



UNIVERSITY OF MINNESOTA

University Senate Consultative Committee
614 Social Sciences
267 19th Avenue South
Minneapolis, MN 55455
Telephone (612) 373-3226

AGENDA

FACULTY CONSULTATIVE COMMITTEE MEETING
AND
DISCUSSION WITH THE PRESIDENT

May 17, 1984
10:15 - 12:30
300 Morrill Hall

- 10:15 1. Minutes of May 3 (enclosed).
2. Report of the Chair.
3. Report from the "Ad Hoc Salary Advisory Group."
4. Election of Chairperson for 1984-85.
- 10:30 5. Discussion with EEOW of the University's Debeau-Melting appeal. NOTE: Professor Striebel will join us for the discussion.
- 11:00 6. Appointment of faculty member to two-year term on Senate Planning Committee.
7. Relationships between Student and Faculty Governance Structures.
8. Preliminary Discussion of Holt Task Force Report.
- 11:30 9. Meeting with the President and Vice President:
Tenure Code. NOTE: Members see attached letter.



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MINUTES
FACULTY CONSULTATIVE COMMITTEE MEETING
AND
DISCUSSION WITH THE PRESIDENT

APPROVED 5/31/84

May 17, 1984
10:15 - 12:30
300 Morrill Hall

Members present: Virginia Fredricks, Phyllis Freier, John Howe (Chr.), Marvin Mattson, Jack Merwin, Irwin Rubenstein, Deon Stuthman, Burt Sundquist, W. Donald Spring, John Turner.

Guests: Members-elect Shirley Clark, Joseph Latterell, Paul Murphy; Professors Fred Morrison and Charlotte Striebel; President Magrath, Vice Presidents Keller and Vanselow; Doug Iverson, Kate Parry, Maureen Smith.

1. The minutes of May 3 were approved with one correction: The motion printed at the middle of page 3 was offered by Professor Spring, not Professor Sundquist.
2. Report of the Chair. Professor Howe introduced Professor Joseph Latterell, elected from the Morris Campus.
3. Report from the Ad Hoc Salary Advisory Group. Professors Howe, Rubenstein, and Spring.

From the 1983-84 year, central administration had \$900,000 for special salary purposes, some of which came from a legislative appropriation and some from retrenched monies. The Vice President for Academic Affairs this year has \$800,000, none of it from retrenched monies, plus \$40,000 remaining from last year, to allocate for 1984-85. The money is to be used for (1) normal retention situations, (2) meritorious individuals whose salaries are out of line in their departments or by comparison with peer institutions, and (3) units that suffer special market pressures.

This spring's advisory group is similar in composition to the 1983-84 group and its members come from the same three committees: SCFA, SFC, and FCC. The group's first meeting with the vice president was on May 14. Vice President Keller announced to them he would operate on the data already created, and hopes the increases will be determined soon and effective July 1.

Vice President Keller wants advice from the ad hoc group on how much of the special salary money should be set aside for each purpose. The boundaries blur between the market-impacted criterion and cases of individual retention. Indivi-

duals were nominated in 1983-84 whose situations didn't fit the criteria but in whose cases Vice President Keller sees merit.

Professor Howe reported that the advisory group had expressed the concern that faculty salary increases not become unduly centralized. The group also questions whether any retrenchment monies should be used in the future for special salary increases (they were in '83-'84, they are not in '84-'85).

Vice President Keller will bring back a specific set of distribution proposals to the group for a May 24 meeting. It is also expected that the next legislative request will include a request for meeting special salary needs.

(NOTE: Vice President informed the ad hoc group that the administration would like to shift the start of the University's fiscal year from July 1 to September 15, in the summer of 1985 if possible. The advantage to the later beginning is that the University can write its budget on the basis of the known legislative appropriation. There are many technical problems to be solved, however. In addition, staff on 12-month appointments take a recurring loss from having raises go into effect 2½ months later than formerly.)

4. Election of FCC/SCC's Officers for 1984-85. The outgoing faculty members have caucused. They propose Professor Jack Merwin for chairperson and Professor Phyllis Freier for associate chairperson.

Professor Stuthman moved the committee cast a unanimous ballot; Professor Fredricks seconded the motion. The committee approved the motion.

5. DeBeau-Melting case: Possibility of University Appeal. Discussion with Professor Charlotte Striebel, Chairperson of Committee on Equal Employment Opportunity for Women.

Professor Howe reminded FCC that the EEOC had heard that FCC had recommended the University appeal the finding of the special master on the DeBeau-Melting case if the court sustained it. But in fact, the FCC discussed the question only once, and briefly, on February 2, shortly after the finding had been announced. It seemed to many faculty that the court's instructing the University to award tenure went further than had any other court action in this area, and some faculty members were concerned about the principle involved, entirely apart from the merits in this case, which FCC members did not know. Professor Howe, in a subsequent conversation on many issues with Vice President Keller, noted the concern about the special master's finding but also noted that if there was merit to the charges raised against the University in this case, that was a matter of serious concern. FCC did not recommend that central administration appeal.

EEOC had also heard that the Regents had been told FCC had recommended an appeal. Professor Howe has been assured that the Regents were not told that.

Professor Striebel told FCC members that the EEOC has to rely on rumor because it has very little information. When a matter becomes "legal," it disappears, she said. The usual channels of consultation seem to close up. The Committee does not know who makes the decisions about appeals, nor at what stage and on what basis.

Professor Striebel distributed copies of the letter EEOWC had on May 16 approved to send to all faculty. She said she was asking for FCC support in this request to urge the administration not to appeal the case.

Professor Stuthman said the EEOWC's complaint should be that it has to rely on rumor.

Discussion in the meeting shifted between the general issue of the basis for deciding whether or not to make an appeal, and some of the particulars of the DeBeau-Melting case.

Professor Striebel said committee members fear they will return in the fall and find the appeal has been filed with the Eighth Circuit Court; committee members will be in the position of trying to find out what has happened and what it should then do.

She described the heart of the problem in this case ^{as} the changes in standards after DeBeau-Melting accepted the probationary position. [^] The court, she said, said the Library could not change the standards for somebody already on the tenure track.

Both Professors Howe and Spring stated their understanding of the Judicial Committee's findings as concluding that the standards applied were appropriate for the claimant. Professor Spring said he did not want to second guess either the Judicial Committee or the court. Responsible, informed people have come to quite different opinions, and it would be irresponsible for an uninformed person, such as himself, to take a position.

Professor Striebel argued that the University should not undertake a court appeal in a case unless something very important is at stake, because of the expense in time, money, and energy. She sees no preential value in this case. However, she said she cannot be sure since the University has been so closed on this case. The EEOW hears that the University's position is that the court should not be allowed to second guess the University and award merit. However, because DeBeau-Melting's faculty voted overwhelmingly in her favor, the court's finding comes down on the side of the faculty. The faculty's judgment should be trusted, she said, because the administration's judgment is tainted by sex discrimination. Central administration did not persuade the court in the course of the trial that there was no sex discrimination involved.

Professor Fredricks pointed out that there have been situations where departments with weak faculties always voted promotion and tenure for their members and where those votes were overturned by the college promotion and tenure committee. In those cases it has also been true that the game rules had been changed; during the hiring boom some faculty had been hired to teach with very little research expected of them initially. The University has to be able to upgrade itself, she commented.

Professor Striebel replied that the current case has to do with substantive changes in the nature of the duties. She said EEOW's position in no way precludes the University's upgrading quality. The court's finding was that the upgrading was applied differentially to women than to men in the Library.

Professor Howe noted again that people read the facts in different ways; some women were tenured and some men were tenured in the year DeBeau-Melting was initially denied tenure. Professor Stuthman added it has some relevance that her faculty did not recommend promotion, but rather recommended a change from probationary to tenured appointment at the instructor level.

Professor Striebel reiterated that the real question is whether there is something so important at stake to the University that it should expend the time and money to appeal. EEOWC would like to see an open discussion of this larger issue. If that sufficient reason exists, she would like to see it articulated openly.

Professor Howe concluded the discussion by noting that all FCC members will receive the letters as individual faculty members and will be able to respond as individuals. The FCC will have to decide what further it wants to do as a body about the larger general issue.

Professor Striebel said the EEOWC would appreciate FCC's advice on how EEOW can best carry out its job. Professor Striebel left the meeting at this point.

At a later point in the meeting, FCC members discussed briefly the apparent difficulty the EEOW has in getting information. FCC members support interested committees' right to access to any information not prohibited by legal constraints. Professor Rubenstein summed up Professor Striebel's question: Is there a role for the faculty in assessing the strength and importance of the grounds for a decision to appeal? Professor Howe remarked that, to date, the University has not appealed any Consent Decree decision to the Eighth Circuit Court.

Professor Turner pointed out that because of the Regents' obligations as trustees of the University, it is appropriate for them to appeal any case as high as the University attorney recommends.

6. Report of the Task Force on Graduate Education and Research.

FCC members asked that copies be sent to the Research Committee as well as to three other committees as already requested: SCC, Educational Policy, and Planning. Discussion of the report will be on the agenda for May 31.

7. Structure of Faculty and Student Governance.

Professor Turner asked that the entire discussion be deferred until the full SCC meeting in the afternoon. It was so deferred.

DISCUSSION WITH THE PRESIDENT
REGARDING THE TENURE CODE

President Magrath, Vice Presidents Keller and Vanselow, and Professor Fred Morrison, Chairperson of the Senate Tenure Committee, joined the meeting.

Copies were distributed of Vice President Keller's May 14 letter to Professor Morrison which recommended specific changes in Sections 10.6, 14.3, and 14.5.

Professor Howe stated the Tenure and Faculty Consultative Committees' hope that the Faculty Senate would complete its substantive work on May 24 and vote

on the document as a whole on June 7. The committees have made efforts to keep central administration and the Regents informed; the lingering issues appear in the Keller letter to Morrison.

Professor Morrison described the types of amendments up for vote on May 24: (1) a number of amendments to the section on financial emergency, which he called not seriously controversial; he is treating Motion 45, he said, as a conforming motion; (2) a couple of technical amendments to achieve, for example, parallel language; (3) the issues raised by central administration in Vice President Keller's letter. The Tenure Committee will meet on May 21 to debate those requests and see whether it wants to support any of them.

President Magrath said the Regents have a strong disposition to support the new tenure code, but that he could not give assurances at this point. What the Faculty Senate passes, he said, central administration will enter into the Regents' docket for information in July, via the Vice President for Academic Affairs. Where President Magrath or Vice President Keller has some difference with the Faculty Senate's document, we will so indicate to the Regents, he said. The Regents presumably will vote on the document in either August or September.

Professor Morrison stated that the process of Regental consideration should not be hurried because the emerging document is massive in terms of its range of implications. If central administration and the Regents have substantive differences with what the Faculty Senate approves, it would be helpful to all concerned, he said, if those could be presented collectively back to the faculty before final faculty action.

President Magrath gave assurance the administration would encourage the Regents to refer any concerns back to the Tenure Committee.

The discussion then proceeded to the points raised in Vice President Keller's letter.

Balance of authority between the Judicial Committee and the President.

Vice President Keller's letter argued that ultimate authority must remain with the President who is accountable to the faculty and the Regents, and the Regents, who are accountable to the legislature and the people of the state.

Professor Morrison said the Tenure Committee had confronted a full range of options regarding judicial authority, all the way from a complete "separation of powers" model (Judicial Committee could never be overridden) to a "full administrative model." They differentiated between cases of dismissal or suspension for cause and all other appeals to the Judicial Committee because dismissal for cause is the equivalent of capital punishment for an academic career. The Tenure Code draft assigns authority to the Judicial Committee to recommend disposition, and says (Sec. 10.6, lines 27-28), "The President may impose the action recommended by the Committee, or any lesser measure which appears to be appropriate."

Because of the extreme seriousness of the possible consequence where suspension or dismissal for cause is a possibility, the Tenure Code increases the Judicial Committee panel size to five members in such cases. Professor Morrison told the meeting that if faculty members of a panel should have to devote full time to such a case for perhaps two weeks, it would be imperative for central administration to make the necessary resources available

(i.e., replacements to cover those faculty members' normal University workload).

Vice President Keller argued that the University's judicial system is not analogous to a court of law and that we fail in our attempts to emulate closely the court system.

President Magrath remarked that it would be almost impossible legally for a president to sustain a removal under the following conditions: a dean moved to remove a professor for cause and the Judicial Committee found there was not sufficient cause for that penalty. But, he questioned putting the limitation into the Code.

Vice President Keller said the prohibition reinforces a panel which may make a wrong decision (a decision which could even leave the University liable if the charges involved, for example, sexual harassment), in order to prohibit the possibility of the president making the wrong decision. No one's decision should be endorsed in advance of the circumstances in a particular case, he argued.

The President said he was inclined to agree that an appeal of such a case to the Board of Regents could include presentation of the facts as well as of procedures. (A major point of the Tenure Committee has been that no one who has not heard the evidence is in a position to make a judgment.)

The President and Professor Morrison indicated some oral agreement that in an instance where the President recommended a sanction more severe than that recommended by the Judicial Committee, the faculty member could appeal to the Board of Regents, and that the faculty member and the President could present evidence to the Regents regarding issues on which the President differed from the Judicial Committee.

Whether or not the President may, after receiving the Judicial Committee's Report, discuss a case privately with any academic officer.

Vice President Keller's letter suggested as an exception to the prohibition that the President be permitted to discuss the case with the University's General Counsel.

Professor Morrison said that while he understood the President's concern in wanting to discuss cases with the General Counsel, since the latter, or someone under his supervision, is the legal officer in the case, to permit such conversations without the presence of the faculty member or his/her representative, would not insure fairness.

The President and Professor Morrison agreed orally within the meeting that both would accept the Vice President's addition to Section 10.6, with the condition attached, "unless the General Counsel has participated in the presentation."

Sufficiency of reason to override the Judicial Committee.

Sec. 14.5, lines 13-15: "The President may impose action less favorable to the faculty member only for compelling reasons, which must be stated in writing..." Vice President Keller's letter suggested substituting "substantive" for "compelling." The President told the meeting he would agree to a different substitution, "very important."

Reporting requirement for the President if he imposes more severe action.

Professor Morrison explained that the Tenure Committee regards the faculty generally as the third party involved in any judgment decision. There should be a public announcement in every instance where the president makes a determination different from the Judicial Committee so that faculty members can assess the judgments and draw their own conclusions. The faculty has an interest anywhere that the basis of tenure might be undergoing erosion.

The President and Professor Morrison agreed that the issues causing the disagreement need to be made public but that the text of the President's statement to the faculty member and the Judicial Committee need not constitute the public report. Professor Morrison and Vice President Keller will work to craft a statement mutually acceptable.

At the President's request, the meeting at 12:30 moved into a brief executive session to hear a report on two personnel matters.

The meeting adjourned at 12:40 p.m.

Meredith Poppele,
Recorder



UNIVERSITY OF MINNESOTA

University Senate Consultative Committee
614 Social Sciences
267 19th Avenue South
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Telephone (612) 373-3226

May 10, 1984

President C. Peter Magrath
202 Morrill Hall

Dear Peter:

We have one item for discussion with you at the FCC meeting on Thursday morning, the 17th, and that has to do with the Tenure Code. As you know, the Faculty Senate will be meeting next on May 24. The agenda then will be eight or so amendments having to do with Section 11, Fiscal Emergency. Unless new amendments come in--which is always possible, of course, though the flow seems to have stopped--, that will finish our business. We would then hope to regroup briefly on June 7 for final approval of the completed document.

That leaves two questions in our minds. First, whether you or the Regents still have concerns that have not yet been addressed? You mentioned several weeks ago that you had some reservations concerning the language in Section 14, specifically as it had to do with final action by the President in Judicial Committee matters. We wonder if those concerns remain, or if there are others that we should be considering before completing our business? Next year's Senate and Tenure Committee will have one-third new members, and we're anxious that this year's group finish the task.

Second, you might indicate to us what the Regents' schedule is likely to be for considering and (hopefully) approving the document. Here again we want to be as helpful to them as we can in facilitating their consideration of it. We've invited Fred Morrison to join us for this discussion.

If you have other items, we will of course be happy to consider them as well.

Sincerely yours,

John Howe, Chairperson,
Faculty Consultative Committee

JH:mp

c: Vice President Keller
Vice President Vanselow
Faculty Consultative Committee

COPY



UNIVERSITY OF MINNESOTA

Office of the Vice President for Academic Affairs
213 Morrill Hall
100 Church Street S.E.
Minneapolis, Minnesota 55455
(612) 373-2033

May 14, 1984

Professor Fred L. Morrison, Chairperson
Senate Committee on Tenure
c/o Law School
324 Law Building
West Bank Campus

Dear Fred:

As you know, I have been following the discussions of the proposed tenure code with a great deal of interest. I believe that there has been enormous progress in developing a code that is clear, substantive and reflective of the values of the University. You and the other members of the Tenure Committee should take great pride in the job you have done.

At various times during the year we have discussed concerns the administration had or the Board of Regents had about specific wording in the code. I believe that in almost every case we have been able to resolve differences. The latest form of Section 7.11 moves a long way toward meeting the concerns of the Board and while I cannot speak for them, I am comfortable in bringing the proposed wording forward with a positive recommendation. The general approach to Section 11 also appears acceptable although I note that Motion 45, which speaks to an important element in the procedures for dealing with a fiscal crisis, has not yet been acted upon. I believe the amendment is an important one and I hope it will be adopted.

The President and I remain concerned about certain elements in Sections 10 and 14, as I have pointed out in earlier conversations. The former Section 10.6 and Section 14.5 bar the President from discussing a case with ". . . any . . . academic officer . . ." except in the presence of ". . . the (concerned) faculty member or the faculty member's representative." I believe I understand the purpose of that provision but, as written, it would appear to preclude conversations between the President and the General Counsel. As I have indicated, I believe that they are absolutely vital to assure that legal and policy issues have been properly considered. I would suggest that a sentence be inserted on line 21 of (old) Section 10.6 and line 6 of Section 14.5 reading as follows:

This prohibition notwithstanding, the President may discuss the case with the University's General Counsel.

Another concern we have in the old Section 10.6 is with lines 27 and 28, which we would like to see deleted. In effect, that sentence gives ultimate authority to an ad hoc panel of the Judicial Committee to determine the action to

COPY

Professor Fred L. Morrison
May 14, 1984
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be taken by the University in a particular case of termination or suspension. This is a very substantial reversal of the usual structure of faculty governance in which committees and panels make recommendations to the President who, in turn, makes recommendations to the Board of Regents. This latter order is appropriate since it is consistent with the overall governance structure of the University and reserves ultimate decision-making to those who must answer to others for their actions; the President to the faculty and the Board of Regents, the Board to the Legislature and the people of the State. That is not true of an ad hoc Judicial Committee panel whose report need not be made public and cannot be amended by any other body, and whose judgment under the proposed procedures could not be questioned effectively even if it were shown to be wrong. It is not inconceivable that a panel's actions in cases such as those involving sexual harassment could lead the University into serious legal liability while preventing it from taking action to protect itself. Deletion of lines 27 and 28 would still leave the strong injunction to the President to provide substantive reasons for not accepting panel recommendations and, indeed, the past pattern indicates that he has most often followed the panel's recommendations.

Section 14.3, lines 12-19 outlines the President's responsibility if he imposes a sanction more severe than that recommended by the Judicial Committee panel. It appears that the intent of this section is to insure that any such action is carefully justified on the basis of the facts determined at the hearing and the relevant University policies. In general, that is a useful concept and one which I know President Magrath believes is appropriate. However, we would like to see two modifications in the paragraph.

First, on line 14 we would suggest that the word "substantive" be substituted for the word "compelling". With no other changes we believe that this will preserve the concept that such actions on the part of the President should be taken for good reasons and should be explained, while avoiding a word that is somewhat more ambiguous and therefore subject to a variety of interpretations.

Second, we would suggest that the sentences beginning on line 16 be changed as follows:

The President's written statement must be given to the faculty member AND to the Judicial Committee and to the Faculty Senate. Its full text must be published in the docket of the Faculty Senate.

In removing the requirement that the President's response be published in the Senate minutes, we would retain the possibility of protecting the privacy of individuals much as the present Judicial Committee procedures do. Of course, where that is not an issue, i.e., where the entire text of the Judicial Committee panel's reports and the tapes of its hearing are made public, the Judicial Committee could also publish the President's response.

Professor Fred L. Morrison
May 14, 1984
Page 3

I hope that the Tenure Committee and the Senate can deal with these issues prior to adopting the code. I would be happy to discuss these points either at a meeting of the Committee or at a meeting of the Senate.

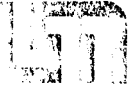
Sincerely yours,



Kenneth H. Keller
Vice President

KHK:trc

xc: President C. Peter Magrath
~~Professor John Howe, Chairperson, Senate Faculty Consultative Committee~~



UNIVERSITY OF MINNESOTA
TWIN CITIES

School of Social Work
400 Ford Hall
224 Church Street S.E.
Minneapolis, Minnesota 55455

DATE: May 30, 1984

TO: Professor Charlotte Striebel, Chair, Committee on
Equal Employment Opportunity for Women
Professor John Howe, Chair, Senate Consultative
Committee

FROM: Professor Miriam Cohn, Chair, Ad Hoc Committee
on Internal Tribunals *MRC*

Dear Professors Striebel and Howe:

The Ad Hoc Committee appointed for the purpose of reviewing Internal Tribunal procedures as established by the Consent Decree is pleased to submit to you a set of recommendations for modification of the structure and procedures of the Internal Tribunal.

Our goal in making these recommendations is the fair, efficient, economic and speedy resolution of claims filed under the Decree.

This report includes the Committee's final recommendations (Part 2), together with a summary of Committee procedures and process (Part 1), and comments and explanations regarding our final recommendations (Part 3). With this document, the Ad Hoc Committee completes its charge of responding to a petition filed under the Consent Decree requesting revision of policies and procedures governing Internal Tribunals (the internal hearing process under the Decree).

The Committee has considered the structure and procedures of existing mechanisms for resolving claims filed under the Consent Decree. It has heard testimony from petitioners and from members of the faculty and administration. We believe that the changes in structure within the judicial system and our other recommendations are necessary to meet the goal of actual and apparent fairness in the Internal Tribunal procedure. Not only is fairness crucial, but the appearance of fairness and objectivity is extremely important. Although we were specifically asked to look at procedures for Internal Tribunals under the Consent Decree, we realize that the model established through this process might significantly influence other University grievance procedures.

In developing its recommendations, the Ad Hoc Committee has addressed the principles of equal access to information and representation, fair hearings, and fair resolution of claims. Part 2 details structures and procedures which:

- (1) Provide for the establishment of a Faculty Assistance Office which is primarily accountable to faculty. This office would provide claimants with trained, experienced faculty advisors who offer assistance in obtaining access to information, advice as to merits of a claim, assistance in discovery, representation without counsel, and support through the process.
- (2) Provide a tightly structured faculty judicial procedure to replace all other internal procedures now in effect in Rajender cases. This structure reduces the necessity for lengthy and costly legal expenditures for both parties.

The intention of the Ad Hoc Committee is to develop a procedure which would reduce apparent inequalities and provide a lower cost mechanism for the processing of claims. It is the Committee's intention to develop structures and procedures which would achieve economies of time and legal costs and enable the University to continue to meet its obligations.

We ask that you give this report your careful and considered attention in the very near future.

MC:jmg

Attachments

AD HOC COMMITTEE ON INTERNAL TRIBUNALS

Part 1: Report of Committee Process (Appointment, Structure, and Procedure)

Purposes and Procedures

In carrying out its charge, the Committee determined that:

- All of its meetings would be open;
- The Committee would act as a fact-finding and information gathering group, much as a legislative committee;
- There would be no attempt to assess the merits of individual claims;
- Recommendations would relate only to possible modifications in the structure and procedures of Internal Tribunals under the Consent Decree. The Committee recognized, however, that such recommendations might influence other aspects of the judicial process.

Committee Appointment

The Ad Hoc Committee is appointed jointly by the Committee on Equal Employment Opportunity for Women (EEO) and the Senate Consultative Committee. The Ad Hoc Committee includes members who represent a wide spectrum of interests in faculty rights and welfare, grievance and trial procedures, issues of sex discrimination, and legal and social protection for faculty. Some members of the Committee were appointed by the EEO to represent its concerns. Others were selected by the Senate Consultative Committee to reflect other faculty or administrative concerns. Several members of the Committee have had considerable experience as advisors in faculty grievance. Others serve or have served on the Senate Judicial Committee. Another member is currently a member of the Senate Consultative Committee. However, regardless of the source of appointment, each Committee member functions primarily as a faculty member and addresses himself or herself to the interests of the university community.

Members:

- Cohn, Miriam R., Chair; Professor, School of Social Work, College of Home Economics
- Aeppli, Alfred; Professor, Mathematics, Institute of Technology

- Hamilton, Russell; Professor, Spanish and Portuguese, and Associate Dean for Faculty Affairs, College of Liberal Arts.
- Kjervik, Diane; Associate Professor, School of Nursing
- Lewis, Douglas; Professor, Philosophy, College of Liberal Arts
- MacKenzie, Warren; Professor and Head, Studio Arts, College of Liberal Arts
- Merwin, Jack; Professor, College of Education
- Rieger, Carol; Associate Professor, Law School
- Rosenberg, Pearl; Assistant Dean for Admissions and Student Affairs, Medical School
- Tichenor, Phillip; Professor, School of Journalism and Mass Communication, College of Liberal Arts
- Trolander, Judith; Associate Professor, History, College of Letters and Science, University of Minnesota, Duluth
- Tsai, Bilin; Associate Professor, Chemistry, and Assistant Dean, College of Letters and Science, University of Minnesota, Duluth

The Committee met biweekly from January 12, 1984 to May 30, 1984 (see Appendix A). Additionally, a subcommittee co-chaired by Professors Rieger and Lewis and including Professors Cohn and Striebel (ex-officio), prepared several drafts of the specific recommended structures and procedures for Committee review and modification. The assistance of Professors Rieger and Lewis has been invaluable in enabling the Committee to discuss and prepare recommendations. The Committee also acknowledges the efforts and support of Joanne Garcia, Office of Equal Opportunity and Affirmative Action, in preparing official minutes, providing support services, and offering staff services to the Committee.

The Chair wishes to thank all Committee members for their contributions, and for the diligence and effort with which they carried through this assignment.

Background and Testimony

Rajender Consent Decree

The Rajender Consent Decree was entered into between the University and members of the female academic employee

class on August 13, 1980. The Decree establishes procedures for claims of discrimination against women as a class between 1972 through January, 1989.

The Decree is administered by the University, with the oversight of the Special Masters. The Masters are appointed by the District Court to hear claims and petitions which are not otherwise settled.

Copies of the Decree are available from the Office of Equal Opportunity and Affirmative Action.

The Internal Tribunal

The Internal Tribunal was established under the Consent Decree as a mechanism for the possible resolution of claims within the University. Although not clearly delineated as such, it has been used as the procedure by which both parties could participate in discovery without benefit of counsel, as well as the means by which the claimant could have a fair hearing before peers.

Some original members of the class action suit, in agreeing to such an Internal Tribunal mechanism, hoped that a procedure could be established which would serve the dual function of early internal settlement of claims, and an arena whereby the University would be made aware of the significance of sex discrimination in hiring, selection, and retention policies. This was reported to the Chair of the Ad Hoc Committee by several individuals involved in the process.

Concern over the efficiency and value of the Internal Tribunal as a mechanism for the early resolution of claims or as a mechanism for highlighting issues of sex discrimination within the University structure surfaced in discussions within the EEOW in 1982-83 (see letters from EEOW to the University attorney).

Petition

A petition was filed in June, 1983, in Federal Court, requesting modification of policies and procedures relating to the Internal Tribunal. The Ad Hoc Committee was appointed to respond to this petition which relates to policies and procedures having an impact upon the class.

Testimony

The Committee received testimony from petitioners and from Rajender claimants, as well as from the University's Office

of Equal Opportunity and Affirmative Action, the University Attorney's Office, the current Chairs of the Judicial Committee and the Senate Committee on Faculty Affairs, the Co-Chair of the Senate Subcommittee on Grievance Procedure Revision, and a former Chair of an Internal Tribunal Panel. The University of Minnesota, Duluth, was represented by members of the Bargaining Unit. In addition, testimony was offered by others who spoke on their own behalf. (See Appendix B)

Petitioners alleged that the Internal Tribunal did not significantly influence the outcome of a case, yet appeared highly intimidating to some women. For these women, petitioners alleged, the Internal Tribunal appeared to be costly, redundant, and to serve no essential purpose. In general, presentations from petitioners, administrative officers, and faculty appeared to highlight an unclear process which was not well understood and had not worked efficiently. For example, representatives from one or more of the groups offering testimony alleged the following:

- There appears to be a general lack of clarity as to the intent and function of current Internal Tribunal procedures;
- There appears to be unequal access to information as to policies and procedures, forms of action, legal procedures, etc. in relation to internal procedures;
- There appears to be unnecessary delay in the Internal Tribunal procedure;
- The ability to secure adequate assistance in assessing the merits of claims, discovery, and preparation for hearing may depend upon the claimant's economic circumstances, particularly upon her ability to afford legal counsel;
- There appears to be an imbalance in the resources available to the parties. The University, as respondent, has access to legal advice, information, and data processing services which may not be available to the employee. Therefore, a mechanism needs to be found to help equalize the resources available to employer and employee in grievance situations.

The Committee believes, on the basis of information and discussion, that modifications in both structure and procedure of the Internal Tribunal are necessary to address perceived injustice and provide for a fair hearing. The Ad Hoc Committee also hopes that its suggested modifications will serve to reduce excessive costs borne by both parties.

Part 2 offers specific recommendations for modifications in Internal Tribunal structure and procedure.

APPENDIX A

Meetings of the Ad Hoc Committee for Internal Tribunals

Thursday, January 12, 1984, 1:30 - 3:00, Room 626, Campus Club

Thursday, January 26, 1984, 1:30 - 3:00, Room 626, Campus Club

Thursday, February 9, 1984, 1:30 - 3:00, Room 626, Campus Club

Tuesday, February 14, 1984, 10:00 - 12:00, Room 404, Campus Club

Thursday, February 23, 1:30 - 3:00, Room 626, Campus Club

Thursday, March 8, 1984, 1:30 - 3:00, Room 624, Campus Club

Wednesday, March 28, 1984, 1:30 - 3:00, Room 624, Campus Club

Wednesday, April 4, 1984, 1:30 - 3:00, Room 608, Campus Club

Wednesday, May 2, 1984, 1:30 - 3:00, Room 624, Campus Club

Wednesday, May 9, 3:00 - 5:00, Room 624, Campus Club

Wednesday, May 16, 1:30 - 3:00, Room 300, Morrill Hall

Wednesday, May 23, 1:30 - 3:00, Room 300, Morrill Hall

Wednesday, May 30, 1:30 - 3:00, Room 608, Campus Club

APPENDIX B

List of persons testifying or presenting to the Ad Hoc Committee
on Internal Tribunals

- 1/12/84: Professor Miriam Cohn
Professor Virginia Fredricks
Ms. Patricia A. Mullen
Professor Charlotte Striebel
- 1/26/84: Professor Clare Woodward
Professor Pat Faunce
Professor Linda Brooks
Professor Janet Macy
Professor Pat Woodbury
- 2/9/84: Professor Clare Woodward
Professor Verona Gordon
Professor Dorothy Gross
Professor Linda DeBeau-Melting
Professor Jacqueline Shick
Professor Jeralyn Plack
Professor V. Lois Erickson
- 2/14/84: Professor Mario Bognanno
- 2/23/84: Ms. Patricia A. Mullen
Stephen Dunham
Professor Wayne A. Jesswein
Professor Eleanor Hoffman
- 3/8/84: Professor Phyllis Freier
Professor Leonard Greenberg
Professor Alfred Aepli
- 3/28/84: Professor Gordon Heistad

AD HOC COMMITTEE ON INTERNAL TRIBUNALS

Part 2: Recommendations for Structures and Procedures

I. Faculty Assistance Office

A. Functions

A new office shall be created to provide advice, assistance, and representation for faculty members and other academic personnel who are contemplating filing Rajender claims or who have filed claims which have been referred to the Judicial Committee. This office shall provide information, assistance with discovery, assistance in assessing the merits of claims, and assistance in preparation and presentation of cases before the Judicial Committee. It shall recruit and train volunteer faculty advisors to represent claimants in the discovery process, mediation, and at hearings. The office may seek legal advice in carrying out its responsibilities.

The office shall be a free standing office, independent of college and university administration, and shall be accountable to the Senate Committee on Faculty Affairs. Faculty members who file claims shall be notified by the Judicial Committee of the services provided by this office, but shall not be required to make use of these services. In addition, the director of the office shall notify all faculty of the availability of the office.

B. Staff

A full-time director and the necessary support staff shall be hired under the direction of the Senate Committee on Faculty Affairs to carry out the responsibilities of the office.

C. Funding

A line item within the University budget should be requested for this purpose.

II. Judicial Committee Structure

A. Selection of Members

Judicial Committee members shall be selected by lot from a list of all faculty members who indicate an interest in serving on the committee. The Chair of the Judicial Committee shall actively encourage faculty to volunteer their names for the list. In the selection of the Judicial Committee from the list of faculty, consideration must be given to making the committee representative of the faculty as a whole. The committee should include at least as high a percentage of women as are represented on the faculty as a whole and should avoid over-representation of individual campuses, schools, and departments.

1. Term of Office

Each member shall serve for three (3) years, and their terms shall be staggered so as to provide continuity.

2. Size of the Committee

The Chair may increase the size of the committee above the minimum number of members required under the Tenure Regulations if he or she believes it is necessary to fulfill the functions of the committee set out below. Additional committee members shall be selected by lot in the same manner as the original members of the committee.

3. Chair of the Judicial Committee

The Chair of the Judicial Committee shall be elected by the members of the committee.

B. Standing Subcommittees of the Judicial Committee

1. Discovery Committee

(a) A Discovery Committee of the Judicial Committee shall consist of at least five (5) members, including the Judicial Committee Chair, who shall serve as the Chair of the Discovery Committee. The remaining members shall be elected by vote of the Judicial Committee. Only persons who have served on a panel which conducted a hearing shall be eligible to serve on the Discovery Committee. Members shall serve for two (2) years and their terms shall be staggered.

(b) The principal duties of the Discovery Committee shall be to:

- (i) resolve discovery disputes;
- (ii) secure the testimony of needed witnesses;
- (iii) respond to requests to dismiss or clarify claims.

2. Salary Review Committee

The Salary Review Committee shall consist of at least five (5) Judicial Committee members who are not members of the Discovery Committee. This Committee will hear claims under the Rajender Consent Decree which relate solely to salary claims of individuals. Members of the Salary Review Committee shall be elected by the

Judicial Committee and shall serve for one (1) year.

The Salary Review Committee shall elect its own Chair.

3. Hearing Panels

Hearing Panels shall be formed from the members of the Judicial Committee who are not members of the Discovery Committee or the Salary Review Committee. These Panels shall hear all claims referred to them by the Chair of the Judicial Committee.

C. Judicial Committee Staff

1. An Administrative Assistant shall be hired by the Chair of the Judicial Committee. This person shall have responsibility for assisting the Judicial Committee and its subcommittees in carrying out their functions. The Administrative Assistant shall assist in the preparation and training of the Judicial Committee members for their assignments, and shall assist in arranging and monitoring mediation.
2. Additionally, from time to time, as it deems necessary, the Judicial Committee may retain the services of an attorney to render legal opinions helpful to the resolution of questions before the committee.

III. Judicial Committee Procedures for Dealing with Claims Filed Under Rajender Consent Decree

A. Referral of Claims Under Consent Decree

All claims filed under the Rajender Consent Decree are sent by the Special Masters to the University. Once these

claims are received by the University the procedures set forth below shall be followed:

1. Referral to Judicial Committee

Within five (5) working days the President of the University shall send the claim to the Chair of the Judicial Committee.

2. Judicial Committee Action

- (a) Within five (5) working days, the Chair of the Judicial Committee shall refer any case which includes a claim for salary only to the Salary Review Committee. Any claim by a person not associated with the University for failure to hire shall be referred to the University Attorney. All other claims will be heard by a hearing panel.
- (b) At this time, the Chair of the Judicial Committee shall notify both the claimant and respondent of this action, sending a copy of the procedures to be followed and stating that the Faculty Assistance Office is available to faculty members who want to use it.
- (c) At this time, the Judicial Committee Chair shall inform the parties that, following the close of discovery, each party must elect whether to agree that any decision made by the appropriate Judicial Committee hearing body will be binding. Unless both parties agree in writing that a decision of a Judicial Committee Hearing Panel or Salary

Review Committee will be binding, no Judicial Committee Hearing will take place and the claim will be returned to the Special Masters.

B. Procedures for Hearing Panel Cases

1. Discovery

All discovery is to be completed within thirty (30) calendar days of receipt by the parties of the letter from the Chair of the Judicial Committee setting forth the procedures to be followed in connection with the case. Requests for extension of discovery may be made by either party. All such requests must be in writing and must clearly set forth the reasons for the request. Requests will not be granted by the Discovery Committee unless the Discovery Committee is satisfied that the requesting party has exercised due diligence during the discovery period. All discovery disputes are to be resolved by the Discovery Committee. Where there is a failure or refusal to comply with discovery requests, the Discovery Committee shall determine whether the requested discovery is necessary to the preparation of the claim or to the preparation of the defense and may require that a confidentiality agreement be signed in order to protect sensitive information. If the Discovery Committee determines that the discovery is necessary and a party persists in refusing to produce the requested discovery, the Discovery Committee may order that the issue to

which the discovery relates be resolved against the party refusing to cooperate in discovery, or that the party be foreclosed from presenting any evidence on that issue.

2. At any time during the discovery period, the respondent may request in writing that the Discovery Committee dismiss a claim because the claim fails to state clearly the basis for the requested relief or because, assuming all factual allegations in the claim to be true, there is no basis on which any relief could be granted by the Judicial Committee. Within fourteen (14) days, the Discovery Committee shall deny the request, require that the claimant clarify the claim, or provide an opportunity for the parties to present arguments. After providing an opportunity for arguments or an opportunity to clarify the claim, if the Discovery Committee finds that there is no basis on which the Judicial Committee could grant any relief to the claimant, the Judicial Committee Chair shall return the case to the Special Masters.

3. Agreement to be Bound by Hearing Panel Decision

At the close of discovery, each party must sign and return to the Administrative Assistant of the Judicial Committee the appropriate Judicial Committee form indicating whether he or she is willing to be bound by the decision of the hearing panel. If either party

does not sign and return this agreement within five (5) working days, the Judicial Committee Chair shall return the case to the Special Masters.

4. Optional Mediation Services

- (a) If both parties agree that the decision shall be binding, the Administrative Assistant to the Judicial Committee will ask each party whether the party wishes to engage in nonbinding mediation before proceeding to a hearing. The purpose of the mediation shall be to secure a settlement of the case.
- (b) If the parties agree to engage in mediation, the Administrative Assistant, under the direction of the Judicial Committee Chair and in consultation with the parties or their representatives, shall arrange a mediation procedure appropriate to the case and a schedule for the completion of mediation. The mediation procedure may include any or all of the following steps:
 - (i) meeting and discussion with the department head involved;
 - (ii) meeting and discussion with the dean or director involved;
 - (iii) meeting and discussion with members of central administration or their representatives;
 - (iv) meeting and discussion conducted by an

independent mediator selected by the parties from a list of mediators maintained by the Administrative Assistant.

- (c) The entire mediation procedure shall be completed within thirty (30) calendar days and may be terminated at any time by either party.

5. Selection of Hearing Panel

(a) Initial Selection

(i) Time of Selection

The hearing panel shall not be selected until discovery has been concluded, the parties have signed an agreement that the hearing panel's decision will be binding, and mediation has been declined or unsuccessful.

(ii) Random Selection Process

Within five (5) working days of the date on which mediation has been declined or concluded unsuccessfully, a hearing panel consisting of three members shall be selected at random from the eligible members of the Judicial Committee who are not currently serving on a hearing panel. A panel member may request that his or her name not be put back into the group from which panels are selected for a period of up to 45 days after completion of service on a

panel which held hearings. This request shall be granted unless in the opinion of the Chair it would jeopardize the fairness of the selection procedure. The selection procedure shall be designed so that at least one member of the panel shall be a woman.

(iii) Information About Panel Member

The Administrative Assistant shall maintain a file which contains a brief biography of each member of the Judicial Committee prepared by the member. This biography shall contain information useful in determining whether or not the member would have a conflict of interest in a particular case.

(iv) Judicial Committee Check for Conflicts of Interest

The Administrative Assistant of the Judicial Committee shall check to determine whether there is any obvious conflicts of interest before sending both parties the names of the panel members. An obvious conflict of interest is one in which a panel member is from the same department as the claimant or respondent. If there is an obvious conflict of interest, the person with the conflict shall be replaced using the same random

selection procedure as used for selection of the original panel.

(v) Notification to Panel and Parties

After panel members have been selected, the Administrative Assistant shall notify the panel members of their selection and shall send the names of the panel members and their biographies to both the claimant and respondent.

(b) Self-Disqualification of Panel Members

In the event that any panel member has an actual or apparent conflict of interest, including a close personal or professional relationship with one of the parties, that panel member shall, by writing a letter to the Chair of the Judicial Committee setting forth his or her reasons, disqualify him or herself from service on that particular panel. The decision of the Chair in these matters shall be final.

(c) Challenges to Hearing Panel by Parties

Each party shall be allowed a maximum of two challenges to the panel. These challenges must be made in writing and sent to the Administrative Assistant within ten (10) calendar days of receipt by the parties of the panel members' names. No reasons need be stated. If a panel member is disqualified, another panel member shall be

selected in the same manner as the original panel members. Any additional challenges must be made in writing to the Discovery Committee and will only be granted upon a showing of good cause.

(d) Selection of Chair of Hearing Panel

One member of the Hearing Panel shall be designated by the Chair of the Judicial Committee as the Chair of the Hearing Panel. This person must have prior experience on a Judicial Committee Hearing Panel.

6. Witnesses

It shall be the responsibility of the parties and their representatives to prepare their cases for hearing. If a potential witness refuses to provide information during discovery or to testify at the hearing, a party may apply to the Discovery Committee for assistance. If the Discovery Committee determines that the testimony of the witness is essential to a fair hearing of the case, the Chair shall request the assistance of the President to encourage the cooperation of the witness.

7. Pre-Hearing Conference

A pre-hearing conference shall be held with the panel members within fourteen (14) calendar days of completion of panel selection. Both parties or their representatives shall be present at the pre-hearing conference.

A member of the Discovery Committee shall also be present if this is necessary to explain actions of the Discovery Committee on discovery or securing cooperation of witnesses.

Among the matters to be decided at the pre-hearing conference are the following: the witnesses who will be called; determination of relevant facts which are not in dispute; a data base to be used for statistical exhibits. Before the pre-hearing conference, the Administrative Assistant shall make reasonable efforts to obtain the written agreement of the parties on facts which are not in dispute and hence to limit the issues on which evidence shall be presented at the hearing.

8. Time Period for Commencement of Hearing

The hearing shall be commenced within thirty (30) calendar days of the date on which the pre-hearing conference occurred, and the hearing shall be concluded within thirty (30) days of the date on which the hearing began.

9. Procedure for Conduct of the Hearings and the Standards to be Applied in Deciding Cases

(a) To the extent they are not inconsistent with the procedures set forth here, hearings shall be conducted in accordance with the rules of procedure adopted by the Judicial Committee.

(b) The Judicial Committee shall adopt written standards to be followed by hearing panels in applying the Rajender Consent Decree and Title VII law.

10. Findings of Panel

(a) The written findings and conclusions of the hearing panel are to be sent to petitioner and respondent within forty-five (45) days of completion of the hearing.

(b) The decision of the hearing panel is final and binding on both parties.

C. Procedure for Salary Review Committee

1. Structure and Purpose of the Committee

The Salary Review Committee shall consist of at least five (5) members who are also members of the Judicial Committee. It will hear individual salary claims filed under the Rajender Consent Decree.

2. Discovery

Discovery shall be concluded within fifteen (15) days of the date on which the parties are advised that the case has been assigned to the Salary Review Committee. At the conclusion of the discovery period, the claimant shall give the respondent the names of the persons to whom she will compare herself in order to prove her salary claim.

3. Agreement that Salary Review Committee Decision Will be Binding

Within five (5) working days of the close of discovery, a decision shall be made by both parties whether to agree that the decision of the Salary Review Committee will be binding. In the event that either party does not agree that the decision will be binding, the case shall be returned by the Judicial Committee Chair to the Special Masters.

4. Selection of a Hearing Officer

If the parties elect to proceed, within five (5) working days of their agreement that the decision will be binding, a Hearing Officer shall be selected by lot from the members of the Salary Review Committee. The same rules shall be applied as recommended for the hearing panel regarding keeping the name out for a period of time, as set forth in III(B)(5)(a)(ii), above. The same procedures for disqualification and challenge shall apply as for the hearing panel as set forth in III (B)(5)(b) and (c), above, except that each party shall be allowed only one challenge without showing cause.

5. Procedures for the Hearing

Each party shall have two hours for the presentation of that party's case. To the extent they are not inconsistent with the procedures set forth here, the hearing shall be conducted in accordance with the

rules of procedure adopted by the Judicial Committee.

6. Decision of Hearing Officer

- (a) After the hearing, written findings and conclusions shall be prepared by the Hearing Officer, who shall then submit these findings and conclusions to the Salary Review Committee for comment.
- (b) Following an opportunity for comment by the Salary Review Committee members, the Hearing Officer shall prepare his or her final decision and send that decision to each party.
- (c) The decision of the Hearing Officer is final and binding on both parties.

7. Time Schedule

The hearing and review process shall be scheduled so that the final decision is sent to the parties within seventy (70) days after the signing of the agreement that the decision of the Salary Review Committee will be binding, as provided in (3) above, except the period June 15 through September 15 shall be excluded.

AD HOC COMMITTEE ON INTERNAL TRIBUNALS

Part 3: Report of Committee Comments and Background Discussion

General Comments

The recommendations as to structures and procedures (Part 2 of this document) focus only upon the Internal Tribunal as established under the Consent Decree. The Committee determined to concern itself only with its charge, namely, to examine the structure and procedures of the Internal Tribunal and make modifications, if necessary or desirable. Therefore, all recommendations apply primarily to Rajender claims.

In developing its recommendations the Committee recognizes that the petitioners and other claimants perceive a pattern of discrimination in current Internal Tribunal structure and procedure. The Committee did not attempt to address each claim as presented, and it agreed that it would not assess the merits of any individual claim.

In proposing these recommendations, the Committee searched for ways which would best meet the need for a fair internal process. In so doing, it tried to consider the needs of claimants, as well as the continued obligation of the University to participate in the process in ways which appear fair to all concerned.

The Committee believes it would be helpful to set forth its reasons for certain recommendations, and to explain some of the alternatives which it considered and rejected.

Structures and Procedures

The report recommends two structures. One, the Faculty Assistance Office which is perceived as a cost effective, feasible way in which to secure assistance to claimants in ways which address discovery and representation.

Second is modification in the structure and function of the Judicial Committee for Rajender claimants, so as to provide a clear, efficient and speedy internal mechanism for the resolution of claims.

Faculty Assistance Office

The following summarizes comments and discussion.

Functions

The Faculty Assistance Office is viewed as the major device for providing assistance to claimants and addressing the issue of representation.

The office is intended to provide a relatively low cost alternative to legal procedures by both parties.

The office is intended to exist for the faculty (in this case, Rajender claimants) and is to be controlled by the faculty.

If it works well, the office should provide advice, assistance, and consultation to potential claimants and to those who have filed a claim. Through early and easy access, it should help to eliminate non-meritorious claims, because it would offer the claimant an opportunity to adequately assess the merits of a claim and the cost/benefits involved in resolution.

The office would be staffed primarily by faculty volunteers. The plan permits recruiting volunteers from several sources, providing a central source for University women for initial advice and consultation, and providing training and exchange with other experienced advisors. Particular training would be offered in University based issues of Title VII law.

It is clear that claimants other than Rajender claimants could also benefit from the services provided by the Faculty Assistance Office. While the Committee's recommendations apply only to Rajender claimants, the faculty could consider expanding the staffing and funding of this office to provide services to all faculty members involved in University grievance procedures.

Staff

The position of Director should be one of strength and respect within the University community. The Director is seen as someone who is not easily swayed by pressure and who can assume the stance of statesperson. The title of Director should imply knowledge of sex discrimination issues and the ability to understand the merits of a case. It also implies the ability to be a trusted advocate who will offer direct and clear information and advice. Administrative skills are also important, but secondary.

Funding

The Committee has recommended that a line item be provided in the University budget for the office to provide for a Director and support staff.

The Director should be a person familiar with University procedure and governance. Additional Committee suggestions for the position of Director include possible release time for a tenured faculty member or services of a professor emeritus. A tenured faculty member would anchor the position firmly within the faculty domain. A professor emeritus would be immune from pressures and able to contribute a long-range perspective.

Hiring

The Committee considered several alternatives, recognizing that no solution is perfect. The guiding principle in the Committee's decision is the need for the Faculty Assistance Office to be as independent as possible of administration, including departments, colleges, and overall administrative structures.

The second principle is that such an office be controlled, so to speak, by the faculty. Discussion also reflected the need for any University employee to have some administrative support system. Therefore, although the Committee recommends that the Director be employed under the direction of the Senate Committee on Faculty Affairs, and that this Committee as a whole be involved in matters such as job description, the Ad Hoc Committee suggests that the Senate Committee on Faculty Affairs may wish to delegate the administrative support function to an office such as the Office of Equal Opportunity and Affirmative Action. The employment of an experienced advocate as Director might in part mitigate some fears about job performance in the face of pressure.

The intent of this plan is to reduce the costs of legal counsel for both parties. The Committee considered the possible costs of such an office and concluded that the cost would be significantly lower than is now the case with litigation.

Judicial Committee, Structures and Procedures

The following summarizes comments and discussion.

Commensurate with the Committee's belief in faculty governance, Committee members determined that the Judicial Committee is the appropriate body to oversee the resolution of complaints under the Rajender Decree. Rather than providing a number of different avenues such as Dean's Ad Hoc Committees, review by Central Administration, etc., the Committee believes that all claims by current faculty members should be treated in the same manner and all should go directly to the Judicial Committee.

Although the Committee's assignment dealt only with procedures for Internal Tribunals, Committee members have determined that certain changes in the structure and procedures of the Judicial Committee will be necessary in order to implement its recommendations and meet the goal of actual and apparent fairness in Internal Tribunal procedures. Therefore, specific modifications in the selection and assignment of Judicial Committee members appear in the recommendations.

Selection Procedure

The Committee recognized that the following selection procedures would necessitate an increase in the size of the Judicial Committee. The Committee decided to endorse a larger Judicial Committee on the basis of requirements for the stated procedures.

A change is made in the selection procedure so that members are selected by lot from among faculty members expressing interest in this assignment.

One member of the Committee suggested that all members of the tenured faculty be considered for two years of duty on the Judicial Committee, much as any citizen assumes responsibility for serving on a jury when called. The suggestion was made to assure impartial, random selection, and to protect against membership on the Judicial Committee serving a faculty member's self-interest.

The counter-argument which prevailed in the Committee is that members who volunteer their time for such an assignment might be the most interested and committed, and hence, those most willing to give time and energy to the task.

Discovery Panel and Salary Review Panel

These panels, which would only be used for Rajender claims, require modifications of the current Judicial Committee.

The functions of the Judicial Committee in Rajender claims are divided into three segments: Discovery, Salary Review, and Hearing Panel.

Salary Review Panel

In response to testimony offered by Administration, it appears that some Rajender claims relate only to

issues of salary. This is a newly established function which the Committee assigned to the Judicial Committee in Rajender cases. It is intended for cases in which the only issue is salary.

Judicial Committee Staff

In order to perform the recommended functions, the Chair of the Judicial Committee must have skilled staff available to her or him. The Committee suggests that the staff should consist of an administrative assistant who has knowledge of procedures and some skills in mediation.

The Committee considered the suggestion of one of its members that an "investigator" be assigned to the Judicial Committee to provide an impartial review of both sides of the case, which could then be reported to the University and also to the Special Masters. Some members of the Committee thought that this idea had merit, but a decision was made not to include it at this time.

Relation of the Judicial Committee Process to Faculty at the University of Minnesota, Duluth, and Other Campuses with Bargaining Units

The Committee considered ways in which the proposed model might apply to women faculty in bargaining units. In discussion, the first principle considered was the need for a procedure which could apply equally to all female faculty on every campus. Committee members are uncertain whether the recommended judicial procedure could be utilized by a bargaining unit claimant in the same manner as it is utilized by any other claimant. If the judicial process is not available to Rajender claimants in bargaining units, than a procedure modeled after the current union grievance procedure could be developed for the Internal Tribunal.

Binding Agreements

This has been suggested as the final phase of Judicial Committee procedure. It would be used only in Rajender cases and is acceptable, according to legal consultation, because it would be a part of a settlement agreement. Once the case is settled through binding agreement, the case, as originally filed with the Special Masters, would be terminated.



UNIVERSITY OF MINNESOTA

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MEMORANDUM TO THE FILE

EXECUTIVE SESSION, FACULTY CONSULTATIVE COMMITTEE WITH PRESIDENT MAGRATH
AND VICE PRESIDENT KELLER. May 17, 1984, 12:30-12:40.

(The President requested a brief executive session following his regularly-scheduled meeting with the FCC, to report on two personnel matters.)

1. The president gave FCC the early personnel notice that he would recommend to the Regents in June that the University appoint Tony Potami to the new position of Assistant Vice President for External Relations and Technology Transfer. Creating the position is an implementation of one of the recommendations of the Lilly Task Force Report. (Note: the Report suggested creating the position at the level of vice president.)

Mr. Potami has already been working in this area (which includes patents) and we can enhance some of the things we want to do by giving him this promotion, said the president. University officers have determined it is legal because the change is a promotion and an enhancement of responsibilities Mr. Potami already has. The president and vice president assured FCC that the Office of Research Administration would still be in good hands.

Some FCC members commented that the proposed title is confusing; a listener is apt to infer a connection with Vice President Kegler's office.

2. Vice President Keller said he has completed his consideration of the review of the University Librarian. If Mr. Smith remains at the University, he will continue to be University Librarian, and an external search will be conducted to find a Director of University Libraries, who would be in charge of library administration. This would be a favorable outcome given the very credible assessments of Mr. Smith's strengths and shortcomings.

Library governance structures: Three major reports have all said the system is dysfunctional and has to be changed. Vice President Keller indicated a change will be made. The Library Council has essentially refused for more than two years to revise its constitution.