

Minutes*

Senate Consultative Committee
Thursday, April 21, 2011
3:00 – 4:30
Room 238A Morrill Hall

Present: Kathryn VandenBosch (chair), Peter Bitterman, Aaron Carlson, Nancy Carpenter, Don Cavalier, Christopher Cramer, Carol Chomsky, Shawn Curley, Bree Dalager, Nancy Ehlke, Marti Hope Gonzales, Michael Hancher, Russell Luepker, Jonathan Lundberg, Steven Pearthree, Sarah Waldemar

Absent: Nick Bergantine, Thomas Brothen, Janet Fitzakerley, Thomas Haarstick, Jeffrey Kahn, Jan McCulloch, Luke Nichols, Michael Oakes, Adair Rounthwaite, Francis Strahan

Guests: Professor Barbara Elliott (Co-chair, Committee on Academic Freedom and Tenure), Provost E. Thomas Sullivan; Professor Virginia Zuiker (Chair, Advisory Committee on Athletics)

[In these minutes: (1) report on Troubled Waters from the Academic Freedom and Tenure Committee; (2) report from the Advisory Committee on Athletics; (3) senate committee involvement in searches for administrators]

1. Report on *Troubled Waters* from the Academic Freedom and Tenure Committee

Professor VandenBosch convened the meeting at 3:00 and welcomed Professor Elliott and Provost Sullivan to discuss the report on Troubled Waters from the Committee on Academic Freedom and Tenure. (The report is appended to these minutes.)

Professor Elliott recalled that the Faculty Consultative Committee (FCC) last fall invited the Committee on Academic Freedom and Tenure (AF&T) to answer six questions related to the events surrounding the release of the film *Troubled Waters*. In order to accomplish its work, AF&T added two meetings to its schedule, and Provost Sullivan met with AF&T four times to review the issues. AF&T also met with General Counsel Mark Rotenberg and Deputy General Counsel William Donohue to discuss legal issues associated with academic freedom. The report provided to the Committee today has been reviewed by AF&T members several times, by the Provost's office, and the response to question #4 by the General Counsel's office, so it has been well vetted.

Professor Elliott noted that the President had said to FCC, in the meeting immediately preceding this one, that the recommendations in the AF&T report are important and speak to issues that need to be addressed. As reflected in the report, it may be desirable to make some policy and procedure changes and to add discussion of academic freedom in the orientation for all new employees—as well as for those who are already at the University.

* 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.

Provost Sullivan said that AF&T worked very hard on most Friday mornings for several months and brought in several people for thoughtful conversations. The co-chairs sifted through a great deal of information to assemble the report that has been provided today. From the many discussions AF&T had, there are simple, short recommendations, one of which is addition to policy language that would indicate that any time academic freedom is implicated in a matter, the question goes to the Provost and, occasionally, to the General Counsel to ensure academic freedom is protected.

AF&T also talked about need for orientation for every new University employee, no matter where hired, about the deeply-held value of academic freedom, Provost Sullivan said. For example, what academic freedom means and how it is applied, so that employees are sensitive to it.

The report also reconnects the values of academic freedom with the tenure code, Provost Sullivan observed; Minnesota is one of the few institutions to do so, and it makes academic freedom much stronger here.

Professor Elliott reported that AF&T intends to write an additional summary, a white paper, to reflect on what it has learned. The report presented today answers the questions posed to the Committee; the white paper will look at the three-fold mission of the University and its connection to academic freedom.

Professor Curley asked about the issue of Board of Regents' copyright on materials. Is there an issue? Provost Sullivan said that to his knowledge, the question was raised and discussed in AF&T but was not in the purview of the questions. The General Counsel's office has not raised the question of the appropriate use of copyright in this connection. Professor Elliott recalled that in the timeline of events provided to AF&T by the General Counsel, one reason that *Troubled Waters* came to the attention of the Vice President for University Relations was because it carried the Regents' copyright.

Professor Chomsky turned to the question of the disclaimer discussed in the report and the conclusion that a disclaimer should not be required on every work carrying the Board of Regents' copyright. She said she did not quarrel with AF&T's conclusion on that point but noted the interaction with the final clause in the Regents' Academic Freedom and Responsibility policy: "Academic responsibility implies the faithful performance of professional duties and obligations, the recognition of the demands of the scholarly enterprise, *and the candor to make it clear that when one is speaking on matters of public interest, one is not speaking for the institution.*" It is considered clear that when one is doing academic work, one is not speaking for the institution, but sometimes the line is harder to draw, and she said she was not sure one could definitely establish the line. When one writes a letter to the editor, one should say one is not speaking for the institution. When one is doing academic work on matters of public interest, however, the matter may be considered less clear. The Academic Freedom and Responsibility policy requires an affirmative disclaimer under some circumstances; how does that interact with the report's conclusion?

The lack of clarity about where to draw the line is what led AF&T to the conclusion it reached, Provost Sullivan commented. Drawing lines could create confusion. At least it would at the present time, Professor Elliott added. Provost Sullivan recalled the conversation: If one writes an op-ed piece, one should probably make a disclaimer, but one would not put a disclaimer on an article or book published in one's field. Everyone knows those are the work of the individual. Those are the two extremes; it is what comes in between them that is more difficult.

Provost Sullivan recalled that he had said to AF&T that in 98% of the cases, the issue is clear: Academic freedom applies. It is the 1-2% of the cases that create questions. The film was the functional equivalent of a faculty member or P&A staff member applying for a grant and receiving funding to produce a film. If one receives, for example, an NEH grant to produce a play or movie, would one put on a disclaimer or question the copyright? These are uncharted waters and there is no uniformity in policy or practice.

What she found interesting, Professor VandenBosch commented, is that academic freedom does not go with a job classification, it goes with role. That is why this item is before the Senate Consultative Committee and will be on the docket of the University Senate, not before the Faculty Consultative Committee and the Faculty Senate. She said she wanted to highlight that point in order to get the message out.

Ms. Dalager asked how the AF&T findings apply to students. Are graduate assistants covered? Professor Elliott said that AF&T had a careful conversation with the General Counsel, and as is true for everyone at the University, it depends on the role. Some do work for hire, in which case academic freedom does not come into play; sometimes people are doing their own creative work, whether graduate student, faculty member or P&A staff, and in that case, academic freedom applies. Ms. Dalager asked if the additional orientation would be provided to graduate students as well; Professor Elliott said that it should be.

Professor Hancher asked whether the Regents copyright notice did not imply a guarantee of academic freedom. Provost Sullivan said that just because the Board of Regents' copyright is on something does not determine whether that material is protected by academic freedom. There are journals published under the auspices of the Law School, for instance, that carry the Regents' copyright, but they enjoy the same academic freedom as any professional journal. The Board copyright could also be on something proprietary and there would be no academic freedom issue, Professor Chomsky pointed out. So the Board of Regents' copyright does not address the question, Professor Hancher concluded.

One question beyond the scope of the AF&T report but that could perhaps be addressed in the white paper, Professor Chomsky suggested, is about the case of a graduate student working on someone else's project. The graduate student is hired to do a job (to work on someone else's creative work), and the report indicates that it is a "work for hire," and "the employer has AF&R but the student/post-doc, consistent with the agreement under which the student/post doc was hired, does not." This seems akin to the circumstances of an administrator who does not have the freedom, as an administrator, to disagree publicly over a decision that has been made. (In the words of the report, "The courts have recognized that administrators have the responsibility to engage in vigorous, robust discussion up to the point a decision is made; once the decision is made, administrators do not have a First Amendment right to criticize the decision, and they can be fired if they do so.") The question for the white paper is whether graduate students have a similar responsibility to engage in discussion and disagreement internally, though not to act outside the bounds of their project responsibilities. Graduate students presumably should not be punished for speaking out internally.

Professor Elliott noted that the report indicates that the U.S. Supreme Court has made it clear that administrators have limited academic freedom paralleling the circumstances Professor Chomsky raises

regarding students. This is an important observation, but not addressed here. AF&T was not asked about students, she observed; the FCC questions were about administrators.

What do they envision for the white paper, Professor VandenBosch asked? Provost Sullivan said that AF&T wished to be respectful of the questions FCC posed but quickly became aware that this is an important, complicated area and recognized the need to educate everyone throughout the University more broadly than simply responding to the questions about this specific case. Inasmuch as this is an educational institution, it should take the opportunity to educate all about the complexities of the issues and to use the incident positively, he added.

Are there relatively few statements out there, Professor Hancher asked, so Minnesota would be a leader in this regard? Professor Elliott said she did not believe there were very many such statements. If so, then that would be a good outcome from the events, Professor Hancher said. Part of the forthcoming recommendation could advance conversations elsewhere about academic freedom.

Professor Cramer suggested that AF&T, in its white paper, expand its discussion of the duties and obligations of academic freedom and responsibility.

Professor VandenBosch thanked Professor Elliott and Provost Sullivan and expressed appreciation for all the work that they and AF&T members put in.

2. Update from the Advisory Committee on Athletics (ACA)

Professor VandenBosch welcomed Professor Zuiker to provide the annual report from the Advisory Committee on Athletics (ACA). Professor Zuiker began with prepared remarks about the committee's charge and membership (between the * * *).

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The committee meets on a monthly basis and reports are given by the Athletic Director, the Director for Compliance, the two NCAA faculty representatives, and the Director of McNamara Academic Center.

ACA has five subcommittees: Student Athlete Welfare, Finance and Planning, Conference Issues, Equity and Diversity, and Campus and Community Relations. ACA faculty members are asked to be chairs of each of these subcommittees. A report on the budget of the athletics department is given to the whole committee by the Senior Associate Athletic Director responsible for finances. Each semester, the Campus and Community Relations subcommittee organizes a Faculty/Coaches luncheon where faculty and coaches get together to meet each other and learn about each other's roles at the university. The hope is "to break down the barriers that exist between athletics and academics within the university and its communities."

At the December meeting, the Director of Compliance holds a joint meeting with the FAOCIA (Faculty Athletic Oversight Committee on Intercollegiate Athletics) and ACA committees to discuss and vote on upcoming NCAA Legislation.

Twice a year, a subgroup of ACA (the two NCAA faculty reps, the chairs of the FAOCIA committee and the ACA committee, along with Ms. Courtney from the Senate office) meets with the Athletic Director to discuss Personnel issues. This same subcommittee meets with Vice President and Chief of Staff twice a year to discuss issues and concerns relating to athletics.

This past year, a subcommittee has been reviewing the ACA & FAOCIA policies. Membership on this subcommittee comes from both senate committees (ACA & FAOCIA). At this time, they have not completed the review of all the policies.

One of the agenda items during this past year has been the University of North Dakota mascot situation and the NCAA. At its September meeting, ACA approved a motion to allow University of Minnesota sports teams to compete against the University of North Dakota (UND) sports teams during the 2010-11 season, since UND had an agreement at that time with NCAA that they would be dropping the controversial nickname and Indian-head logo at the end of the year. With this approval, the athletic department then began scheduling events with University of North Dakota.

On March 11, 2011 the *Grand Forks Herald* reported that the state Senate in North Dakota approved legislation demanding that the university keep its controversial nickname and Indian-head logo despite an agreement with the NCAA, that was upheld by the state Supreme Court, to drop those symbols.

A few of the ACA members met with the Athletic Director and one of the Associate Athletic Director to discuss the athletic department's plan on scheduling games in the future with the University of North Dakota. At the meeting, ACA discussed the ACA COMPETITION AND ANTI-DISCRIMINATION POLICY. It was agreed that future scheduling with UND would be discouraged.

At its April meeting, the whole committee was briefed on what had been happening since September and adopted a motion that future scheduling with UND would be ceased.

An update since the meeting in April is that the *Chronicle of Higher Education* on Tuesday, April 19, 2011, reported that "The National Collegiate Athletic Association will start penalizing the University of North Dakota for its 'Fighting Sioux' team nickname this coming August despite a new state law that requires the university to keep the name, according to the *Grand Forks Herald*. Bernard Franklin, the NCAA's executive vice president for membership and student-athlete affairs, said in a letter Tuesday to the university's president that the organization would not reconsider a 2007 agreement in which the university pledged it would give up the nickname unless two Sioux tribes consented to its being kept, which one has refused to do. The new law requires the state's attorney general to consider suing the NCAA if it takes action against the university over the nickname and the university's Indian-head logo, which the law also requires the university to continue using. The NCAA penalties will prevent the university from playing host to postseason contests and will forbid its teams from wearing the logo or the nickname during postseason play." (Taken from http://chronicle.com/blogs/ticker/north-dakotas-fighting-sioux-law-wont-prevent-penalties-ncaa-says/32279?sid=at&utm_source=at&utm_medium=en)

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Professor Luepker asked what happens if North Dakota does follow the law. It is a touchy situation, Professor Zuiker said; UND receives money from the state legislature. Is there a penalty, Ms. Dalager asked? Professor Zuiker referred to the *Chronicle of Higher Education* article, which said that "the new law requires the state's attorney general to consider suing the NCAA if it takes action against the university over the nickname and the university's Indian-head logo, which the law also requires the university to continue using." She said she had no knowledge about whether they would do this or not.

Ms. Carlson asked what the McNamara Academic Center is. It is the place where student-athletes go to receive academic help, tutoring, study hours, and so on. It is located in the Bierman Building.

Professor Curley asked about the proposal for a new basketball practice facility. Professor Zuiker said that the athletic department is trying to raise funds for it, but has not raised as much as needed.

Professor Hancher asked if ACA does any financial analyses. They hear a report from the senior associate director on the athletic budget, Professor Zuiker said. If ACA wishes to hear more, they have a subcommittee to look at issues. The department runs in the black, and the Big Ten Network has brought in considerable revenue. Professor Cramer noted that the athletic department receives about \$2 million in O&M funding; Professor Zuiker pointed out that that amount is less than what was provided in the past. Ms. Courtney reported that historically the O&M money was funded to address equity issues."

Professor Hancher inquired about donations to the University prompted by the success of the athletic program. In response it was noted that there has been research on this question for over 50 years and no one has been able to document a link between athletic department success and donations to the institution as a whole, although there is ample evidence that donations to the athletic department increase when its "major" sports are successful.

Professor Chomsky said that in previous reports, the Committee has heard about the level of commitment to academics on the part of the coaches. She asked Professor Zuiker what her sense of that commitment is now. Professor Zuiker said that the Faculty Academic Oversight Committee on Intercollegiate Athletics would hear more about that issue, and Professor Johnson, its chair, will be reporting later.

Professor Cramer recalled news articles about a women's golf coach suing the University. Professor Zuiker said that they receive updates from the athletic director, but because this is a personnel matter and in litigation, they cannot discuss it publicly. When head coaches are hired, the ACA chair or FAOCIA chair or a faculty member from either committee is asked to serve on the search committee, along with one of the two faculty NCAA representatives

Professor Curley asked if ACA is satisfied with its access to athletics and the openness of the athletic department to committee advice. Professor Zuiker said ACA has a good relationship with the athletic director, who keeps the committee up to date on issue. They also meet with associate athletic directors and other officers, who bring issues to the committee.

Professor Cramer asked about the commitment to devoting resources to all sports, despite having three large revenue-raising sports. Professor Zuiker said that they are informed about coaches' salaries

and have seen equity increases delivered. There is dedication to creating good experiences for student-athletes outside the three major revenue-producing sports. They also do surveys of women athletes and students of color who are athletes to identify issues. Each sport is also audited, and sometimes issues come up during the audits.

Ms. Waldemar asked how closely ACA works with the Office of Institutional Compliance. Ms. Courtney reported that the Director of Compliance (for athletics) reports to the General Counsel.

Mr. Carlson asked about alcohol in the stadium. Professor Zuiker said they receive updates on the issue. Ms. Courtney pointed out that ACA cannot take a position on the issue; this is a legislative issue that the President deals with. Professor Zuiker agreed that the matter is out of ACA's control.

Professor VandenBosch thanked Professor Zuiker and Ms. Courtney for joining the meeting and providing the report.

3. Senate Committee Involvement in Searches for Administrative Officers

Professor VandenBosch turned the attention of Committee members to a proposed revision in the administrative procedure "Hiring Senior Administrators: Senate Committee Involvement" (http://policy.umn.edu/Policies/hr/Hiring/RECRUITFACPA_PROC08.html). The proposed change is to incorporate the additional consultative committees established by the two new senates (for P&A and Civil Service staff).

Mr. Pearthree reported that the CAPA executive committee added the P&A Consultative Committee to search involvement wherever the faculty and students were involved.

Committee members made a number of editorial suggestions and then unanimously approved the changes and approved the item for the University Senate docket.

The Committee voted unanimously to approve the University Senate docket.

Professor VandenBosch adjourned the meeting at 4:45.

-- Gary Engstrand

University of Minnesota

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April 18, 2011

MEMORANDUM

To: The Faculty Consultative Committee

From: The Committee on Academic Freedom and Tenure

Re: Responses to "Troubled Waters" Questions

Background

In September 2010, a University vice president determined that a film, "Troubled Waters," (TW) that had been produced in the College of Food, Agriculture, Natural Resource Sciences as a sponsored project, was not appropriate for public release. Considerable controversy and discussion followed. In November 2010, the University's Faculty Consultative Committee (FCC) asked the Academic Freedom and Tenure committee (AF&T) to respond to six inquiries regarding how the TW experience should be considered in light of our understanding of Academic Freedom and Responsibility at the University of Minnesota. This report is submitted in response to FCC's request.

Definitions

Academic freedom is recognized in the law as a subpart of the First Amendment that is special to the academy. The Board of Regents reaffirmed its policy on Academic Freedom and Responsibility (AF&R) in June 2009. The current policy, as recently amended by the Faculty Senate, provides:

- "**Academic freedom** is the freedom, without institutional discipline or restraint, to discuss all relevant matters in the classroom, to explore all avenues of scholarship, research, and creative expression, and to speak or write on matters of public concern as well as on matters related to professional duties and the functioning of the University."
- "**Academic responsibility** implies the faithful performance of professional duties and obligations, the recognition of the demands of the scholarly enterprise, and the candor to make it clear that when one is speaking on matters of public interest, one is not speaking for the institution."

In addition, these provisions are embedded in the tenure code and the University's Code of Conduct. Key language from the tenure code includes these statements that indicate the connection between tenure and academic freedom and responsibility:

- "Tenure is the keystone for academic freedom."
- "Both tenure and academic freedom are part of an implicit social compact."
- "In return, faculty have the responsibility of furthering the institution's programs of research, teaching, and service."

FCC QUESTIONS re: Academic Freedom and "Troubled Waters" Film

1. Under what circumstances does academic freedom extend to individuals beyond faculty, faculty-like staff, and other University employees who produce intellectual and artistic content? Conversely, what personnel or functions of the University are not covered by academic freedom? In general, what are the limits to academic freedom?

In the 2009 policy, the Board of Regents affirmed that the protections of academic freedom are accompanied by commensurate responsibilities. They are extended to all University employees who produce intellectual and artistic content as part of their employment; anyone (of any employment status or rank) who designs, creates, or discovers content as part of their University employment has academic freedom, accompanied by its responsibilities, including professors, museum directors, artists, etc.

Academic freedom and responsibility do NOT extend to employees who have been hired to complete the intellectual / artistic work of their supervisor. Anyone hired by someone to accomplish that person's design/plan/etc. is not extended academic freedom and responsibility; the creative effort and responsibility remain with the supervisor who is directing the employee's effort.

The limits of academic freedom have been defined by the United States Supreme Court, which has established that academic freedom is not a defense to an illegal act such as academic fraud, slander or defamation, obscenity, or the clear and present danger of bodily harm (as a result of one's speech).

In the case of "Troubled Waters," a P&A staff member, using her own ingenuity, came up with a project, proposed it, earned grant support to complete it, worked on it, edited it, and also hired others to work with her on the project. The film was her intellectual product, a result of her curiosity and effort. None of the limits to academic freedom were present in the TW case. The staff person's creative work (the film's content) was protected by academic freedom.

2. What is the understanding of academic freedom and responsibility as they apply to University administrators, only some of whom are tenured faculty members? What are the limitations of academic freedom that arise from their responsibilities as administrators?

In recent years, the federal courts have established that administrators have limited academic freedom. The courts have recognized that administrators have the responsibility to engage in vigorous, robust discussion up to the point a decision is made; once the decision is made, administrators do not have a First Amendment right to criticize the decision, and they can be fired if they do so. These United States Supreme Court rulings are based on long-standing traditions. As a public employee in a position of authority, the administrator relinquishes certain free speech and academic freedom rights as part of the employment bargain. When we revised the Board of Regents' policy on Academic Freedom and Responsibility in 2009, we were aware of these court cases. We therefore included the following comment to the Board as part of the background discussion:

The Committee recognizes that freedom to speak about the affairs of the University without institutional discipline or restraint does not extend to those who hold senior administrative positions. The Committee understands that the Board of Regents and the President have the right to expect that senior officers and others in key administrative positions (for example, at the level of dean or above) and their immediate staff will support the University's mission and the policies, procedures, goals, and programs established and announced by the Board of Regents and the President, and will not publicly undermine them. This includes, for example, statements before the legislature, to the media, etc.

Some employees and faculty at the University have both administrative and creative / departmental positions. In cases where the person functions as an administrator, the person does not have academic

freedom for that work; however, when teaching and doing creative work within the person's discipline, they are protected by academic freedom.

In the case of the "Troubled Waters" film, a (former) University vice president (in her administrative role) asserted the film was not ready for public release. The record of events surrounding TW shows that the Vice President later apologized for going beyond her role and responsibilities with her actions. Prior to any decision, the Provost, as Chief Academic Officer, should have been consulted. Once consulted, the Provost determined that the film was protected by academic freedom and he immediately released the film.

Recommendations: To avoid this from happening again, **we recommend a change in both policy and procedure. Policy:** The Board of Regents delegates its responsibilities to the University administrators in "Delegations Documents." These documents need an additional sentence/section stating that if an administrator (including unit heads, directors, deans, and those in central administration) receives any question regarding any research, educational, or intellectual effort that include the slightest implication of academic freedom, the question should be referred to the Provost's office (or the Office of the General Counsel, as appropriate) for review and decision. This policy statement obligates **Procedural change**, as well, which is discussed in #5, below.

3. What measures, if any, should be taken to ensure that administrators and others who are not faculty members understand the meaning and implications of the policy on academic freedom and responsibility?

As posed, this question implies that only administrators and non-faculty University employees can benefit from additional understanding of the AF&R policy. We submit that all employees can benefit from additional measures to enhance this understanding.

Currently, there is limited training about the meaning and implications of the AF&R policy. The Provost's office now leads the New Faculty Orientation and New Department Chairs' training sessions as they begin their positions; Human Resources administrators run other new-employee sessions. These are full-day orientations, and all employers are encouraged to send their new hires. At these sessions, senior administrators talk about the concept of a university.

In the "Troubled Waters" experience, there is a question whether the University Relations administrators involved in the decision making had adequate understanding of the AF&R policy. General Counsel Rotenberg's memo summarizing the events related that University Relations was contacted by the college and asked to review the film. The film was reviewed; it was thought controversial and in need of further discussion prior to release, and University Relations took the lead in seeking to have that happen, seemingly without recognizing the academic freedom dimensions of the issues that were being discussed.

Recommendations:

There is a need to do a better job in orienting all employees, regardless of their status and / or title, about academic freedom and responsibility, and how it is a core value of our University.

All New Employees

We recommend that academic freedom and responsibility be added to the orientation discussion of what a research university is, what a land-grant university is, and what employees of the University do. Employees need to be provided more information about the nature of a university, including an explanation of academic freedom and responsibility, as they are the basis of the creative work accomplished at the University. These additions to the orientation can alert the employees to the job they are doing and enhance their pride in the University.

Deans and Senior Administrators

It is important that the current orientations and discussions with individuals in positions of authority continue, and that they are also educated on the limits to their authority. University administrators and staff need to know about, understand, and adhere to the policy and procedure statements (which we recommend be amended, see #2 and #5, here) regarding academic freedom and responsibility. In recent months, the Provost has met with the deans and all senior administrators, leading discussion and articulating the importance of academic freedom—and their roles and responsibilities with the issue. We recommend this become a routine topic for discussion at those orientation meetings and for sessions with experienced chairs, as well.

Current Employees

We are also aware that current University employees are not included in these orientation sessions since they are not new hires. There also needs to be ongoing education (perhaps through Responsible Conduct of Research and other in-service educational settings) to review the meaning and implications of academic freedom and responsibility in the University setting. One idea is to develop a one-page guide about the subject for the Provost's web page with links to the policy, procedures, and other resources. An "Academic Freedom and Responsibility" link could be added to the faculty and staff "one-stop" websites as well.

4. When projects that involve the production of intellectual or artistic content are undertaken as works-for-hire or otherwise by non-University employees, or the products of such projects are expected to be copyrighted or otherwise owned by the University (which may imply approval or endorsement by the Board of Regents of the University), what does that mean for application of the policies of academic freedom and responsibility? What oversight by University faculty or administration, if any, is appropriate? What actions are appropriate if concerns arise about the connection of the project with the University? When the University holds the copyright to products, is there, or should there be, routinely a disclaimer stating that views do not represent those of the University, the Regents, the University administration or the faculty in general? If such a disclaimer is discretionary, who decides whether to include one, and on what basis?

In general, when a University employer hires an employee to complete work as part of the employer's creative work ("works for hire"), academic freedom and responsibility extend to the creative leads on the project, but not to the others hired to work on the project. This applies when the employee is hired from an internal or external pool of applicants and regardless of where the funding originates. For example:

- When a graduate student or post-doc is working on another's creative work, it is a "work for hire," and the employer has AF&R but the student/post-doc, consistent with the agreement under which the student/post doc was hired, does not.
- When a student or post-doc is creating his/her own work, AF&R apply.

- Some creative work at the University is funded by external sources, awarded to the Board of Regents, and managed through grants and contracts; AF&R apply to the creative lead for the project. Those hired merely to assist the creative leads in the completion of the project do not have AF&R.
- AF&R in a “work for hire” should be clearly defined in the contracts and other documents that are signed in the hiring process.

When concerns regarding the connection of a funded project with the University are raised, systems exist to review those concerns (Sponsored Projects, IRB, animal safety, etc.); when the issues of concern focus on academic freedom and responsibility, the Provost and Office of the General Counsel respond.

When something carries the Board of Regents' copyright, it is not determinative of academic freedom and responsibility. For example, several Law School journals carry the University copyright, but the scholarly work in the journals' articles is protected by the authors' academic freedom and responsibility. There is no disclaimer on those journals. The Board of Regents' Policy on Copyright states that, consistent with academic tradition, academic work (scholarly, pedagogical, or creative work) is owned by the faculty member who created the work. The only exceptions to this rule require a written agreement between the faculty member and the University. The Board of Regents' policy on Copyright is available at: <http://www1.umn.edu/regents/policies/academic/Copyright.html>

In the case of “Troubled Waters,” the Board of Regents copyright was on the film. The P&A staff member who came up with the idea for the film and provided the lead for the project was covered by AF&R. She also hired an artistic director (who was not protected by AF&R) to complete the funded work. The work was funded by a combination of a legislative grant and additional grants, which were managed through University offices. The lead person enjoyed both academic freedom in creating the work, and the responsibility to meet the grant requirements.

Recommendations:

Currently there is no policy at the University that requires all work with a Board of Regents copyright include a disclaimer. In the academy, it is understood that journals, books, creative work, and other forms of scholarship reflect the ideas of the University faculty or staff member who created the work, not the Board of Regents. It is the opinion of the AF&T Committee that requiring a disclaimer on some work that carries the Board of Regents copyright, but not all work, could send the wrong message. Rather, the Committee recommends that we continue with our current practice of not requiring a disclaimer.

5. What procedures are in place to govern decisions about University products that that are in a gray area, where it is not certain whether rights and responsibilities of academic freedom apply?

There are no current administrative procedures that accompany the Board of Regents' policy on Academic Freedom and Responsibility, although the recognized and assumed procedure has been that any emerging issues are to be referred to and discussed with the Provost. In addition, according to the provisions of the tenure code, faculty members may file a case with the Judicial Committee if they believe their rights under the AF&R policy have been violated. P&A employees and staff may file a charge with the Office of Conflict Resolution.

In the “Troubled Waters” experience there may have been confusion regarding appropriate review of the film and decisions regarding its public release. When the TW events occurred, several of the senior administrators were out of town. In this case, clarity was missing among some administrators regarding roles and responsibilities of administrators in responding when issues of academic freedom and responsibility arise.

Recommendation:

A short set of administrative **Procedures attached to the Academic Freedom and Responsibility Policy** should be developed to provide guidance and specify the response when issues arise that involve academic freedom and responsibility in the future. The AF&T Committee will draft a short set of Procedures with the Provost’s office.

6. The decision to delay showing the film was based in part on concern over controversy that would ensue from its showing. Some controversy is to be expected in disseminating intellectual work products associated with the University, however. The critical question is what actions are appropriate in the face of expected controversy? What have we learned from this particular controversy over how better to handle such concerns?

Expected controversy must not be a determining factor when disseminating intellectual and artistic work products from the University. The core work of the University is based in debate that results from doing cutting-edge work. Controversy must be expected, whether the controversy results from a challenging presentation, creation, or idea. The University’s dissemination of controversial intellectual and artistic work products is protected by academic freedom. Preserving academic freedom should take precedence; it is just a question of how to handle the controversy.

In the “Troubled Waters” experience, the film was not released when a University vice president (whose job is to protect the University’s name) perceived that the film would result in controversy and negative publicity for the University. Once that decision was made public, considerable controversy and negative publicity for the University resulted as a consequence of her decision. This controversy had an impact on employee and public trust in the University’s commitment to AF&R, as well as its decision-making processes and its role in honoring funded commitments. When the film was ordered to be released and was released in the following weeks, an open panel discussion followed its initial presentation to encourage discussion of the challenging ideas presented in the film.

Recommendations:

As part of a University, we do need to expect controversy, and we need to have administrators who protect the core values of the University (not just protect the University from negative publicity). When circumstances raise academic freedom as among the relevant core values in a controversy, academic freedom must have priority. The Provost needs to be consulted in a timely way regarding resolution to the conflict (see Recommendations for changes to policy and procedure, #2 and #5, above).

Certain University administrators, such as those in University Relations and other offices, have the complex job of managing communications surrounding controversy. These administrators’ decisions, and their communications that address controversial issues, must be guided by the core values and principles codified in University policies and procedures (and laws). As one of these essential core values, academic

freedom explains, justifies, and enables us to see the value in diverse viewpoints expressed in University work products. Open dialog about the ideas through panel discussions with the audience (as was done in the TW experience) is a useful example of how these principles can be exercised in managing controversy.