



UNIVERSITY OF MINNESOTA
TWIN CITIES

All University Senate Consultative Committee
383 Ford Hall
Minneapolis, Minnesota 55455
Telephone (612)373-3226

AGENDA (L)

Senate Consultative Committee
Thursday, March 5, 1981
1:15 - 3:15 p.m.
Regents Room, Morrill Hall

1. Fix agenda.
2. Minutes of February 19 (enclosed).
3. Report of Chair (enclosed).
4. Report of Student Chair.
5. Claims Procedures (revised draft enclosed).
6. March 19 meeting?
7. Committee reports.
8. Old Business.
9. New Business.
10. Adjourn.



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MINUTES
SENATE CONSULTATIVE COMMITTEE

March 5, 1981

The thirteenth regular meeting of the Senate Consultative Committee was called to order at 1:15 p.m. in the Regents Room of Morrill Hall by Marcia Eaton, Chair. Other members present were Orhan Arkan, Julie Bates, Robert Brasted, Russell Hobbie, Keith Jacobson, Douglas Pratt, Sue Pribyl, Paul Quie, Dennis Sargeant, W. Donald Spring, and Bruce Thorpe. Guests present were Carol Pazandak, Mary Jane Plunkett, Maureen Smith, and Vice Presidents French and Keller.

The following documents were distributed to the members: (1) President Magrath's testimony of March 5 before the Judicial Administration Subcommittee of the House Committee on Judiciary, against a bill to end the constitutional autonomy of the University; (2) February 5 ACIA minutes summarizing extended consideration of the domed stadium issue and stating ACIA's resolution on the question; (3) a list of reports filed in the SCC office.

1. The agenda was left flexible because the President had been called to testify at noon on the autonomy issue and would be unable to join the meeting until approximately 2:30.

2. The minutes of February 19 were approved as submitted.

3. Report of the Chair. Marcia Eaton.

A. Sexual harrassment. There is no confirmation yet from SCFA on their changes to the final draft of the document from their subcommittee.

B. SCC meeting schedule. The SCC tentatively decided to move the March 19 meeting to April 2.*

C. Library data taken from the Chronicle for Higher Education. Professor Eaton clarified the meaning of "acquisitions" as signifying net acquisitions. The Senate Library Committee will consider the meaning of the data.

D. The Judicial Committee meets today to vote on changing their rules concerning confidentiality.

* There will be a meeting March 19.

E. Old Business.

(1) The SCC steered to SCFA about a year ago a request to consider extending the definition of nepotism. There has as yet been no report back. Dr. Keller said Academic Affairs has made some progress on the question.

(2) SCC requested the ACIA in the fall to make its rules consistent with the heavy increase in athletic participation by women. It is awaiting word from them.

4. Report of the Student Chair. *Sue Pribyl.

A. Fees. MSA Forum meets later this same day to vote on recommendations from the MSA fees committee. She observed that the trial period for a refundable Daily fee is coming to an end and there has been no official resolution of the question. She and Professor Eaton recalled that the ACSA, the Fees Committee, and the Board of Student Publications had all been asked to review the policy. None have yet responded.

B. Domed Stadium. Orhan Arkan reported on the Student Life poll of 725 students, faculty members and Williams Fund donors. The results were widely mixed. Professor Eaton called members' attention to the ACIA consideration of the issue.

C. Sexual harrassment. Julie Bates expressed her dismay that undergraduate students who complain of sexual harrassment are not being referred to any grievance body because of the appearance that the University has no system to deal with them. She requested adding this concern to the discussion with the President.

5. Claim procedures. Professor Laura Cooper (Law), Professor Charlotte Striebel (Math) and Kathy Olson (Measurement Services), representing the Faculty Advisory Committee for Women, introduced themselves and distributed a memorandum containing recommendations for revisions to Attorney Tierney's February 13 draft of claim and petition procedures.

Professor Eaton reminded the meeting that the SCC had, following its February 5 meeting, requested of the University Attorney more easily comprehensible writing in the claim procedures document and a reference to the claim hearings being open, consistent with the recent move to opening grievance proceedings generally. The February 13 draft contains no mention of open hearings. Professor Eaton requested and received the Consultative Committee's approval to remind Mr. Tierney it wants those hearings to be open.

Professor Cooper enumerated the objections of the Faculty Advisory Committee for Women to the February 13 draft of the claims procedures.

A. Roles of the claimants and of the University President. The committee alleges unfairness is reflected in the President's role as both 'impartial judge' and co-respondent with other administrators named in a complaint. They further allege unfairness in the University Attorney's acting as counsel for the University when the claimant is understood not to need a lawyer. The committee proposes two changes: (1) that only the President be allowed to review the legal analysis and recommendations of the University

lawyer; and (2) that either respondents in internal tribunals not be privy to the recommendations of the University Attorney or that the claimant receive them as well.

B. Shortcomings in procedures for hearings not held before the Judicial Committee. The advisory committee alleges the procedures do not sufficiently inform the claimant, describe the nature of the proceedings, nor require the hearing officer to support his/her decision. The committee asks that the procedures be completely rewritten.

C. Burden of proof. The committee charges that the procedures do not apply the burden of proof required by the Consent Decree to the Judicial Committee's hearings. Professor Cooper said since decisions of the internal tribunal or the Judicial committee are appealable, the burden-of-proof required internally should be consistent with that of the federal district court.

D. The committee wants a statement that hearings will be open.

Professor Brasted asked whether any of the committee had met with Mr. Tierney to resolve their differences. Professor Striebel replied that the committee had once offered to meet with him and he had requested them to instead submit their requests in writing.

Professor Hobbie noted that in the meeting the SCC initiated late last fall and which it expected would produce satisfactory claims procedures, the lawyer for the class was, it would seem, somehow prevented from stating his case forcefully.

Professor Cooper said it was the University's responsibility to develop the claims procedures. The plaintiffs retain the option of alleging to the Special Master that the University does not seem to be proceeding in good faith. Time is running short: the internal claims and petitions on past grievances are required to be settled internally by approximately the end of spring quarter, or go to the Special Master.

Professor Spring suggested the committee compile all their requests in writing and, at one of the SCC meetings scheduled with the President, confront the University Attorney. The SCC members need time to study the memorandum just received from the committee, Professor Eaton noted.

Professor Hobbie moved that the SCC invite attorneys Tierney, May and Sprenger to attend the March 19 SCC meeting with the President, for an exchange about the claim procedures. The motion carried without dissent, but was later reconsidered (see 7.B. below).

6. Committee reports.

A. Legislative Relations. Professor Pratt reported that the district meetings with legislators have all been held or are presently scheduled. Faculty have reached key committee people. He and Professor Robinson are now planning other ways of meeting with legislators.

B. Outreach. Professor Brasted awaits the results of SCEP's fact-finding effort. Professor Eaton asked if the newly approved administrative

post of Assistant Vice President for Outreach would soon be filled. Dr. Keller said the administration would post that opening soon, but added that the budget crisis makes filling new posts somewhat problematical.

C. Senate Reorganization. Professor Spring stated that it is essential there be a quorum for the April 16 Senate meeting to pass the new constitution.

7. Discussion with the Vice Presidents.

Vice President French observed that the administration's presentations to the legislature have consumed a good deal of time.

A. Financial. Professor Brasted asked Dr. French what he expected the effect would be on University of Minnesota Medical School students if student loans are significantly reduced. Dr. French replied that while a change might mean students would acquire more debt, he did not think it would keep any from attending.

Bruce Thorpe asked Vice President Keller to comment on the likelihood of a tuition surcharge for summer session, whether his office supported it, and how they would justify it.

Dr. Keller replied that he supports the added fee for summer. The need relates to the University's original plan to sell \$5 million worth of land. Consultants now say the University could not realize more than between \$2.5 million and \$4 million in land sales this year. (The land was overassessed in terms of the current market, and the Rosemount land cannot presently be sold.) The University has now centrally retrenched \$750,000 from the Indirect Cost Recovery Fund, and it absolutely needs the extra \$350,000 a summer surcharge would bring. The students, he said, lose either way. They pay more with a surcharge, but the more the U retrenches, the less return they get for their expenditure. With reserves down to nearly nothing, and the University budget so tight, a University payment of a million dollars in debt service next year would come out of the hide of the whole University.

Mr. Thorpe stated his strong disapproval on the Regents part in changing their vote by extending the surcharge, at the recommendation of the administration. Student attitude toward the University on this issue is a serious problem, he said.

Dr. Keller replied that the essential \$350,000 does not exist apart from a surcharge. Dr. French added that the budget executive is trying to spread out the hurt as much as possible. The burden does not fall only on students.

Sue Pribyl asked where the difference will come from between realizable income from land sales, the new retrenchment and the surcharge on the one side, and the anticipated income from land sales on the other. Dr. Keller said that the University will carry a deficit into the next year, but that the deficit must be limited. The University considered selling rental housing it owns on Ontario Street but concluded it could not justify displacing several hundred students as that would do.

Professor Hobbie reminded the meeting that faculty members have suffered many adverse changes in their work conditions over several years of retrenchment. He admitted his irritation that students refuse to admit the difficulties and swallow the surcharge. Dr. French cited the alternative solutions Michigan State

and the University of Michigan have adopted of dropping programs and faculty.

Orhan Arkan stated his recollection that the surcharge had been regarded as the least desirable of the three moves to compensate for the \$14.1 million drop in revenues. He questioned how the least desirable means could be the one chosen to extend. (Other recollections of the relative tolerability of the steps taken differed, Professor Spring mentioned.)

Dr. Keller explained the cost of borrowing. The University can only borrow against the value of its land. The banks' requirement that the University start immediately to repay the principle as well as paying interest would take a prohibitive chunk out of the University's budget. Looking at the surcharge aspect without considering the problem as a whole, he said, leads one to erroneous conclusions. Overall, the retrenchment has been organized in a way to preserve the educational program, the parts of the University that directly affect the students.

Mr. Arkan asked if Summer Session makes a large profit. Dr. Keller explained that the presumed affluence of Summer Session is a great fallacy. Summer Session programs are not assessed all actual costs, but only faculty salaries, and those are at a lower rate than during the rest of the school year. The University must subsidize Summer Session because the long-standing legislative policy of not supporting Summer Session continues even though the reason for the policy is gone. Professor Pratt added that academic departments also pick up some Summer Session costs, such as lab costs.

There was a brief consideration of the funds available for the rest of the current year. On April 15 the state will receive the final report on revenue projections of state income through the end of the fiscal year (June 30, 1981). The University, however, said Dr. Keller, could not further reduce costs before June 30. Dr. French said a further state shortfall is anticipated, but it appears that educational systems will be protected from it this time. Professor Pratt commented that it is hard for departments to make rational decisions in the atmosphere of uncertainty.

B. Consent decree claims procedures (see item 5 above).

Vice President Keller offered a different viewpoint on the University's responsibility in developing claim and petition procedures under the consent decree. He described the SCC's providing for a meeting with an outside attorney as within their right, but unadvisable. He asked members to consider University independence and autonomy in fulfilling its obligation under the consent decree.

Professor Hobbie summarized his reasons for making the motion. He referred to the earlier meeting of lawyers the SCC had recommended, by which the SCC intended to bring together both sides so they could resolve some striking differences. Dr. Keller said it may well be appropriate for the SCC to be critical of the University Attorney if they perceive he has not done an adequate job. But today's SCC proposal would give the class attorney access to a University decision in an extra-legal setting. The precedent disturbed him, he said.

The University and the Consultative Committee should push ahead to correct any flaws in the procedures, he continued, However, he said, it is not up to

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the University to create a document to please the advisory committee. He said it has been well observed that the University does not do well at creating and operating a legal type system, but that it is successful in providing collegial grievance proceedings. He favors the proceedings being as open, free and fair as they can be made, and consistent with court rules. The University wishes to do its best to achieve an internal settlement. Where there is no internal settlement, the case will go to court.

Professor Pratt moved to reconsider Professor Hobbie's motion. The motion to reconsider passed without dissent. Several SCC members expressed their reservations with the earlier motion. Professor Hobbie offered a substitute motion: That the SCC invite University Attorney Tierney to discuss the claims procedure document with them at its meeting with the President on March 19. The substitute motion carried without dissent and prevails over the motion at the end of section 5 (page 3).

The meeting adjourned at 2:20 p.m. and reconvened immediately with President Magrath.

Respectfully submitted,

Meredith B. Poppele

Meredith B. Poppele,
Secretary



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CONVERSATION WITH THE PRESIDENT

March 5, 1981

The Consultative Committee's conversation with President Magrath convened at 2:20 p.m. on March 5 in the Regents Room. SCC members present were Orhan Arkan, Julie Bates, Robert Brasted, Marcia Eaton, Russell Hobbie, Keith Jacobson, Douglas Pratt, Sue Pribyl, Paul Quie, Dennis Sargeant, W. Donald Spring, and Bruce Thorpe. Guests were Vice Presidents Fench, Hasselmo and Keller, Assistants to the President Jim Borgestad and Carol Pazandak, and Mary Jane Plunkett, student government adviser, and Maureen Smith, University Relations.

The President reported from the legislature that the autonomy amendment had cleared the House subcommittee and that hearings are scheduled for next week. He is optimistic that after the University has presented its case, the amendment will fail. The Regents and the administration are very strongly opposed.

The principle agenda item for the SCC with the President was on planning for possibly extremely adverse financial conditions in the future. Many of us, Professor Eaton said, believe we face hard times, although we don't think Minnesota will face Michigan-style cuts. She reported that she and Professor Swan, Chair of UCBRRB, had met with a small group of faculty on March 2. That group agreed that charged words such as "catastrophe" should not be used. The SCC seeks Professor Magrath's initial response to her draft document and the idea that departments need guidance in reducing costs.

The President said that while the University cannot make further cuts without harming its educational mission, and that one could not announce in advance where the University would cut if financial disaster fell upon the state, still it would be unrealistic not to assess a situation the University might indeed have to face. He and the central administrators regard it as a sign of maturity, he said, that a student and faculty committee wants to discuss these issues. He hopes the new effort will avoid duplicating other planning and studies underway. He added that thoughtful, substantive kinds of planning also help the institution make good decisions about using extra, unexpected resources which just might happen along. He specified that he would not favor reassessing the Tenure Code at this time. Vice President Keller concurred in this opinion and recommended that substance, more than process, be the focus.

The President remarked, apropos the extent of University planning, that an argument he had heard that day in favor of removing the University's autonomy was that enrollments are going to drop drastically and the state should direct

the University's response to that change. President Magrath was able to answer that the University began its planning for enrollment drops long before the HECB did.

Professor Spring asked whether it would be practical for the initiative for this examination to come from a faculty group. Central administration has the necessary resources and a faculty group might inadvertently waste a lot of time and generate damaging rhetoric. Professor Pratt spoke in favor of preserving the faculty position in planning.

President Magrath said he approved the initiative of SCC and other faculty groups in surfacing the issue, and also sees it very important for students and faculty to participate.

The vice presidents pointed out some different approaches a new study could take. Dr. Hasselmo said there is nothing in the University's planning process directly applicable to the elimination of a unit or department (as Geography is threatened at Michigan). Dr. Keller cited calculating the cost savings from eliminating specific units as one way the budget executive tries out ideas. The budget executive can bring out alternatives for consideration and try to structure a discussion, he and Dr. French suggested.

President Magrath suggested the Consultative Committee could create an expanded subcommittee with a very general charge, invite in the budget executive to explain what it has done and considered, and then be in a position to define a more precise charge for itself.

Professor Eaton said it has been suggested that the questions be discussed at several levels. Some sets of criteria are not applicable at the department level. Dr. Keller and Professor Eaton cited questions of fair workload in various areas, and of accountability, and Dr. French said it is the faculty who can be the most helpful in answering those questions.

Professor Eaton stated that even if University budgets do not decline, the University will still have to make choices because new areas of knowledge emerge which require new faculty and new program administrators. The University will never be able to do everything. Dr. Hasselmo said the planning process works to accommodate these kinds of choices.

Orhan Arkan asked how specific the SCC wanted to be in its plan. He asked if they might discuss procedures whereby units and departments are evaluated. Dr. Keller said that in each of the last three retrenchments the University has asked those questions and used the same terms Mr. Arkan raised ('core', 'centrality', 'productivity', etc.). Comparison of widely different units are always ultimately subjective, he said.

President Magrath said that while it will not be possible to produce a precise prescription, it would not be a mistake to prepare for future decisions by exploration and examination.

9. New Business.

A. Professor Eaton informed the Consultative Committee that the Campus Calendar Committee has been asked to discuss a semester system and an early fall start,

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early spring release schedule, not to begin--if at all--before '83-'84.

B. Julie Bates said she felt overwhelmed by the University's lack of resources for students who have suffered sexual harrasment. SOS and the Women's Center apparently cannot handle the complaints.

Vice President Keller said that both CLA and the Graduate School have procedures for handling such complaints, and that any CLA students should be referred to the dean's office.

President Magrath and Professor Eaton both expressed their hopes that SCFA will bring its proposal before the Senate this spring. The President has held off on taking administrative action, preferring to have procedures resolved through the Senate, but said he could on an interim basis put a plan in the deans' offices. Professor Eaton added that counselors can tell students each collegiate unit has a grievance mechanism which they can try to use--although those normally deal with scholastic grievances.

President Magrath said that an aggrieved student can always write a letter to her dean with a carbon to the President or a vice president. He acknowledged that students are sometimes too fearful of recrimination to take that step. Sometimes the administrators have been able to work the problem out.

The conversation concluded at 3:20 p.m.

Meredith B. Poppele,
Secretary, SCC

C. Peter Magrath
Testimony for Judicial Administration Subcommittee of
House Committee on Judiciary
March 5, 1981

Mr. Chairman and Members of the Judicial Administration Subcommittee of House
Committee on Judiciary:

I would like to make a few introductory comments, outlining the position of the University of Minnesota on H.F. 34. I will then yield the podium to Regents Moore, Unger, and Krenik so that they might present their views on this important matter.

For the record, let me note that during the 1976 and 1977 legislative sessions, the Board of Regents vigorously opposed proposals that were virtually the same as that embodied in H.F. 34. This opposition, as the speakers who follow me will attest, has not diminished. Rather, the Regents, as well as the University community in general, have the most serious reservations about any change in the constitutional status of the University.

The basis of these concerns is reflected in a series of questions that H.F. 34 raises, but unfortunately does not answer. The first, and perhaps the most perplexing question is this:

What is the specific reason for changing a constitutional policy that has served this State and its largest University, one of our nation's great educational institutions, for 130 years? Put another way, what is the immediate harm that this bill is designed to correct? If passed, would this bill actually succeed in correcting the alleged harm?

I can only speculate upon the answers to these questions, for I have yet to be informed of the specific problems that the University's constitutional status has created. I must presume, given the general arguments of its authors, that the bill has something to do with the fact that the University of Minnesota is a public institution receiving approximately 1/3 of its fiscal resources from the State. Because of this public support, it is argued that the University should be subject to direct public control and governmental management.

I do not disagree with the suggestion that the University of Minnesota be publicly accountable. As the record clearly shows, the University is already subject, in real and effective ways, to all three branches of both the State and the federal government for the expenditure of its public monies. In fact, I suspect that the University of Minnesota is subject to more intensive State and federal review than any other publicly-assisted institution in Minnesota. In broad terms, we are subject to legislative and executive branch scrutiny every time we seek funds to support our general programs, State Specials, or capital proposals. We are further subject to the Architects Designer Selection Statute every time we propose to construct a major new facility. We are also subject to the full review processes of the Legislative Audit Commission. And our constitutional status hardly protected the University from sharing in the recent \$195 million State budget cutback. In fact, the Governor's review process resulted in the University's being retrenched more than any other single State unit or agency.

In addition to these review mechanisms, there are countless other ways that, as a unique research University, we are held to strict accountability standards. Every federal dollar the University receives -- and I might point out that the University adds almost \$100 million to the State economy each year through

federal support -- is subject to external review. Every time we seek to develop and fund new academic programs, we are obligated to share our proposals with the Minnesota Higher Education Coordinating Board. And the University Hospitals alone are already subject to no less than 185 different federal, state, and external agencies, many of them relating to fiscal matters.

In short, the University of Minnesota is held fiscally accountable for the resources it receives. If there are any questions about our expenditures, then I assure you, they will be aired by members of the Department of Finance, the Governor's Office, the House Appropriations Committee, the Senate Finance Committee, the Education Division on Appropriations or the Finance Education Subcommittee. And if our answers are found to be lacking in some respect, then the legislative committee members have the power to vote against our appropriations requests. That, to my mind, is the very strictest form of fiscal accountability.

A second question raised by H.F. 34 is, "How does the University now relate to Minnesota Statutes on other matters?" It seems to me that before we look at the possible effects of this bill, we ought to have a full picture of the extent to which the University is already subject to legal regulations. It has been made abundantly clear over the years that the University is by no means beyond the law of our State and nation. Our legal status is indeed explicitly recognized in the Minnesota Constitution and we are governed in compliance with the State and Federal Constitutions, with federal laws, and with laws exercising the general police powers of the State of Minnesota in matters of public health, safety, and welfare. Beyond these basics, however, the University is subject to a wide array of other Minnesota Statutes, either because the University is written in or because

the Board of Regents has adopted policies to place the University in compliance. The list is a long one -- longer than most members of this committee may realize -- and we do not, to my knowledge, have a complete, up-to-date list. When the Constitutional Study Commission was in operation in 1971-72, the list included some forty chapters of statutes involving University compliance. Since then, the list must have grown, because the University complies with the privacy laws, the open meeting laws, and the Department of Finance legislation, to mention only some of the recent legislation.

It is not clear how many additional statutes would apply if this bill were passed and a constitutional amendment approved. Unless we have a very precise picture of the specific statutes that would apply to the University, and unless we know this picture before a bill of this kind moves, we are going to be in the dark on a number of vital questions.

It does seem clear that H.F. 34 raises far more questions than answers. The bill before us simply would add to the Minnesota Constitution the phrase "except as otherwise provided by law," to the current section conferring upon the University "all the rights, immunities, franchises, and endowments" granted to the University. This language lends itself to many interpretations. Let me list a few questions that illustrate the point:

- Does this mean no changes in statutes affecting the University until new bills are enacted in each particular case?
- Does this mean a general housekeeping bill has to be passed to make all relevant statutes applicable to the University?
- Does it mean that the University is to be written into Chapters 15 and 16 and placed under the supervision of the Commissioner of Administration? Further, would the Department even be capable of including the University?

- . Does it mean that the University should be placed under the same statutory status as the other post-secondary systems, and if so, which system should serve as the model?

Taking the last of these first, perhaps there exist some general assumptions that "the University should be treated exactly like all of the other systems." It isn't that simple. Please consider Chapter 136. For one thing, it does not treat the State Universities the same as the Community Colleges. I am not suggesting that they should be treated the same, but there are enough differences in Chapter 136 to make it impossible to simply write in "and the University of Minnesota." I thought I might find in the Statutes a clear statement of the role and responsibilities of the other post-secondary boards, and that this might provide some guidance about the role of the Regents if this bill passed. What I found in M.S. 136.03 is that the State University Board has all the duties, powers, jurisdiction, and authority that it had "on and prior to April 1, 1901." The statutes on the State Community Colleges are not any more specific, since much of the language on duties and powers talks more about where they can locate colleges than how they can run them.

In looking through these statutes, one finds other interesting sections, especially in the light of some of the arguments about University autonomy. One learns, for example, that the State University Board is not subject to the State Designer Selection procedures if the building project in question is a revenue-producing facility, such as a dormitory or a cafeteria. (137.37) One finds that the State University Board can make its own rules on the purchase of technical educational equipment and not follow the State's regular procedures. (136.24) One also learns that both the State University Board and the State Community College Board have specific areas of "autonomy" which are not subject to the controls of

the Departments of Administration and Finance. I don't challenge these particular sections of Statute; they are probably all perfectly sensible. What I would say, however, is that current statutes certainly do not provide a clear-cut model of how the University of Minnesota might be treated, and they do lead to this insistent question: How would the University of Minnesota specifically be treated under a new legal arrangement.

I do not have any clear answers to these statutory issues, even though I view them as former professor of constitutional law and history. As lawyers and members of this Judiciary Committee, many of you may entertain similar questions as to the implications of H.F. 34. If we have questions about the bill, the reasons for its introduction, and the effects it might have, what about the general public who would have to vote on a Constitutional amendment?

The ballot language suggested in the bill is very carefully and strategically written. A quick reading of the question in the voting booth would probably lead many people to see it as uncontroversial. Although the language is certainly not overtly slanted, the only background information provided is that the other public institutions are subject to statutory law; it fails to mention the fact that the University of Minnesota is already subject to a long list of statutory laws. Regardless of one's point of view, though, this bill poses an issue that plainly cannot be described in the space available on a ballot. Regardless of how it is written, the only way to accomplish an informed vote on the issue must be an extensive, state-wide campaign that exposes the issue to public debate. This is not a minor housekeeping bill to address a technicality in the Minnesota Constitution, and it cannot be treated this way.

Without extensive background information, it is not hard to imagine some of the typical reactions when people read the ballot, and I find these reactions troublesome. Some will read it and say, "Sure, nobody is supposed to be above the law," but I think I have made it clear enough that the issue just isn't that simple and that the University does not argue that it is or should be above the law. Another reaction might be -- and it bothers me greatly -- that the University must be doing something wrong -- something for which it should be punished. I do not happen to believe that the University deserves to be punished or to be perceived as being irresponsible and unaccountable to our State's fundamental laws and interests. Quite to the contrary, particularly in these difficult times, I believe the University of Minnesota -- one of our State's most valuable resources -- needs to be encouraged and supported for its excellent work.

Thus, Mr. Chairman, my general reaction to H.F. 34 is that it is neither necessary nor desirable. Regardless of statutory or constitutional provisions, the University of Minnesota is not above the law. It has, in fact, traditionally responded, and continues to respond, as fully and promptly as possible, to all the publics to whom we are accountable. The University's constitutional autonomy finally means, when all is said and done, that a unique institution has a safety valve. It is not a license to ignore statutes, bills, rules, and regulations.

In most situations, in fact, our constitutional status may be more important in its presence than in its application. The very presence of this status seems to have a cautionary effect, discouraging legislative meddling in the pursuit of disciplined inquiry, protecting colleges from becoming arenas for political contention, and providing limited relief from State administrative bureaucracies.

As one of the largest, most visible public institutions in the State, the University of Minnesota at times is an obvious target. Sometimes we deserve the barbs; usually we don't. As a big establishment, we do not have the luxury of replying the way we would sometimes wish. I am convinced that the constitutional status has something to do with our reactions to criticism, working in a way that is just the opposite of what some might expect. Rather than firing back or ignoring an attack from what may seem like a protected position, it has been my observation that University people tend to take the extra step in the other direction toward discussion and negotiation. Put bluntly, in order to avoid the kind of confrontation that might cost us our constitutional status -- and hurt both the State and the University -- we have made concessions that we might otherwise not have made.

Our whole structure of governance and method of doing business is currently based on the premise -- and the promise -- that issues can and should be resolved within a carefully designed framework of public and University policies. If University policies are any different from other public policies, there ought to be a rationale for that difference, and we ought to stand ready to explain and defend our rationale. To the extent that particular policies or decisions made under those policies are the issues, we believe that focusing on those issues is much more productive than putting through a constitutional amendment that may or may not solve the issue and could have side effects that cannot be anticipated or controlled.

I would like to conclude with these thoughts. In the seven years I have been coming before the committees of this hard-working Legislature, I have been impressed by the candid and productive dialogue between its members and the University of Minnesota. The lines of communication -- and true, intelligent, accountability -- are wide open, reinforced by the significant fact that you directly elect the Regents of the University, unlike the case with any of the other

educational institutions. This process is working, and it is working well, and it has served Minnesota's interests. There is no reason to engineer a major constitutional change affecting one of our State's great and vital intellectual resources. I hope you know and understand my profound respect for this Legislature and its committees. University policies and procedures are open for your committee's examination. If any of them are of concern or interest, please let us know. I would welcome opportunities to explain and review them with you at your convenience. Such a course, I respectfully submit, would be far more productive than moving ahead on the bill before you.

DRAFT PROPOSAL ON PLANNING

A general concern of faculty at the University of Minnesota is that financial exigencies within the next few years may require drastic measures if the University is to maintain its academic integrity and high quality educational programs. At a recent meeting of faculty governance leaders of the Big Ten, Marcia Eaton, Chairman of SCC and Patricia Swan, Chairman of UCRRBR had this concern magnified dramatically when they learned that Michigan State is right now faced with the necessity of cutting programs, some of which include tenured faculty.

No one wants that sort of thing to happen here. It may be bad for morale even to think about it as a possibility. But it may be equally bad, or worse, to ignore it.

At that meeting we also learned that the University of Minnesota has made greater progress for long range planning than have many other institutions in the Big Ten. But our long range planning has, for the most part, been based upon "steady state" assumptions. The criteria developed by the Planning Council, as well as those developed by the Budget Executive in consultation with UCRRBR, are probably not applicable in a disaster situation.

The Tenure Code approved by the Faculty Senate in 1973 (and as yet not approved by the Board of Regents because of the "cease and desist" orders) specifies clearly the procedures that are to be followed when tenured faculty are dismissed due to a financial emergency. The code states that the criteria for such cuts must be determined independently of a consideration of any individual units. We believe that it is essential that such determination begin now, so that we can face emergency as calmly and rationally as possible.

We further believe that such discussions carried on "abstractly," rather than with the goal of preparing "hit lists," can actually be good for morale.

Obviously this issue is central to the charge of many Senate and University committees. Clearly it relates to the work of SCEP, SCFA, Research, Tenure and others. SCC proposes that an extended subcommittee of SCEP be formed, with members from _____

The charge to that subcommittee will be as follows:

1. Examine Section 15 of the 1973 Tenure Code to see if the procedures dictated there are still adequate.
2. Look at the criteria used last year by the Budget Executive and UCRRBR and this year in developing planning memoranda to see if they are such that they satisfy the needs as spelled out in Section 15 of the 1973 Tenure Code.
3. If the criteria are adequate, determine whether the Senate should approve them as an independent policy (thus avoiding "cease and desist" problems).
4. If the criteria are not adequate, recommend changes and/or methods for making changes.

The subcommittee should report back to the SCC.

Marcia M. Eaton

2/9/81