about the duties and responsibilities of the FARs (appended to these minutes). They are appointed by the President and there is a particular set of responsibilities defined by the National Collegiate Athletic Association (NCAA) that comes with the job as well as a set of responsibilities defined on campus. They are also the representatives to the Big Ten Conference; the group of FARs at the Big Ten believes they are academically-oriented and that they are holding the line on academic issues. On the campus, their most important responsibility is with the Faculty Academic Oversight Committee on Intercollegiate Athletics. In addition, Professor Leo serves as the University's representative to the Western Collegiate Hockey Association (WCHA), which (for the men) will soon become part of the Big Ten. There has been a lot of change in athletics, particularly in football, and they welcome questions, Professor Brady concluded. Professor Leo noted that he and Professor Brady essentially split the sports, with each taking responsibility for about half of them.

Professor McCulloch asked what changes have occurred in football and what those changes mean. Football had a rough year, Professor Leo said, and it had a coaching change that it was fairly evident, early in the year, would happen. The student-athletes struggled all fall and some did not pay as much attention to their academic work as they should—and there appeared to be little response on the part of the coaching staff. Coach Kill brings a very different approach, almost an old-fashioned approach, in that he believes students must do well on the field and in class. He has a career of improving teams. What he is worried about, Professor Leo said, is that the campus and media will not give him enough time

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\* 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.

to turn the situation around. He said he really like Coach Kill's attitude, approach, and level of discipline. Professor Brady agreed and commented that the new coach is coming into a tough situation.

In addition, the McNamara Academic Center (for student-athletes) had considerable turnover, but is now being directed by Lynn Holleran from the President's office and the situation is improving. Professor Bitterman inquired about the size of the McNamara Athletic Center. It has eight counselors, 2 learning specialists, including one qualified in disability assessment, and about 50 subject-specific tutors.

Professor Brady said the University has a great group of student-athletes, and in a number of sports there are no problems, with many student-athletes having GPAs over 3.0. She reminded the Committee that the majority of student-athletes are excellent students. Three of them won significant academic awards, Professor Leo reported. For example, student track athlete Mike Torchia won the Big Ten Medal of Honor and women's hockey student athlete Kelli Blankenship won a WCHA post grad scholarship. Not all schools have athletes who win these awards, and Minnesota does very well.

Professor Oakes asked what the two were worried about.

Professor Leo reported that they had just been at Big Ten Conference meetings, and even the Big Ten Commissioner, who is a good businessman, is worried about the sustainability of the enterprise. Minnesota is not Ohio State or Penn State, and with 25 sports Minnesota has a large number of student-athletes. The budget for intercollegiate athletics is balanced, but it is not well-balanced, and the department needs to generate more income.

So there is tension, Professor Oakes concluded, because the revenue-producing teams need to win more in order to generate more revenue. Professor Leo agreed and said "that scares us." Professor Brady said it is important that the University maintain control of its intercollegiate athletic program. There has been a lot of external criticism by people who do not know what is going on, and while people at the University cannot say anything, those outside are free to say whatever they wish. Part of the tension of programs that are not winning is that University staff cannot divulge details. The problem that Athletic Director Joel Maturi faces is walking the line between revenue and maintaining integrity. Professor Leo reported that he and Professor Brady are meeting with President-designate Kaler's Chief of Staff, Amy Phenix, to discuss issues related to athletics, and he said that whatever failings people may believe Mr. Maturi has, integrity is not one of them. What is happening is that the athletic directors now being appointed around the country are tending to come more from a business background, a trend they are not sure they are comfortable with. Mr. Maturi attends virtually all athletic events and is close to the student-athletes, some, Professor Brady said, do not see that as a winning model for an athletic director.

Professor Campbell asked about Title IX [the federal law requiring the provision of equal opportunity for women in higher education, including in athletics). Professor Brady said that Mr. Maturi is well aware of Title IX and Minnesota does quite well. It has some women's teams that have large numbers of participants. The athletic department is trying to do the right thing, and while it may not always fully achieve what it intends, Minnesota does not play games with the numbers (as some institutions have done recently).

Professor VandenBosch noted that the two guests had met with President-designate Kaler; she asked if they said anything about doing things differently. They looked at the mission, values, and vision statement for intercollegiate athletics, Professor Brady said, and athletics has a very inclusive mission,

values, and vision that is publicized all over the building. She said she did not know if that statement will be congruent with President Kaler's vision, although he has said there will be no compromise on academics. What he will likely do, Professor Leo said, is think about the sustainability of the enterprise.

Professor Oakes asked if there is a paradox. If the University wants academically-strong student-athletes, and acknowledging Minnesota is not Stanford in terms of its ability to recruit academically stellar students, will Minnesota often not be able to recruit the best athletes, so the coach will be unable to win? Is that a sustainable system? Professor Brady said there has been talk about how in the past Minnesota was able to recruit good Minnesota students, B in their class, who were coachable. They weren't the top athletes when they were recruited but they were coachable. Professor Oakes said that Michigan and Ohio State, for example, recruit the best athletes nationally; how can Minnesota win in the Big Ten? Professor Brady said that Coach Kill would say that he can recruit athletes who are coachable and can win. Professor Leo said that Coach Kill would say that his strength is being able to identify athletes who will be great as juniors and seniors.

Professor McCulloch asked about the challenges and opportunities with Nebraska joining the Big Ten Conference. Professor Brady said that Nebraska brings its football prestige to the Big Ten, which will allow the Conference to make more money. And the Big Ten is good at distributing revenues evenly, so all the Conference schools benefit. With twelve teams, the Big Ten can have two divisions and championship games; it is estimated that the first championship will generate \$30 million.

Professor Hancher asked about the trend in graduation rates for student-athletes. Professor Brady said there is no team that is in trouble. Men's basketball has improved and football had problems last year but those are being remedied. Professor Leo said that one concern he had, dating from his work on the Kane-Leo task force a few years ago, is that while it is possible to graduate from the University with a relatively low GPA, it is difficult to get admitted to many majors when one has a low GPA.

How does the University compare to the Big Ten in graduation rates, Professor Hancher asked? It is at the bottom, Professor Leo said, just as it is with the general student body. There is a high correlation between the graduation rate of student-athletes and that of the student body at large. Is there a significant loss in the last semester of a student-athlete's presence on campus, Professor Hancher asked? They do have a program for students to come back, Professor Brady said. In the case of football, she said she believes Coach Kill will enforce the rules and will not let athletes play if they don't go to class. Those who do not go to class are not a significant fraction of the athletes, Professor Leo observed, and Professor Brady pointed out that there are football players majoring in an engineering field who are doing quite well.

Professor Chomsky recalled a conversation with a student-athlete who told her that she added a second major in order to remain eligible for a fifth year. Does that have an impact on graduation rates? Students are eligible for four years of competition, Professor Brady said, and sometimes a student may be red-shirted or injured. They look at 5-year and 6-year graduation rates. Double majors are one option; graduate school is another. Professor Leo reported that NCAA rules require that student-athletes have 80% of the credits they need for graduation by the end of their fourth year; counselors, he surmised, probably dislike double majors because it is difficult to tell if they have met the requirement of the NCAA rule. Professor Brady said she would like to see data on how many non-athlete students meet the 80% rule; she observed that student-athletes are monitored very closely.

Professor VandenBosch asked if there are things the faculty should know about or where they wished the faculty would take a greater interest. Professor Leo suggested keeping a close eye on distance learning; student-athletes can be put in a distance-learning class because they are not doing well in another class. That is one part of the bigger picture of distance learning. Professor Bitterman said he would like to see data on the 80% rule and the general student body for the purpose of calibration; can they get it? To see if the University, or athletics, has a problem? They could, Professor Brady said; Ms. VanVoorhis, the Registrar, is a member of the Faculty Academic Oversight Committee for Intercollegiate Athletics and regularly asks them what information they need. They also rely on Mr. Pritz, who works with compliance and athletics on data management. Much data can be provided, but the bigger problem, Professor Leo said, is changes in requirements of college programs.

What they would like the faculty to know, Professor Brady said, is about the tensions that exist. Things are at a crisis in terms of winning versus being in school, and tensions are starting to fray the enterprise. Commissioner Delaney is a good businessman and it was surprising to recently hear him speak strongly about the conflict with academics.

Professor VandenBosch thanked Professors Brady and Leo for their report; Committee members thanked them for all that they do as FARs.

## **2. Clinical Research**

Professor VandenBosch said that the next item on the agenda came from the discussion at the last meeting, at which time Committee members talked about the potential for additional scholarly work on patient consent and policy, especially in areas of research where it is difficult to obtain informed consent because of diminished capacity. The thought was that this is an area where the University has an opportunity to be a leader because it is such a comprehensive institution. She asked that the Committee spend time discussing what role the governance system might play in promoting such work, whether it should delegate the responsibility to another committee, or frame questions and encourage academic units to take them up (or both).

Professor Bitterman referred to a handout that had been provided to the Committee indicating the number of open studies (the designation for studies that are active and not yet completed) reported in [clinicaltrials.gov](http://clinicaltrials.gov) searched on 5-18-2011), the website reporting federal government tabulation of clinical trials—no matter where they are conducted.

All	37507
France	2746
Ohio St	2205
UNC	1495
U Wash	1474
Illinois	1426
Michigan	1097
UMN	884
UCLA	834
Indiana	764
Duke	729

Toronto	719
Wisconsin	695
Mayo	678
Sweden	664
Iowa	436
Penn St	328

Professor Bitterman noted that he has not done a lot of clinical-trial research but he does do work with patient-derived specimens to study disease mechanisms and identify potential new treatments. All of this work is reviewed by the Institutional Review Board (IRB). He talked to colleagues in the Department of Medicine, one of the largest departments in the University, about the number of clinical trials being conducted at the University of Minnesota. They guessed at perhaps 100-150. There are, as the data from [clinicaltrials.gov](http://clinicaltrials.gov) indicates, 884 such studies taking place at Minnesota.

There are about 37,000 clinical trials being conducted around the world, Professor Bitterman said, with 664 in Sweden and 2764 in France. All US trials whether conducted in the private sector or at universities are posted on this site by law. The international tabulation is voluntary but considered to be fairly accurate since all peer-reviewed publications require posting on the site. Big Ten universities vary between about 700 and 2200 studies. With 884 studies at the University of Minnesota, this is a very active area of research, and is at peer institutions as well; they are very public, very frequent, very visible, and many faculty engage in them.

Professor Luepker said that he had more than a passing interest in this topic because he serves as Director of Graduate Studies for the Clinical Master's degree program in the AHC and does research on patents (not drug trials). He agreed with Professor Bitterman that such studies are very common in Minnesota and nationally. [Clinicaltrials.gov](http://Clinicaltrials.gov) is relatively new, Professor Luepker related, and its creation was driven by the Vioxx trial and other events. Vioxx was a very popular drug for arthritis that was later shown to increase heart attacks and strokes; the company had done studies and knew it had a problem, but this was a very profitable drug. There were trials that were never published or discussed that demonstrated there were problems; if there were negative results from the trials, they never saw daylight. That trial raised the level of consciousness about clinical trials and all such trials must be registered at [clinicaltrials.gov](http://clinicaltrials.gov), with required reporting intervals. It is an important advance.

In terms of the diversity of trials, Professor Luepker said, there are observational studies, observational and clinical trials sponsored by the federal government, and industry-sponsored trials. Most are done through CROs (Contract Research Organizations) private organizations that have their own IRBs, not universities. At one end of the spectrum are industry-sponsored trials to develop a product that the company can profitably market and sell. There is also a wide spectrum in the vulnerability of research subjects, such as children, prisoners, and those who cannot make logical decisions. From his clinical and research experience in the field of critical care, it is prudent to regard *any* person who suddenly becomes seriously ill as vulnerable, Professor Bitterman added. To lump all clinical trials in one basket is dangerous, Professor Luepker said. Moreover, this is a highly regulated field, and when the Vioxx trial demonstrated that the system was not working well, it was tightened up. He would ask any faculty committee that looked at these issues if the University, with a very good IRB, should draw up a separate set of rules. He said he does not want to stop the debate, and the question is how to protect patients, in a field that is already well regulated both internally and externally.

Professor Anderson inquired what effect the Clinical Translational Science Award (CTSA) process would have. The University has applied for a CTSA grant, and does not yet know if it will be funded. It would not have much impact, Professor Oakes said; if the University does not receive it, the number of clinical trials conducted here would probably decline. What if the University does not receive it, Professor Anderson asked? The University has government and industry research now but could suffer without the CTSA, Professor Luepker said; the CTSA would make the University eligible for more federal grants. And if it does not receive it, Professor Anderson said, the University may see a shift to a greater proportion of clinical trials sponsored by industry. Yes, Professor Luepker replied, that could happen. Several Committee members noted that while it is officially still pending, the University's CTSA application received an extremely favorable peer-review.

In terms of the multi-disciplinary spectrum of trials that Professor Luepker described, Professor Bitterman said, he also asked faculty colleagues (who do not do clinical trials) what they thought the per-patient cost of trials is. Most guessed around \$1000 per patient. The actual cost, for a trial requiring a low level of investigator time and minimal risk, is about \$5,000 per subject. For those requiring the typical amount of investigator time, and minimal risk, the cost is about \$10,000 per subject. For trials such as bone-marrow transplants, which require active monitoring, the cost is about \$14,000 - \$18,000 per patient. These numbers may be helpful to provide colleagues and the general public with some benchmarks when they read about clinical research and its costs, Professor Bitterman said.

Professor Oakes said he wished to make two broad points. First, in terms of the protection of human subjects in studies, at this time the University has about 3,000 open studies that have been reviewed by the IRB (that includes everything from Anthropology to Medicine). The IRB is tasked to protect human subjects. The studies vary in scope, risk, and benefit. Some studies, in his view, are low risk and of low benefit. Some studies are of very high risk but also of high potential benefit, such as research involving stem cells to treat blood cancers. The aim of the IRB is not to eliminate risk, but to balance risks and benefits, so that if risks are high, the potential exists for significant benefits both to science and to the research subjects themselves. They believe that approach is necessary if there are to be improvements to human health.

When it comes to protecting human research subjects, it is not just the IRB that has a role, Professor Oakes said. There is ongoing monitoring by the IRB, which can stop a study at any time—and sometimes there is a need to stop a study because the utility of a treatment has been established and no more research is needed to demonstrate it. There are also Data Safety Monitoring Boards (DSMBs), which receive real-time data from studies when subjects have been hurt or have died. Finally, there are the researchers/investigators themselves: They are required by federal law to report adverse events to the IRB and/or DSMB. And one shouldn't forget the fact of reputational effects: No one wants to be seen as conducting sloppy research.

Professor Oakes stressed that the IRB pays careful attention to studies with subjects who are unconscious, cognitively impaired, or sick, for example, because the IRB knows they are vulnerable and thus the IRB must serve as a sort of proxy for them. Industry studies also get closer IRB attention—but, somewhat ironically, they are often easier to evaluate because there is often a template that is used for such studies at a number of different sites. So, Professor Oakes concluded, there is a system in place. It is not perfect but it is a vast improvement over what existed ten years or more ago.

Some research is risky, Professor Oakes noted. For example, in the early work with cardiovascular stents, many patients died who may not have if they had received bypass surgery. Now, following much more research and technological advance, almost everyone wants a stent and few want surgery. It is all too easy to Monday-morning-quarterback what is good and what should have been done, be it research in Anthropology, Education, or Medicine. .

His second point, Professor Oakes said, is that "we as faculty need to be careful about judging the worthiness other faculty members' work." If the IRB or the Vice President for Research or the Provost or the Dean were to be able to tell a faculty member that he or she cannot do "X" research because they didn't like it, the University is in trouble. Both clinicians and Anthropologists should have the leeway to study what they wish in line with disciplinary norms. The system of human research subject protections is in place to minimize harm.

Professor Luepker said he wished to reinforce Professor Bitterman's point. A \$15,000 cost per-subject for clinical trials is not unusual. But the proposition that someone recruits subjects to make money is not true. Companies have determined these costs and the University does not make money on them. Such trials are expensive to conduct at a university in part because it is very thorough, very protective, very careful, and it does not profit from the trials. A company can do clinical trials anywhere in the world and there are places where they can be done much more cheaply—and they can tell the company the results they desire. If the University is to maintain high standards, it must be very strict.

Professor Bitterman said there is an opportunity for scholarship on the gradient as trials move away from the United States, and how effective the monitoring boards are in protecting human subjects—and in protecting the individuals doing the high-risk research.

Professor Chomsky inquired what the role is for governance. Usually a topic would be delegated to another committee, in this case probably the Senate Research Committee, to have people with expertise come in and have a conversation similar to this one, as happened with the conflict-of-interest policy. The reason for governance committees to have that conversation is to bring greater clarity to the issues, so the conversations would be on record for the University community and the public. The committees can also ask if more should be done; governance cannot do studies such as this, but it could encourage others to do them. How does Professor Oakes know as much as he does, Professor Chomsky inquired? The Committee does not normally have its own experts; in this case, the conversation has occurred here because it does have experts. Should more be done? It is reasonable for the Senate Research Committee to take on the issue, with the conversations in this Committee thus far as a base, and perhaps it could hear from people who are doing clinical research.

Professor Hancher said that while he has not followed these issues closely, it appears that one concern about clinical trials is whether the University is conducting trials under undue influence and if there are outside interests that have not been addressed. The general question is how much the University should be exposed to external financial control.

Professor Luepker said he had some concerns as well, such as about the turmoil related to commercialization and patenting, when the goal is to get a product or procedure to the market. The partnership between the University and the Mayo Clinic was promoted to the legislature as a way to develop high-tech industries. The discussion of the Biomedical Discovery District has included talk about building liaisons with companies with adjacent industry facilities. There is a national debate on

these issues; should the Committee hear more about it? Committee members discussed a number of questions related to the source of research funding, the quality of the science that results, and institutional reputation. Professor Luepker inquired how much industry funding for clinical research constitutes a tipping point.

The role for governance, Professor VandenBosch said, is to reflect where things stand now, summarize the issues, bring in expertise (to supplement that already on the Committee) as a way to disseminate the information, and crystallize questions that others might take up. Committee members agreed.

Professor Hancher said that faculty members are interested in the financing of the University; this is part of that topic. The question is about pressure from outside and whether it is undue. Professor Boyle agreed that research funding could be considered in the context of general financial pressure on the University. There is also the reputational concern, Professor Oakes added; whether there is a scandal in football or because of a research study, either harms the University.

Professor VandenBosch noted that in other instances, this Committee has developed a list of questions and asked other committee chairs to take them up, as appropriate to the committee. Some of the questions that have arisen here could go to the Senate Research Committee, others to the Committee on Finance and Planning, and others to the Committee on Academic Freedom and Tenure. She said she would ask the help of the Committee in developing a list of questions.

Professor McCulloch asked what in the past might be instructive, what has been set in play that differentiates the University from private industry. She said one major turning point was the Tuskegee study—are there things that have been forgotten that could be instructive? Committee members agreed that a historical summary would be a useful starting point to a discussion of clinical research, and mentioned some sources of local expertise. Professor VandenBosch thanked Professor McCulloch for her questions, indicating that these were good ones to start the list.

### **3. Context for Grading on Transcripts**

Professor VandenBosch next welcomed Vice Provost McMaster to the meeting to have a conversation about two related ideas on grading; she noted that Committee members had several handouts. One idea is that there are significant disparities across units in the distribution of grades (reflected in the annual report on grading data to the Senate). Are those disparities acceptable? In the best interest of students? Incidental? The second idea is related to the efforts at the University of North Carolina—Chapel Hill to normalize data on transcripts in order to provide information about the context of a grade (e.g., also note on the transcript the average grade in the course). Is this something the University should consider? It could help mitigate the differences across units.

Vice Provost McMaster said he looks at the grading data every year, especially the percentages, and he agreed that there are significant differences across colleges and levels, which are to be expected. He said he has found that over the last several years there has been no significant uptick in grades, although if one looks back over a longer period, there has been an increase in the level of grades awarded. The differences across the colleges are probably differences one would find across the country.



Professor Boyle said she believed all faculty and students know that some majors are more difficult than others—that is not news to people, so the variation does not seem problematic. Vice Provost McMaster commented that the College of Science and Engineering is more difficult across the board, while the College of Biological Science awards the lowest percentage of A's of any of the colleges.

Professor Gonzales said that the dynamics and demands are very different at different course levels. In 5-XXX courses, there are selection effects, such that students who are not sufficiently prepared for the rigors of these advanced courses are not allowed to enroll. Thus, higher grades in more advanced courses may well reflect the skills of the students enrolled.

Professor Hancher said he concurred that there probably was not a lot of change in grades recently; the changes happened in the past. The Vietnam War was a contributing and lasting factor. So there is now a more constrained range in which grade inflation can occur. Variations across disciplines is probably reasonable and expected and typical; he said he would not tell colleagues in another college how to grade. So the question, he said, is how to interpret the grades as they come out of the system.

Dr. McMaster suggested one might see a considerable amount of variation within colleges as well.

Professor Hancher said again that he believed the variation is predictable and conventional—unless people take grades assigned by different professors as meaning the same thing. Most people do not. There are scores that are normalized, such as SAT scores, where one receives both the raw number and the percentile. The proposal at UNC Chapel Hill provides additional information on how this A student compares with this other A student.

Professor Boyle agreed and said that if grades were normalized, there would be less pressure to inflate grades because students would know they would be normalized anyway. She said she favored additional information on the transcript but would not want to move forward with normalizing grades without talking with student representatives. Professor VandenBosch said that this Committee's conversation is to decide whether to refer the question to the Committee on Educational Policy next year to do more study, with a charge to be written by Professor Cramer.

Vice Provost McMaster said that one negative side to such a change is that if Minnesota were the only one or one of a few universities that make it, it might hurt the University's students. If one could see on the University's transcript that the average grade in the class was an A and a C was a low grade, but one could not see that on transcripts from other institutions, the University's student could be at a disadvantage. He also wondered what faculty behavior might change. That information is already known in departments, Professor Hancher said. Would the behavior change if the normalizing information were made available to the department chair? He did not believe it would. But the grades given would be more legible to others.

Another question is how administrators might use the information, Dr. McMaster said, such as for promotion-and-tenure or merit decisions. How might the additional information be added to the evaluation of teaching? That can already happen, Professor Boyle said. This would be more public, Dr. McMaster said.

Professor Hancher said he would not recommend the North Carolina model, which is extremely complicated. The percentile rank of a student in a course can be done more simply.

Dr. McMaster said, in response to a question from Professor VandenBosch, that he thought the Committee on Educational Policy could have a very useful discussion and can obtain student views. Professor Hancher suggested that other examples be brought to the table in order that the University might be able to identify best practices. Professor VandenBosch said Professor Cramer would frame the questions and would raise them in the context of what was done at North Carolina: Is it a good idea to provide contextual information on the transcript? If so, how best can it be done?

What is on the transcript and what is made public are very different, Professor Boyle observed. She favors putting more information on the transcript but not making professors' grading practices public. Professor Hancher agreed. As with the raw score and percentile for the SAT, the grades that faculty members give out is the raw score; at present the percentile is hidden.

Professor Curley said he had a contrary view about providing context. It creates the illusion of precision, he said, and could focus on what one might not want it focused on, as opposed to the content of the courses.

Professor VandenBosch said this Committee would not decide the outcome of the discussion, only commenting on possible negatives and positives. Professor Hancher suggested that the Committee on Educational Policy hear from employers and graduate admissions offices on how they interpret grades. Vice Provost McMaster said he thought publicizing the normalizing scores would be problematic. The range of information that could be provided is no information (as at present on most transcripts) to the North Carolina model, which is very complicated and all public. There may be something better in between.

Professor VandenBosch thanked Vice Provost McMaster for joining the meeting.

#### **4. Committee Business**

Professor VandenBosch drew the attention of Committee members to two recent communications that she and Professor Cramer had prepared and sent.

The first was a message of thanks to the Academic Freedom and Tenure Committee chairs (between the \* \* \*):

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Dear Barb and Karen,

We have appreciated your leadership as you guided discussions this year in the Academic Freedom and Tenure Committee concerning academic freedom and academic responsibility. We especially admire your courage in taking on difficult but important questions that have raised controversy both inside and outside the University. In fact, the breadth of these discussions illustrates how our core value of academic freedom can be experienced and lived in a setting where it is honored.

The committee has done a very good job of considering in depth the issues that have been raised and of elaborating on their implications. We appreciate your commitment to steer the discourse towards identification of general principles and away from specific disputes, and we believe that these discussions contribute to a greater understanding of academic freedom.

FCC is also issuing a statement explicitly underscoring our support of academic freedom. This will serve as a response to further inquiries that may arise on this topic.

We look forward to the culmination of your work in the planned white paper that will address comprehensively the topics of academic freedom and responsibility

Sincerely,

Kate VandenBosch, FCC Chair  
Chris Cramer, FCC Vice Chair

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The second statement was in response to media reports and other comments on recent discussions at Academic Freedom and Tenure Committee, Senate Research Committee, and this Committee's meetings (between the + + +):

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May 17, 2011

Following several news and blog accounts of recent discussions in University of Minnesota Faculty Senate committees, Professors Kathryn VandenBosch and Christopher Cramer, the chair and vice chair of the University of Minnesota's Faculty Consultative Committee (FCC), the elected executive committee of the Faculty Senate, provided the following statement:

We believe that some recent news accounts and blogs have inaccurately characterized discussions of academic freedom issues by the University of Minnesota's Faculty Consultative Committee and Academic Freedom and Tenure Committee. We issue this statement to clarify the record.

First, it was the FCC, not the University administration, that decided to pursue this discussion. Shortly after the February 7 written statements on the Markinson matter by General Counsel Mark Rotenberg and Regents' Chair Clyde Allen, the Secretary to the Faculty (Gary Engstrand) had an informal and impromptu conversation with General Counsel Rotenberg (a chance meeting walking across the Mall) in which Mr. Rotenberg said it had occurred to him that there were a number of general questions about the issues raised by the Markinson matter that might be of interest to the faculty. Dr. Engstrand mentioned the conversation to us and we agreed it would be useful to consider the broader implications. At our request, Dr. Engstrand asked Mr. Rotenberg to help us begin the conversation by articulating the issues he thought we might address. We thought that could be useful and later received the questions from Mr. Rotenberg. In his message conveying the questions, Mr. Rotenberg wrote that "While I'm not necessarily

qualified to address them, here are some broad questions that the committee [FCC] may wish to address, or recommend for a broader discussion within the faculty community."

Second, portrayals of this discussion as an effort to 'muzzle' or 'silence' a faculty member who is raising questions are simply wrong. The Faculty Senate, its committees, Mr. Rotenberg, and the University administration have been unwavering in their defense of academic freedom, even or even especially with respect to controversial or uncomfortable statements or events. The minutes of the committee meetings at issue demonstrate just that. Not only was there no intent on the part of any of the discussants to stifle criticisms of the kind made in connection with the Markinson matter, the committee members and members of the administration who spoke explicitly defended the right of the critics to speak out in the manner they did. At no point did any of the committee discussions suggest that any faculty member's right to criticize be constrained. Nor has Mr. Rotenberg, in any written or oral communications with us or the Academic Freedom and Tenure Committee, made any such suggestion.

Third, the question from Mr. Rotenberg that has generated the most attention, "What is the faculty's collective role in addressing factually incorrect attacks on particular U faculty research activities?" was not intended nor was it used by either the FCC or the Academic Freedom and Tenure Committee to reinvestigate the correctness or incorrectness of the particular claims at issue in the Markinson matter. Others with appropriate background and training and who were charged with that responsibility have done so on several occasions. We have instead focused on broader questions: What responsibility, if any, do faculty members have, individually or collectively, to speak out when one of their colleagues continues to be criticized, even though the faculty member being criticized has been exonerated of misconduct by all of the available internal and external bodies constituted to render such judgments? Is it appropriate for faculty members, individually or collectively, to counter those who are delivering the criticism of their colleague? No one has yet reached any conclusion on those questions. Mr. Rotenberg's question was not focused on the bioethicists' statements, either directly (no one's name or publication was mentioned) or indirectly. Rather, his question was intended, and was treated as, raising a general concern—what should be done if attacks seen by others as factually incorrect were made on faculty research activities. It is inaccurate to characterize the question, or the ensuing discussion, as designed to elicit discussion or determinations of a particular matter or to stifle the criticisms themselves. Questions such as those discussed are entirely appropriate for governance committees to consider. Indeed, the suggestion that these questions should not be raised or discussed by faculty bodies is itself an attempt to constrict the faculty's free exchange of ideas that is a hallmark of our university.

Fourth, those in the media and elsewhere who are interested in the University's stance on academic freedom should be aware of actions undertaken at the University to expand the protections of academic freedom in especially relevant ways. The U.S. Supreme Court, in *Garcetti v. Ceballos* (2006), held that public employees who criticized the actions of their employer may be sanctioned or terminated. Although the court opinion said explicitly it did not rule whether the opinion applied to faculty members at public colleges and universities, there has been widespread concern that it might, and subsequent lower court decisions have confirmed that risk. Immediately after the *Garcetti* decision, the Academic Freedom and Tenure Committee took note of the case and, with the strong endorsement of Mr. Rotenberg, Provost Sullivan, and President Bruininks, recommended to the University's Board of Regents that it modify its Academic Freedom and Responsibility policy to explicitly include the freedom "to speak or write, without institutional discipline or restraint, on matters of public concern as well as on matters related to professional duties and the functioning of the University." The Board of Regents approved the change unanimously June 12, 2009. The current policy can be viewed here:

[http://www1.umn.edu/regents/policies/academic/Academic\\_Freedom.pdf](http://www1.umn.edu/regents/policies/academic/Academic_Freedom.pdf). The national office of the American Association of University Professors and the Director of the Thomas Jefferson Center for the Protection of Free Expression wrote a joint letter to the Regents congratulating the University on making this change—one of the first institutions to respond to the potential danger posed by the *Garcetti* case. This policy change means that the University stands behind the right of individual faculty members to criticize institutional practices and decisions without fear that their academic freedom will fail to cover such activities.

In conclusion, we are dismayed and disappointed that some of our colleagues have interpreted our discussions as an attack on academic freedom. We on FCC and our colleagues on Academic Freedom and Tenure are among the last people at the University who would be quiet about, much less advocate, a restriction on the academic freedom of any member of the University community. On the basis of our interactions with Mr. Rotenberg, and our understanding of the discussions that the Academic Freedom and Tenure Committee has had, we firmly believe that there was no explicit or unspoken intention on the part of anyone involved in these events to introduce novel restrictions on academic freedom. Nor, under our watch, will any such efforts be undertaken.

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Following brief discussion of the content of the second message, Professor VandenBosch adjourned the meeting at 3:20.

-- Gary Engstrand

University of Minnesota

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### **Faculty Athletics Representatives (FARs) Responsibilities and Relationships With Multiple Constituencies**

#### Minnesota's Infrastructure for Intercollegiate Athletics Enterprise

- Intercollegiate Athletics Department and AD report directly to President's Office (AD sits on Executive Committee of President)
- Compliance Office reports directly to University's General Counsel's Office
- Academic Center (MAC) reports directly to Provost's Office
- FARs report to President and are appointed by President at recommendation of the University Senate (FCC)—2 FARs (Linda Brady and Perry Leo)

#### Function of FARs

1. Relationship with NCAA
  - Evaluate legislation and serving as delegate to convention
  - Maintain NCAA rules (local institutional control)
  - "Represent" the faculty of the institution
  - One of recognized individuals who can make contact with NCAA regarding policies

- Serve on NCAA committees and participate in governance
- Serve on certification steering committee
- Review and sign off on initial eligibility determinations of student-athletes, waivers, and appeals

## 2. Relationship with Campus Constituencies

- Recognition by President that FAR responsibilities are beyond normal faculty service
- Serve on ACA (advisory to President and athletic director; example issues would be activities in the new football stadium and use of facilities, mascot issue, homecoming, relationships with alumni, etc)
- Serve on FAOCIA (Faculty Academic Oversight Committee on Intercollegiate Athletics); this committee is strictly made up of faculty and deals with academic issues such as waivers of the 2.0 GPA, petitions to Big Ten/NCAA on credits, review of APR and athlete grades, review of team culture relative to academics, review of progress toward degree, etc.
- Assuring academic integrity and student-athlete welfare (e.g. participating on "Academic Support and Performance for Student-Athletes Task Force")
- Active participation in and monitoring of McNamara Academic Center activities
- Eligibility Summits with Admissions, Academics, Athletics, Compliance, and Registrar's Office representatives
- Advisory role to President and his Chief of Staff including briefings for Conference meetings and BOD of NCAA
- Regular interacting with AD, SWA, and other Associate/Assistant Ads—in-person, phone, e-mail
- Regular reporting to Faculty Senate through Faculty Consultative Committee, presenting to Undergraduate Deans, participating in discussion with Senate representatives regarding COIA, fostering coaches/faculty interaction
- Monitoring of SA experience: Attending coaches meetings, Athletics Department staff meetings, SAAC meetings, subcommittee of ACA on student welfare; contributing to applications for SA Scholarships
- Attending athletic events, scholarship dinners, academic award dinners, AD's advisory committee (donors) meetings
- Participating in exit interviews for graduates as well as transfers
- Working closely with Compliance Office in submitting waivers, petitions, violations, and broaching investigations of issues
- Approving of CELs and reviewing of missed class time
- Serving on search committees for coaches, AD, other staff including Development Officer

## 3. Relationship with FARA and Division 1A FAR group

4. Relationship with Conferences: Attending Big Ten and WCHA meetings, participating on or chairing committees, chairing Joint Group of FARs, ADs, and SWAs of Big Ten or WCHA league, in rotation with other members of the Conferences, participate in legislation and development of policies and procedures.