Minutes*

Faculty Consultative Committee
Thursday, May 6, 2010
12:00 – 2:15
325 Coffman Union

Present: Marti Hope Gonzales (chair), Melissa Anderson, Nancy Carpenter, Carol Chomsky, Chris Cramer, Shawn Curley, Janet Fitzakerley, Kathryn Hanna, Caroline Hayes, Emily Hoover, Brian Isetts, Walt Jacobs, Jan McCulloch, Michael Oakes, Martin Sampson, Kate VandenBosch, Cathrine Wambach

Absent: Jeff Kahn, Russell Luepker, Becky Yust

Guests: Vice President Kathryn Brown, Mark Rotenberg (General Counsel), Lynn Zentner (Office of Compliance); Vice President Stephen Cawley, Ann Hill Duin, Bernie Gulachek (Office of Information Technology); Sarah Waldemar (Council of Academic Professionals and Administrators)

Other: Kathryn Stuckert (Office of the President)

[In these minutes: (1) administrative conflict-of-interest policy; (2) update on Google; (3) creating a P&A senate; (4) governance problems elsewhere; (5) presidential search; (6) open meeting law and Senate committees]

1. Administrative Conflict-of-Interest Policy

Professor Gonzales convened the meeting at 12:05 and welcomed Vice President Brown, Mr. Rotenberg, and Ms. Zentner to the meeting to discuss the revised administrative conflict-of-interest proposed policy.

Vice President Brown began by reviewing where things now stand. Last fall (and for a considerable period before that) consultation started on an administrative conflict-of-interest policy. The concept originally came out of the Medical School but the faculty and academic leadership concluded that such a policy should extend across the University. A working group was formed. Compliance officer Lynn Zentner consulted on the draft all during the fall and received a great deal of helpful suggestions. Given the amount of feedback, Vice President Brown decided that they needed appropriate direction from a Regents' policy, so proposed a Board policy on individual conflict of interest on which they consulted broadly; the Board adopted it in March of this year. The Board policy sets the cornerstone, establishes the definitions, and sets the ethical standard that applies to everyone at the University. After the adoption of the Board policy, they returned to the administrative policy and completely redrafted it. The revised version identifies activities that are higher risk and that therefore require more oversight and reporting.

Vice President Brown and Ms. Zentner have now consulted with every group with which they consulted about the Regents' policy and with whom they consulted earlier about the draft administrative

* 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.

policy, Vice President Brown related. She posed a process question. They have proposed a process, and have spoken with Professors Gonzales and Oakes about it: They will have a small group (herself, Mr. Rotenberg, Vice President Mulcahy, and the University Auditor Gail Klatt) make modifications that have been suggested through the consultation process (for example, they received excellent suggestions for clarifications from the Senate Research Committee). Ms. Zentner met this week with a small group of faculty (Professors Fred Morrison, Law, David Johnson, and Sri Zaheer, Carlson School) to do a very close review of the language and took away several suggestions from that session. A meeting is also planned with Professor Kahn

After all of these discussions, they would like to take the revised draft to the President's Policy Committee (PPC) in June for approval, Vice President Brown told the Committee. Following PPC action, there would be a public comment period. Normally the comment period is 30 days; she said she would be willing to leave it open in this case for the summer and into September, and then bring it to the University Senate on September 30. Typically, such policies come for discussion, not action, and are then put into effect. Professor Morrison has indicated that the process normally calls for presentation to the Senate twice, once for information/discussion and once for action; doing that in this case would delay adoption of the policy to the end of the year because the second Senate meeting is not until December 2. She said that given how widely the policy has been consulted, she was not sure that additional consultation with the Senate would add to the process, and might well simply add to the time. She said that there has been extensive airing of views about the policy and surmised it would be unlikely that complete consensus could be achieved. The policy has been in the works for two years or so, and it is to the benefit of the institution to get it on the books, and Ms. Brown noted that the policy was driven by the academic side of the house, not the administration. Will there be any benefit to added consultation, at this point, she asked? She said she would like to have an agreement with the Committee on what the process will be.

Professor Curley inquired what the matrix on policy consulting suggested for this policy. It suggests University Senate action, not discussion only. Professors Hanna and Oakes said they agreed with Professor Morrison's view, that it should come for information/discussion at one meeting and action at the next one. Would they be comfortable having both information/discussion and action at the September 30 meeting, Vice President Brown asked?

The policy should come before the University Senate for action, Professor Chomsky said, because that will mean greater support for it once adopted. There has been a lot of consultation, she agreed, but it would help if they would bring the final draft back to this Committee, after the changes have been made and before it goes to the Senate in the fall. As part of that review, it would also be helpful if the Committee could see the comments that were provided, so that someone other than the drafting group considers the changes and helps ensure that faculty concerns are reflected—and so that it does not run into problems at the Senate.

Professor VandenBosch asked about the implementation timeline after September 30. The University is already doing most of the things in the policy, Ms. Brown explained: identifying conflicts of interest, having faculty and staff file REPA forms, having conflict-of-interest committees develop management plans when potential conflicts exist. What will be different will be more stringent regulations concerning gifts and reporting for individuals in high-risk areas. Ms. Zentner is committed to an education program and will talk to as many people as possible so that everyone knows what the policy requires.

Professor Anderson commented that the administration has consulted this policy to death, appropriately, and that the Senate should be able to act in September. There is also a committee promoting instruction in conflict-of-interest, which would be another way to promote the policy. Vice President Brown said they want a policy that makes sense but that they would also like to bring the process to a conclusion.

Professor Oakes complimented the three guests, and in particular Ms. Zentner, for doing well on a very difficult job. He said he would also support having a vote at the September 30 meeting, provided the draft is open for comment all summer, that there are reminder emails to faculty alerting them to the draft, and that this Committee has the opportunity for a final review. He said that the risk-stratification plan is brilliant, in terms of conflict of interest and issues related to the Institutional Review Board, with human-subjects research a risk-driver. There is a question about whether social-science researchers who submit applications to the IRB and receive an exemption are "involved in human subjects research" for purposes of the conflict-of-interest policy and thus in the high-risk Group A. The Association for the Accreditation of Human Research Protection Programs (AAHRPP) takes the position that they are doing human-subjects research, so are in the high-risk category.

[The question of social-science research being classified as a high-risk activity, and the possible conflict with AAHRPP, went on for some time, but after the meeting Professor Oakes spoke with Ms. Keane, who heads the University's human-subjects research protection program and who also serves on the board of AAHRPP, and with Marjorie Speers, the Executive Director of AAHRPP, and reached agreement that exempt research using human subjects—typically conducted by social/behavioral scientists—would not *automatically* put such research into the high-risk category because AAHRPP understands that the University's internal review system will identify any social- or behavioral-science research that is actually high-risk.]

Professor Chomsky said there are also issues for people whose research is not exempt but is also not high-risk, and she would raise those concerns later in the meeting when the substance of the policy is discussed. She wanted Vice President Brown to be aware of that concern, however.

Vice President Brown said she understood from the discussion that the Committee is agreeable to the proposal that the PPC will act on the draft in June, the policy would be posted for comment for the summer, and they would return to the Committee in late August or September to provide an update on changes made as a result of comments, and that it would then go for discussion and vote at the September 30 University Senate meeting. Professor Curley said that if this Committee finds major issues that need further discussion, it should have the option of saying that the Senate discussion/vote needs to be postponed. Vice President Brown agreed; if there remains major uncertainty, they do not want to rush the policy through. Professor Chomsky suggested that when the policy is posted, there should also be a note indicating that the final draft will come back to FCC and let people know they can talk with FCC members if they wish. Vice President Brown noted that the Senate vote is advisory. Vice President Brown expressed thanks to the Committee and to all faculty who took the time to provide comments on the draft.

Professor Sampson inquired if they have a master list of everyone with whom they have consulted. They do, Ms. Zentner said. That list should be part of the docket item, he suggested.

Mr. Rotenberg commented that he has been interacting with the news media about conflict of interest. In addition to the internal need for rules, there are a number of external groups that care about whether the University has an up-to-date policy (e.g., in the political and media communities). For them, saying that there will be more months of delay sounds like foot-dragging. As everyone on this Committee knows, he observed, there are countervailing interests in the case of conflicts of interest.

Professor Gonzales thanked Vice President Brown for her work on the policy and for joining the Committee.

Ms. Zentner then reviewed the major changes that have been made in the policy.

-- The definition of business entity has been narrowed so that non-profits that are solely educational, religious, or philanthropic are not included in the coverage of the policy.

-- Adjunct faculty are excluded unless they are involved in the identified high-risk areas or there is a local (college) decision that an adjunct appointee should be included.

-- The reporting regulations were originally first-dollar, but are now $5,000 for those in high-risk areas and others remain at the current level of $10,000. NIH may issue a rule that changes the threshold, in which case the University's policy would change to meet the federal policy. Professor Oakes inquired why first-dollar coverage was not retained. Ms Zentner explained that she is currently working on the preparation of an appendix to govern the Medical School (and perhaps all of the AHC) that will require first-dollar reporting, which is where the highest risk typically will be. Those decisions will be made with Senior Vice President Cerra. Professor Oakes said he shared Mr. Rotenberg's concern: The public may see this as watering down the policy.

-- Consulting agreements must be written if the individual is engaged in high-risk activities; in other cases the policy recommends but does not require written agreements.

-- There is a "no gifts" rule for those in high-risk activities. There is no limit on gifts if one is not in a high-risk area but the University assumes people will be reasonable. Anyone can accept a gift to the University and there will be local control on questions of gifts in an international context.

-- There is more local control over education and training events but there are still parameters around continuing education; in the latter case, the content cannot be controlled by industry.

-- Business representatives on campus will be a matter of local control, but the policy asks that units (i.e., colleges) develop a policy and provide it centrally so that central administration will know how the issue will be managed.

-- There is additional language on endorsements to make it clear that educational activity that involves comparative analysis is not included; if someone is asked to give an opinion on the basis of scholarly expertise, that is not an endorsement.

Professor Curley spoke about the potential conflict with AAHRPP on human-subjects research and then observed that some faculty do not believe this policy is the right place to address problems with ghostwriting. Ms. Zentner said they discussed ghostwriting in the fall and concluded it does fall within

the COI policy: In the ghostwriting context, people are asked to sign their name to a document someone else prepared. In the conflict of interest context, concerns regarding inappropriate influence exist. Professor Curley said he had concerns about ghostwriting, but not about the money. There are two pieces to ghostwriting, Mr. Rotenberg said. There is the issue of academic integrity, which is independent of and distinct from conflict of interest. There is also an important connection with conflict of interest in some contexts, where the reason an outside company would want to pay to have a professor's name on a product is to enhance its prestige. Professor Curley asked if that is not a matter of academic integrity as well. It is an important question, Mr. Rotenberg said, because it is an illicit borrowing of the prestige of the University. In medical fields, that is seen as conflict of interest, Professor Oakes said.

Professor Anderson said there is a difference between a faculty member who gets someone to write an article and when a company seeks to put someone's name on an article. The first case should not be covered by the policy but the second should.

Professor Chomsky said that she and colleagues do IRB non-exempt research that is not high-risk (e.g., oral histories of lawyers, observing lawyers in law offices). As noted in previous consultation, requiring a consulting agreement can be a problem for lawyers because the attorneys may want consultation that is not discoverable (in the legal sense). There remains concern that such a consulting agreement will be required of faculty who are within the IRB jurisdiction but are not in fact engaging in high risk research and whose consulting is not problematic. She said she had two additional questions. One, once one is in the high-risk category, is one in it for everything one does, even if other activities have no relationship with human-subjects research? Can activities be separated? Two, if people must be put into a category, is there a way to take them back out, on a case-by-case basis, after review by a conflict-of-interest committee that can identify when there is not a conflict of interest risk?

Professor Anderson asked about the statement from the Academic Health Center Student Consultative Committee, copies of which had been distributed at the meeting. The draft policy does not address the concern raised by the students: Chairs and deans address conflict-of-interest issues but they also receive funds from the company that they can distribute and have oversight for. That is a reasonable point. That is a matter of institutional conflict of interest, Mr. Rotenberg said. Ms Zentner agreed and said that the University has a separate policy to address institutional conflicts of interest. She said she would review the students' concerns and respond to them.

Mr. Rotenberg said he did not want to lose sight of the issue Professor Oakes raised, that of first-dollar coverage. The difference between first-dollar coverage and a $5,000/$10,000 threshold will be a hot-button issue for some people, he said, and it will be a critical issue for a number of people at the University as well. The Regents will likely hear about this, even though they are not responsible for this policy, and people will wonder why there is not first-dollar coverage.

Professor Chomsky had several points. She reported an issue raised in the Law School: There is a difference between "clinical care of humans" and "clinical practice involving humans," but the policy seems to equate those and is unclear on which activity is covered. They have lawyers, including adjuncts, involved in "clinical practice involving humans" in the Law School, in training students in practice. She said she hoped the language would be clarified, and adjuncts involved in clinical legal practice would not be included in the disclosure requirements. She asked about the language covering educational materials and prohibition on using materials that advertise or promote a product: Does that forbid instructors from distributing to students materials that will assist them in learning to use the Westlaw system? She noted

that the language about samples and demonstrations being "centrally received" is in the passive voice and does not identify who is responsible to ensure that is done. It is odd when there is no subject in the sentence. With respect to sales and marketing events, what constitutes a "sales or marketing event sponsored by" a business entity? Finally, the present language concerning gifts to Group A individuals would forbid her from receiving a gift from one of her children; she assumes the policy was meant to bar gifts "provided by a business entity," but that limitation was not included in the draft.

Professor Gonzales thanked Ms. Zentner and commented that the discussion has illustrated how complex the institution is. She jokingly expressed the hope that Ms. Zentner would be able to increase her staff to answer all the questions that will arise. Ms. Zentner expressed certainty that her staff would not increase and thanked the Committee for its time.

2. Update on Google

Professor Gonzales welcomed Vice President Cawley, Dr. Duin, and Mr. Gulachek to the meeting to provide an update on University discussions with Google. She noted that the Committee had been provided earlier in the day copies of an article reporting that UC Davis had declined to use Google for its email system because of concerns about security.

Vice President Cawley said he knows the Chief Information Officer at UC Davis and will talk with him about the decision they made. He said he wished to provide the Committee an update on how the University decided that Google is secure and will meet University management practices. He asked Committee members how many were familiar with Google Apps; many were. Mr. Cawley explained that the Google apps suite of software includes mail (gmail), calendar, chat, documents (file-sharing and creation), and a web-hosting collaboration tool.

Professor Jacobs asked if the package included Google Wave. It does not, yet, Mr. Cawley said. Mr. Gulachek reported, however, that Google has asked the University if it wishes to participate in testing Google Wave; they have agreed to do so with enthusiasm.

"It is OUR Google," Mr. Cawley explained. The University owns the data; it controls the applications, and it turns things on or off. Once the decision was made to use Google for students, they were asked if it would work for faculty and staff. Some faculty and staff already use Google; a number of deans and faculty have asked the Office of Information Technology (OIT) to make it work for all faculty and staff. They have worked with Google, the auditors, the General Counsel's office, and the compliance officers, as well as a lot of faculty and staff. They asked Google to produce their most recent SAS70II; a major audit review of its control processes and security procedures; the University auditors were allowed to validate the test procedures and OIT received an outstanding report about them. The University will receive a report from Google every 18 months and he has asked the University's auditor, Gail Klatt, to audit the University’s Google Apps implementation. The auditors' conclusions were that they have a high degree of trust in Google from both technology and management standpoints and that the Google environment is more secure than anything the University could reasonably afford.

After these discussions, the University tightened the contract so that it obligates Google to maintain their security standards, Mr. Cawley related. He said he believes the Google environment is as safe as the University's. He emphasized that email, regardless of the service provider, is not secure for transmitting private or sensitive data and said he will remind the University community of this again.

OIT is now working with each college to design a rollout. They are not forcing any schedule, and the Academic Health Center units will probably be the last colleges to make the change, and they may create an exceptions process to allow individuals to sign up earlier. (The last conversions are expected to take place in September of this year—it will not be a multi-year process, Mr. Cawley said in response to a query.) The process will take a while because everyone must sign in and they need to get everyone on Google calendar. They are developing training materials and there will be much available online. Both gmail and the calendar will integrate with handheld devices; the transition will be painful for some, and some will need handholding, but they will provide the necessary support, Mr. Cawley said.

Professor Oakes said it should be on the record what the change will cost and save the University. Mr. Cawley said that if everyone converts to Google, and the University can turn off its current calendar and email systems, it will save about $1 million per year (approximately $500,000 in licensing fees and another $500,000 for one rather than two systems). If the University must continue to run its own systems, the savings will not be as great. Professor Oakes suggested that if units resist making the change, those units (rather than the cost pools) should be charged with the cost of maintaining the University systems. Mr. Cawley said that it may come to that. Mr. Gulachek reported that they have received feedback encouraging them to compress this transition period both to avoid the need to use two calendar systems and to more quickly realize the savings; they are working with the information-technology leaders in the colleges on the transition. They are also working with the coordinate campuses, Dr. Duin added.

Professor Wambach asked about the merits of buying systems versus homegrown systems and pointed out that the University is purchasing services from Google rather than supporting Gopher Mail, but eliminating WebVista and supporting its home-grown Moodle site. Mr. Cawley said that the OIT strategy, set out in their six-year plan, is that the future will more and more be purchasing software as a service, with access over the Internet, a trend that corporate America is also seeing. There is no way the University can develop and maintain solutions at the price it can be provided on the market.

WebVista is different, Mr. Cawley said. The vendor is no longer supporting it (after 2013); Blackboard bought it and now wants institutions to buy their new product—at twice the cost. The vendor is eliminating WebVista. There is another product that the University prefers, Moodle. He has asked whether the University needs two course-management software systems, and appointed a committee that engaged in a lot of consultation to advise him on the question. The committee recommended going with one system, Moodle, because that is the one that students and faculty prefer. It is an open-source product used in 212 countries around the world with support unlike WebVista—and the vendor cannot take it away.

The Senate Committee on Information Technology has told him that OIT has a lot of work to do in the next two years to get faculty ready to move courses from WebVista to Moodle. How it will be done will vary by college. There are about 27 months to get ready, because courses for 2012 must be ready for Moodle. They will have the ability to archive WebVista courses so that instructors can make the transition later if the course is not needed immediately.

What happens to University listservs, Professor Chomsky asked? They remain in place, Mr. Cawley said.

Professor Hanna said that students have email for life; how do they get off the list if they don't want it? All they have to do is quit using it, Mr. Cawley said; if an account is idle for a year, it is turned off. And what about emeritus faculty, she asked? They retain their email for life, Mr. Cawley said.

Professor Hayes said that she uses WebVista in part for course materials that should not be available publicly; will there be the ability to restrict access on Moodle? There is, Mr. Cawley said. Some functions in Moodle have never been turned on but the University may wish to do so, Dr. Duin said. They want Moodle to be a superior experience, Mr. Cawley said, and there are gaps in it (such as the ability to detect plagiarism).

Professor Isetts commented that syncing a palm device in the Academic Health Center is tedious. Mr. Cawley said it took him about 60 seconds to integrate his phone to Google. Professor Oakes suggested that the first adopters should be asked to teach those who follow.

Professor Hoover asked if people will be able to retain their private gmail accounts once they have a University gmail account. They will, Mr. Cawley said, and both can be integrated on a cell phone. One can blend them or not, as one wishes, Mr. Gulachek said.

Professor Gonzales thanked Mr. Cawley, Dr. Duin, and Mr. Gulachek for joining the meeting.

3. Creating a P&A Senate

Professor Gonzales now welcomed Sarah Waldemar, Chair of the Council of Academic Professionals and Administrators (CAPA), to discuss the possibility that CAPA may proposed to restructure itself into a senate, parallel to the Faculty Senate and the Student Senate.

Ms. Waldemar related that the conversations about converting CAPA to a Senate began last fall; they appointed a committee to consider the question and will take a proposal to CAPA this month for feedback and, if appropriate, put it up for a vote in June. If the concept is approved, there will need to be revision of a number of Senate documents and approval by the Board of Regents will be required. She is bringing the idea to this Committee to seek faculty suggestions and comments.

Ms. Waldemar said that there would likely be a name change and explained that CAPA was established when the P&A staff were relatively new as an employee group, and set up outside of the governance structure. At the time, the value of being part of the Senate structure was not apparent; restructuring would allow them to work more closely with the faculty and administration. The change would include modifying how P&A senators are elected to the University Senate but it would not mean a change in the number of P&A senators in the University Senate. The idea that will be presented to CAPA will include maintaining the current breadth of representation in the P&A Senate.

Professor Chomsky noted that there are faculty-like P&A staff who serve in the Faculty Senate and vote for faculty senators. When that arrangement was created, allowing such P&A employees to vote both for faculty senators and for CAPA members, it was because CAPA was different and not part of the Senate. If there is a P&A Senate, that issue will come up. Ms. Waldemar said the faculty-like P&A staff have distinct job descriptions and that no decision has been made and little discussion has taken place regarding their voting. They now do vote for both CAPA and faculty senators, Professor Chomsky observed, but if a P&A Senate were created, they should only vote in one or the other body. Are there

things particular to P&A status, in addition to their faculty-like status, that requires their concerns be heard on the P&A side? There must be a way to hear those concerns but those individuals should not receive two votes. Ms. Waldemar agreed.

Professor Curley inquired about the motivation for the proposal. Ms. Waldemar said they have looked at what has gone through the Faculty Senate and University Senate and noted that a number of things have bypassed CAPA even though P&A staff are affected by them (e.g., evaluation of instruction). CAPA is enough outside the system that sometimes matters do not flow to them in the same way they would if they were a P&A Senate.

Professor Chomsky said the idea makes sense. Originally there were no P&A staff in the Senate except for those who were faculty-like, and it was only a few years ago that P&A staff generally were added to the Senate. The lack of a structure parallel to the Senate was not a problem before P&A staff became members of the University Senate. There will continue to be some things that go only to the Faculty Senate, she pointed out, but establishment of a P&A Senate will bring clarity to questions that have existed and will require that thought be given to which senate an issue should be referred.

Professor Gonzales asked where CAPA receives support for its existing committees (which would continue if there were a P&A senate). The Executive Committee is supported by the Senate office, Ms. Waldemar said, but they would not ask for Senate support for the other four committees. Their existing committees do not really overlap with Senate committees, she added.

Professor Chomsky noted that there will have to be consideration to practical questions such as a meeting time for the P&A Senate in conjunction with the other senate meetings.

Professor Gonzales inquired how "senatization" would help improve communication between P&A members on Senate committees and the P&A Senate. Ms. Waldemar explained that the current Executive Committee would become a P&A consultative committee, and an outreach committee would be organized and charged with communicating with Senate committee members.

Ms. Waldemar said they will vote in June, so that she would like to return in the fall to talk about implementation, should it be approved.

Professor Gonzales thanked Ms. Waldemar for coming to the Committee for suggestions.

4. Governance Problems Elsewhere

Professor Oakes drew attention to an article that appeared in The Chronicle of Higher Education titled "Faculty Senate Chief Quits at U. of New Mexico, Citing 'No Hope' of Shared Governance." He said he wished to have a conversation on the record about the problems being faced at the University of New Mexico and the different nature of governance experience there and here at the University of Minnesota. The salient point is about shared responsibility, which is not about faculty making the decisions, it is about faculty having a voice. There are detractors, but the faculty must have a voice in governance. Not in governing—that is the executive responsibility.

Readers of The Chronicle provided a number of comments on the article. "Shared governance usually means having a voice on policy and providing feedback on its implementation." "Shared

governance is about letting faculty having influence over matters that affect them, it is not about making the decisions themselves. Faculty just want to have a voice and an administration that is committed to making decisions through a collaborative, consensus oriented process where possible (and granted, that is not always possible)." "Shared governance means that faculty are viewed as stakeholders in the institution. They participate in shaping the future of the institution and solving problems as they arise. I work in an institution with no shared governance to speak of; in the end, the students lose out. Faculty can see when policies negatively impact students, but it is damned near impossible to get anything changed. Our university committees take their agendas from the administration. Committee reports are written for committees and meetings are for rubber stamping. There is a clear sense that if one speaks out, they will be punished. Our faculty council is a joke. Nothing happens there. No one speaks out. Morale is very low. But there are no leaders to take up the cause." "Ditto here at my university. There is no shared governance. It's a joke. All faculty senate meetings rubber stamp whatever is on the agenda. The provost and deans hold the biggest sway on what gets on the agenda. Anyone who speaks out against something becomes a target for the administration, so few are willing to do that. It's only the little details where faculty can have any real impact."

Professor Oakes commented that the experience reported at New Mexico and by the readers of the article has not been his experience while serving on this Committee.

5. Presidential Search

Professor Gonzales next asked Committee members to consider the language about consultation with the governance system in a presidential search. The Board of Regents' office has proposed changing the language that currently appears in a footnote in the administrative procedure "Hiring Senior Administrators: Senate Committee Involvement":

> **The selection of the University President is the legal responsibility of the Board of Regents and the search committee for this office is drawn from the members of the Board. This committee has customarily involved the Senate Consultative Committee in the search, either relying on SCC to act as a search advisory committee or asking SCC to appoint such an advisory committee. It is presumed that this practice would continue.

The Regents' office suggested changes in the footnote indicating the Board has customarily consulted the Senate Consultative Committee and included faculty, staff, and student representation on any search-advisory committee. It was noted that the language in the footnote, originally adopted in the early 1990s, has not been the practice for the most recent searches. The Committee accepted the changes proposed by the Board but suggested that they be written in the present tense, to indicate that they do consult with the Senate Consultative Committee and do include faculty, staff, and students on the search-advisory committee (rather than saying that is what they have customarily done in the past, thereby implying that they will perhaps not do so in the future).

Committee members discussed the size of the search-advisory committee. It was noted that a number of years ago there was information from some of the other CIC schools that presidential search-advisory committees typically had faculty as 1/3 to 1/2 of the members. The Committee suggested that Professor Gonzales write to Board of Regents Executive Director Ann Cieslak to urge the appointment of a similar percentage of faculty members to the search-advisory committee for the University's upcoming presidential search.

6. Open Meeting Law and Senate Committees

Professor Gonzales reported that two faculty members had written to complain about the fact that the meeting with the President, Provost Sullivan, and Senior Vice President Jones on April 15 had been off the record, and that the Committee either should or must comply with the requirements of the state open-meeting law. She asked that a portion of the text of her letter in response be incorporated in the minutes of this meeting (which appears between the * * *)

* * *

I received your letter in which you cited the State of Minnesota's Open Meeting Law, and in which you voiced concerns about the fact that members of the FCC have voted unanimously to close some of our meetings this year. It's deserving of a thoughtful response, so please bear with me.

First, as a technical but minor matter, we have been advised by the General Counsel that FCC and Senate committees generally are not subject to the State's open meeting law. The law (p. 4) provides that it "does not apply to certain types of advisory groups"; because Senate committees are not governing bodies, but are instead advisory groups, we and the University's General Counsel do not believe that Senate committees are subject to open meeting provisions. Having said that, I want to assure you that for the most part, we favor open meetings and full reporting; as you know, we have about the most-reported committee meetings of any imaginable. The FCC and other Senate committees share an extraordinary amount of detail (sometimes to the chagrin of the administration) and I'm not convinced that many faculty or staff share a concern that we are hiding very much.

Second, the University Senate explicitly authorized its committees to close meetings when necessary. In February 2003, the Senate adopted the following change to its bylaws. The Motion below passed unanimously [between the * * * * * * * * * * *]:

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MOTION:

To amend Article II, Section 7 of the University Senate Bylaws as follows (new language is underlined; language to be deleted is ~~struck-out~~).

ARTICLE II. RULES FOR COMMITTEE ON THE UNIVERSITY SENATE

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7. Committees of the Senate shall have a policy of open meetings. Closed or executive sessions may be held only after approval by a two-thirds majority of the committee members present and voting. ~~and only when personnel matters are discussed, when quasi-judicial functions are carried out, or when closed sessions are required to protect the right of individuals. Under this rule, a~~ All regular sessions of the All-University Honors Committee and the Judicial Committee shall be considered closed or executive sessions. ~~As an exception to this rule, the Senate Consultative Committee, the Faculty Consultative Committee, and the Student Senate Consultative Committee are granted the right to close a portion or all of a given meeting, after approval by two-thirds majority of their respective members present.~~ The

committee shall keep a list of all topics discussed and actions taken in its closed meetings and incorporate that list in its minutes. Only committee members and others designated by the chair may remain in the meeting once a motion to close the meeting has been adopted.

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COMMENT:

The University Senate and the Twin Cities Campus Assembly and their committees are not subject to the Minnesota Open Meeting Law.

In general, the Senate and Assembly and their committees should have open meetings. There are times, however, when committees cannot effectively serve a consultative purpose if there are others present. There have been a number of such times during the past year: the Advisory Committee on Athletics had a difficult time discussing the possible elimination of sports when representatives of the media insisted on being present; the Committee on Finance and Planning frequently discusses legislative strategy with the University's Chief Financial Officer (other committees often discuss sensitive political matters as well); the Research Committee has discussed sensitive research projects in connection with the secrecy policy. In these and many other situations, the committees have either had to contort their agendas to fit an item into one of the categories specified in the existing bylaw that permit closed meetings or they were unable to close their meeting--and thus committee members were unable to discuss in an organized fashion the issue before them. Often when closed meetings are not permitted, the chair and committee members are forced to communicate in other ways that do not facilitate full discussion.

The Consultative Committee recommends that any committee of the Senate or Assembly be permitted, by a two-thirds vote of those present at the meeting, to close their meetings, with the proviso that the topics discussed and any formal committee action must be reported in the Committee's minutes.

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Third, and as explained by the COMMENT to the bylaw change I provided above, it is our experience that the senior officers will speak more candidly about some matters when we are off the record. It would be unwise of us to inhibit those candid conversations, and we understand fully the reasons why they need to be off the record. We are aware that our minutes are occasionally read by legislators and staff at the Capitol, and by newspaper reporters. We do not wish to speculate publicly—via the FCC minutes—about what the legislature, individual legislators, or the Governor might do with respect to the University's appropriations, capital requests, or other sensitive political matters. Such speculation can back-fire, or become self-fulfilling prophecies; either way, there are situations in which public speculation manifested in FCC minutes does not serve the best interest of the University. And on any number of matters, neither do we wish to make public debate between FCC members and the central officers about various courses of action the University might take; publicizing sharp differences in matters of opinion does not help the institution when those differences become the grist for often-misleading and inaccurate news media articles. If we want central officers to know our views, and if we want to be in a position to hear about sensitive matters and to offer faculty views about them, we must be in a position to have the discussions off the record.

If you and other faculty colleagues believe that the 17 elected and appointed members of FCC, drawn

from across the University, are to represent most effectively, and as forcefully as possible, the views of the faculty in our discussions with the senior officers, it is essential that we be able to have off-the-record conversations with them. There must be a level of trust by the faculty in their colleagues chosen to serve on FCC if we are to carry out our responsibilities effectively. Of course you and any like-minded colleagues, through a further amendment to the bylaws, could insist that all our meetings always be open and on the record. If you do so, however, you will significantly compromise our ability to consult effectively with the senior officers on critically important issues. If you don't like what you see now, imagine the consequences of a lack of candid discussion between faculty governance leaders and senior administrators that will result from uniformly open meetings.

Finally, I'm no lawyer. To be absolutely certain that I have interpreted the Open Meeting Law correctly, I have relayed your concerns to General Counsel Mark Rotenberg, and we on the FCC will be meeting with him or a representative from the OGC in the near future to discuss the applicability of the Open Meeting Law to Senate committee meetings. We hope to do that by the close of this academic year, and results of our conversation will be reported in detail in the FCC minutes.

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Professor Curley commented that it is clear that the Committee has the legal right to close its meetings. The Committee takes seriously its responsibilities, Professor Chomsky commented, and its reports are widely disseminated to the faculty. They also take seriously a decision to close a meeting, she said, in order to have candid discussions that otherwise would not be held.

Professor Oakes inquired if everyone agreed that it has been of great benefit to have off-the-record discussions; there was no disagreement. He said that Committee members have been able to be better representatives of the faculty because of the closed discussions.

Committee members discussed briefly the state Supreme Court decision reversing Governor Pawlenty's unallotments and the proposed policy covering summer effort, after which Professor Gonzales adjourned the meeting at 2:15 so Committee members could attend the Senate meeting.

-- Gary Engstrand

University of Minnesota