

MANDATORY RETIREMENT TASK FORCE

Final Report

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This Task Force, which was appointed by the Faculty Consultative Committee and the Provost, has been studying the implications of the imminent elimination of academic mandatory retirement ("uncapping") since spring 1989.¹ We published a draft report dated February 20, 1990, to encourage the University community to reflect, to discuss, and to comment. Four forum meetings were held in the Twin Cities, and meetings were held at the Morris, Crookston, and Duluth campuses. Discussions were held with SCFA, FCC, and other groups, and a presentation was made at a meeting for deans. Comments were also received in writing and by telephone.

We respectfully submit this final report. While our recommendations are set forth in summary form at the beginning of each topic, we intend the entire text to be an essential part of our report. We understand that most of these recommendations will require additional study and evaluation. The proposals should be evaluated not just in terms of their contribution to faculty welfare, but in terms of their ability to enhance the quality of education that we offer our students, our capacity to advance knowledge, and the value of the University to the broader society of which we are a part. We recommend that the Faculty Consultative Committee accept the task of monitoring the implementation over time of the individual parts of the report.

Following a brief account of the legislation governing mandatory retirement (part 1), three sections address these themes: 2. The Literature on Aging and Performance: Informing the University Community; 3. Academic Performance Throughout the Life Cycle; 4. Improving Academic Retirement.

1. The Legislation:

Why We Must Change

The federal legislation which already bars mandatory retirement generally will become effective for tenured faculty scheduled for mandatory retirement after December 31, 1993. This legislation will bring the full protection of the Age Discrimination in Employment Act (ADEA) to the academic staff. Other provisions of the act already govern the employment relationship of University employees, including tenured faculty. Civil Service

1. The Charge to the Task Force is Appendix A.

employees, and most professional and administrative employees,² are already covered by the ban on mandatory retirement. The potential liabilities are serious, and a new consciousness about age discrimination will be required. We will be striving to comply by removing any illegal age discrimination from the conditions of employment of our scholars; our scholars will become much more sensitive to what age discrimination is and to what the legal remedies are for such discrimination.

The legal system provides penalties for the proscribed age-related employment practices. Proof of discrimination can be based upon proof of an intent to discriminate, or it can be based upon proof of the disparate impact of an employment practice on a protected group. Since the proof of an age-discrimination case may often rest on statistical evidence about the disparate impact of an employment practice on older employees, we must become much more careful about those impacts.

We also need to consider intent: talk about retirement as a way of getting rid of older, less productive employees is laden with improper intent. Likewise, talk about hiring younger scholars to maintain vitality reflects assumptions about age and vitality, and may indicate an atmosphere of discrimination. On the other hand, concern about keeping up the opportunity for employment of entry-level scholars in order to continue attracting such persons to academic life is not automatically discriminatory, unless it is a pretext for an illegal intent.

The lesson of this legislation is that we must structure our employment practices to be free of illegally age-based features. We must judge each scholar on the basis of individual performance, not on the basis of an age stereotype. While it is too early to obtain answers to every question about interpretation of the ADEA, it is clear that certain practices are illegal. In the areas that are less clear, as a matter of policy we should be striving not to find the limits, but to comply with the policy objectives of the legislation.

2. All professional and administrative employees except those with continuous appointment are clearly granted freedom from mandatory retirement by the ADEA. The ADEA may arguably retain mandatory retirement until 1994 for those with continuous appointment. However we have been informed that present Regents' policies do not provide for mandatory retirement of any professional and administrative personnel.

2. The Literature on Aging and Performance:

Informing the University Community

The stereotype that performance declines with age is partly true and partly false. Although the probability of performance problems does increase with age, age alone is not helpful in judging the performance of any individual scholar.

Scholarly interest in the relationship between aging and academic "productivity" in research has increased in the past few years,³ owing in part to fears that the fate of the very large faculty cohort hired during the 1960's would have adverse effects on university life. The end of mandatory retirement, some believe, may mean an overall decline in academic productivity.

While recent studies of a few disciplines suggest that research productivity decreases with increasing age, it is not at all clear that aging itself is the main cause, nor how aging may be related to other factors. There are in fact several methodological problems in the study of aging and academic life. The most significant is disentangling aging from cohort and

3. The literature on this subject is large, and important studies are in progress. Useful recent contributions are:

Bader, Jeanne. "'Uncapping' in Higher Education: A Primer." Educational Gerontology 14 (1988): 481-95.

Reskin, Barbara. "Aging and Productivity: Careers and Results." In Faculty Vitality and Institutional Productivity, edited by Shirley Clark and Darrell Lewis. New York: Teachers College Press, 1985.

Blackburn, Robert, and Janet Lawrence. "Aging and the Quality of Faculty Job Performance." Review of Educational Research 23 (1986): 265-90.

Lawrence, Janet, and Robert Blackburn. "Age as a Predictor of Faculty Performance: Three Conceptual Approaches." Journal of Higher Education 59 (1988): 22-38.

Clark, Shirley M., and Mary E. Corcoran. "Faculty Renewal and Change." In G.G. Lozier and M.J. Dooris, eds. Managing Faculty Resources, New Directions for Institutional Research, no. 63. San Francisco: Jossey-Bass 1989.

Simonton, Dean K. "Age and Outstanding Achievement: What do We Know After a Century of Research?" Psychological Bulletin 108 (1988): 251-67.

period effects. Furthermore, environmental conditions such as low expectations may have strong effects, and the cross-sectional studies have no controls for that important variable. There is concern about the quality of work in the later periods of the scholar life cycle, but distinguished researchers in their later years continue to produce about the same proportion of widely cited articles. There is evidence for and against the argument that research performance declines with age.⁴ Most of these studies have been cross-sectional rather than longitudinal, and therefore are subject to the severe limitations of such studies.

But the evidence from longitudinal studies is strong that people with need to use skills may retain them to very advanced ages.⁵ Performance may be better explained by lifetime work habits than by age,⁶ and may depend more upon the environment than we have realized. Indeed, an environment which is filled with age-based bias and low expectations may itself affect performance negatively, an effect akin to self-fulfilling prophecy. While the cross-sectional studies raise some questions about performance and aging, the more rigorous longitudinal studies indicate that skilled performance usually is maintained to an advanced age.

The lesson from these studies is clearly consistent with the policy of the ADEA: each person should be judged on the basis of individual performance. Nothing in the literature justifies use of age as a reliable indicator of the performance of any individual.

We need to become more familiar both with this literature and with the implications of the ADEA legislation. Either we are going to learn these lessons the easy way by serious preparatory study or we are going to learn them the hard way through

4. Little attention has been given to disciplinary and institutional differences. Teaching is absent from all the authoritative studies of academic aging, although it is the subject of a major study in progress sponsored by Princeton University and major professional associations.

5. E.g., Warner Schaie, "Beyond Calendar Definitions of Age, Time, and Cohort: The General Development Model Revisited," Developmental Review 6 (1986): 252-77.

6. One well-documented study has found that "cumulative advantage" rather than age affects performance most. P. Allison and J. Stewart. "Productivity Difference Among Scientists: Evidence for Cumulative Advantage," American Sociological Review 39 (1974): 596-606. Another study proposes that the key predictor is the "constant probability of success." See Simonton cited above.

litigation. The President should provide for such study by all administrators, and new administrators should be exposed to these concerns when they are appointed. The faculty should become more familiar with these issues as well, perhaps with publications and forum discussions arranged by the faculty leadership and various interested units.⁷

3. Academic Performance Throughout the Life Cycle

The primary impact of the uncapping legislation on academic institutions is that the use of mandatory retirement as a solution to problem faculty members will no longer be available. The decision to retire will soon be made solely by the individual scholar. Since the average retirement age will increase only slightly, by one to two years according to estimates and experience elsewhere, the effects on new hires, mean faculty age, age distribution, and access for minorities and women, are not likely to be substantial for the University as a whole.⁸ The impact on the faculty may be greater, however, if the "wrong ones" decide to stay longer. The faculty as a whole will have to bear the costs of any such adverse selection. While overall impacts are not likely to be great, the impact on a particular small department could be considerable as the result of the combination of a higher than typical density of older scholars, a less-than-average rate of retirements, and adverse selection.

As Parts 1 and 2 suggest, performance is the concern throughout the entire academic career. Recommendations of the Task Force therefore address the continued development of all faculty members throughout their careers through the suggested provisions for faculty development, post-tenure performance reviews, and a performance-based pay system. Also discussed are cases of poor

7. Collected publications on aging and performance and on mandatory retirement issues are available for use by faculty in the office of Jeanne Bader, Coordinator, Minnesota Area Geriatric Education Center (MAGEC), D527 Mayo, 612-624-3904. The materials include an annual Handbook of Research Abstracts on "Uncapping" of Academic Mandatory Retirement, published by MAGEC beginning November 1989.

8. The actual number professors of advanced age is likely to be very small. A study of our faculty indicates that the yearly probability of faculty members in their sixties returning the following year, is about .80. The cumulative effect of an 80% retention means that after 10 years only about 10% of an original 60-year-old cohort will remain on the faculty. The causes of departure include change of employment, retirement, death, and disability.

performance or incapacity due to medical problems.

Therefore, there is a real need to deal with serious problems of performance early. If we wait too long to offer help in problem cases, the behavior may become too rigid for change. Moreover, if we wait too long to apply appropriate pressures, we may seem to be taking actions that are age-related.

While we need to be concerned about individual performance at any age, we conclude that there should be no change in the institution of tenure, such as five-year-term tenure, or termination of tenure at any time in the employment relationship, such as at a certain age or after a number of years of service. At the same time, we should remember that the opportunity for self-governance and for maintaining the institution of tenure implies accountability. Tenure has never been intended as a protective device for those who seek to take advantage of the institution by performance that is so low it can only be characterized as opportunism.

Concern about fostering individual performance at all ages becomes the compelling principle.

Recommendation 3.1

The University should plan a comprehensive faculty development program and adopt a policy of regular allocations of resources for faculty development and vitality programs to increase the availability and usage of such programs by the whole faculty. Unit plans should be designed to include concern with individual development plans. Unit heads should be held accountable for participation by members of the unit in personal and professional development activities at all ages. Sabbatical compensation should be increased to stimulate greater usage.

Faculty development and vitality are lifelong needs. We need to provide resources to facilitate optimal and continuing development of our faculty members at every age. We also need to create an academic culture in which lifelong growth and learning and the use of development resources are expectations for all, not just a regimen prescribed for problem cases.

Two recent University reports, by the Merwin and the Swan committees, have also called for systematic attention to the continued development of our faculty members and the

institutional environment that influences their performance.⁹ These reports called for many specific actions, including--to name a few--better funding of sabbaticals, more attention to departmental characteristics that support performance (e.g., recognition by colleagues, sufficient civil service support, participative governance), and mid-career fellowships both for enhancing lifetime development and for relieving mid-career difficulties.

We recommend that past faculty development recommendations be implemented and that a comprehensive faculty development plan be implemented. The development of such a plan is not a new suggestion. President Keller asked the Swan Committee to develop a faculty development plan for the next decade.¹⁰ Unfortunately the Swan Committee felt it needed to focus on the immediate pressing problems, primarily low salaries, and could not develop such a plan.

This will be the third time in seven years that a major University-wide committee has recommended proactive and systematic attention to faculty development. We believe that now

9. Jack Merwin et al. Report of the Steering Committee to Facilitate the Scholarly Activities of the Faculty. University of Minnesota 1983.

Patricia Swan et al. Report of the Faculty Development Committee. University of Minnesota 1987.

10. With regard to this part of their charge, the Swan Committee wrote:

A comprehensive faculty development plan would be beneficial to the University because, through its tenure system, the University makes a commitment to a faculty member for a long period of time, often the greater part of an academic career. To the extent that faculty members are able to realize their full academic and professional potential, the University will benefit. If a faculty member's professional performance and contributions fall short of potential, the University loses. A comprehensive development plan would need to take into consideration not only remuneration and appropriate review for that remuneration, but also the criteria whereby faculty performance is to be judged, the nature and amount of resources that will be used to support faculty work, the qualities of an environment that will encourage the best performance, and the opportunities the faculty will be given for improving teaching and research skills. Several aspects of such a comprehensive development plan are present at the University, but others have received little, or no, attention.

is the time to allocate resources to plan and implement a comprehensive faculty development program to support our diverse faculty in their many roles, at every age and at each career stage. The primary beneficiaries of such efforts will be the students we teach and all those who benefit from our research and service activities.

Recommendation 3.2

The Faculty Senate should establish a policy for a system of major post-tenure performance reviews to be conducted by the faculty at least every five years.

We look at evaluation of faculty performance as a faculty responsibility, in a university which provides strong opportunities for self-governance. Our proposal is for review by the faculty, not by administrators.

While each one of us can improve performance by conscious efforts, we are more likely to actually achieve performance increases by having access to quality feedback from peers and others, and by utilizing that feedback seriously. Since it is clear that a periodic major review by peers provides much better information for self-improvement than the typical self-assessment based annual review, we owe it to ourselves and to our constituencies of students, legislators, donors, and alumni to implement major peer reviews as a critical part of our efforts to improve ourselves and to be accountable to our various publics.

While some units of the University already provide ample evaluation and feedback processes, a uniform, major review every three to five years would provide far more benefits than it would cost. We expect to avoid increases in the cost of such reviews by reallocating resources already used in more frequent evaluations. The process of appointing review committees should include provisions for protecting scholars against appointment of biased panels, and for appropriate delays upon request by the scholar when circumstances suggest waiting until a more appropriate time for the review. Experiences at peer institutions (e.g., the University of California) provide attractive models for further study.

Such reviews would have a strong developmental character. They would also be useful for recommendations for advancement under a system of real merit pay, which is our next proposal. The linkage between these two proposals is clear.

Recommendation 3.3

The University should adopt a performance-based pay system with the following features: adequate review and grievance features, including a strong faculty ombudsman office.

The faculty pay system should begin with a humane base, certainly not less than comparable teaching opportunities at community colleges and high schools. Provisions must be made for adjustments for market conditions facing certain units. Cost-of-living increases should be provided to keep the purchasing power of the base constant, and substantial increases should be given at least every five years for demonstrated achievement.

Although most of us find great intrinsic rewards in scholarly work, we are at least partly responsive to economic stimuli, with some differences among us in degree. Any real merit pay system, including a step system with performance reviews to justify step increases, is consistent with this objective. The perception is that the present system is not operating effectively as a merit system, both because of lack of adequate resources and because of a failure to allocate resources in many instances in accordance with merit. While there may be some differentiation in results both for very high performers and for very low performers,¹¹ the vast majority of faculty in the mid ranges have little economic incentive for extra effort in quantity or quality of service. Furthermore, too much annual effort is required by both faculty members and administrators to allocate the very small rewards available, and small differences in "merit" increases between scholars are generating negative reactions that are disproportionate to the benefits of the differentiation in rewards.

Our proposal is designed to restore appropriate incentives to the structure of the compensation system. While some costs are implied by this proposal to fund both cost-of-living and real merit steps, the benefits in performance may make the costs seem modest. The success of this proposal depends heavily on the ability of the leadership of the University to obtain the resources to implement it; tokens are not the incentives we propose.

A credible system for grieving pay and other merit-based decisions needs to be established along with a strong ombudsman office to seek informal resolution of differences about these decisions. Any review should be consistent with maintaining the appropriate range of discretion used in making these decisions.

11. Robert Kudrle and Geoffrey Maruyama, "Discretion in Faculty Salary Adjustments, 1982-1986." Report for the Senate Committee on Faculty Affairs 1989.

For a merit system to be effective, the evaluation of unit heads should include an assessment of the use of appropriate rewards and the unit head's effectiveness in communicating the reward outcomes and the reasons for these outcomes to the faculty. Many economic decisions (for example, research support, travel, and summer-session teaching or research) are now made without review in many units, and often faculty members question the merits of rumored allocations. Further, too much secrecy invites abuse. Such a secret decision-making process may reward efforts, but it keeps rewards secretly given from serving as a model to others. One solution is for units to disclose all such decisions to each academic member of the unit. Another solution is for a committee of unit members to review and advise the unit head. Conditions differ greatly from one unit to another, and no one prescription will serve the needs of every unit.

Recommendation 3.4

In order to develop a consensus and to provide notice of expectations about performance at any age, the faculty of each unit should adopt post-tenure standards of desired levels of performance in teaching, research, and service.

These standards should be approved by the Academic Vice President. Some units have already considered and adopted such standards, and therefore have already established a basis for these expectations. We believe that discussion of these matters will be useful in developing commonly accepted standards in units; it is better to conduct these discussions openly, rather than behind backs.

Some institutional response to extremely low performance is necessary. Zero pay changes are appropriate under the tenure code for such performance. A pay decrease is also possible under the tenure code for performance that is so low that disciplinary sanctions are appropriate; such a sanction is not as extreme as discharge or suspension without pay, and it does not require the full judicial system for implementation in a particular case, although it would be grievable.

Cases of extreme below-par performance should be considered, as they have been in the past, after warning and opportunity for counseling, as grounds for discharge for cause. Academic freedom is threatened more by overlooking such opportunism by these few faculty, than by a careful and responsible institutional response. Unit heads should be given necessary resources to prepare for proceedings in extreme cases, and should be negatively evaluated if they ignore serious problems. The number of such proceedings each year will be small. Only the

few clear cases of extreme low performance should be pressed. The Academic Vice President is in the best position to be the "gate-keeper" for this process. Successful use of this process in a few clear cases will increase the credibility of negotiations in subsequent cases.

Recommendation 3.5

The procedures governing temporary and permanent suspension for medical reasons should be reviewed by the Senate Committee on Faculty Affairs or a task force to develop procedures consistent with the needs of the University to terminate or suspend any faculty member for medical reasons and to make determinations in cases of temporary or permanent medical disability.

Existing procedures may not handle certain cases, such as Alzheimer's Disease, or other forms of severe dementia, in which the individual may be unable to assess the situation. More appropriate procedures to initiate temporary or permanent leave for medical reasons may be needed.

4. Improving Academic Retirement

We need to examine barriers to retirement which might cause those who are ready to retire to postpone retirement, and we need to encourage some faculty to remain, in view of the projected shortage of faculty in the near future, by specific arrangements, such as a retirement and immediate rehiring,¹² or by a transitional contract.

Flexible arrangements for part-time hiring of retired faculty are attractive both to the department and the individual. Many older scholars enjoy such opportunities and they should know that they are available at a reasonable level of compensation. These opportunities enhance the retirement years and provide benefits to the institution.

In general we believe that our regular employment policies should neither encourage nor discourage retirement, which should be the decision of the individual.

12. The effect would be to provide full or part access to the retirement income in addition to a full salary.

Recommendation 4.1

The administration should contract for an evaluation of our retirement counseling facilities by an outside consultant with experience in retirement matters.

Although we believe that the Employee Benefits staff provides good service with the resources available, we do not know whether we have adequate staffing of this function at the University, or whether some modest increase in staff is needed. Therefore a one-time expert consultation seems appropriate.

Retirement counseling (beginning with the first appointment) is very important in providing information to the faculty at the lowest cost. While present programs do include opportunities for such counseling, as well as a newsletter concerning employee benefits, perhaps other formats for communicating could be used to improve these services, such as regular visits to departments by counselors, access by faculty computers to up-to-date tutorials, and videotapes available for home use.

Recommendation 4.2

The University should make special efforts to encourage voluntary, tax-sheltered savings.

Voluntary savings have current tax advantages and will greatly increase the funds available for retirement income. The University should continue to publicize the advantages of such savings opportunities and should make more efforts to encourage faculty to utilize these opportunities.

Recommendation 4.3

The University should amend the Faculty Retirement Plan to provide for a uniform 13% contribution by the University for each dollar of line-item salary received by members of the plan.

We have reviewed the utility of our faculty retirement plan in terms of replacement of salary. We find that our retirement plan is a very successful method of funding retirement by deferring compensation payments through contributions by the University¹³ and by the participant to the individual's account

13. While the contribution is made mechanically by the University, the purpose, structure, and history of the Faculty Retirement Plan are clear that all the funds allocated to the

under the plan. An adequate level of replacement salary is a strong factor in retirement decisions.

Increasing the lower (2.5%) present rate of University contribution on the first \$5,000 to a rate of contribution of 13% will improve and simplify the plan, and will provide somewhat more benefits proportionately for lower-paid faculty.¹⁴ This change can be funded by a one-time allocation out of recurring funds for salary increases of less than 1% of overall faculty compensation. This change has already been proposed by the Senate Committee on Faculty Affairs and recommended to the Senate by the Faculty Consultative Committee, and we concur in recommending it.

Recommendation 4.4

The University should adopt a policy providing for office space, and normal office facilities for mail, xerox, telephone, postage, computer access, secretarial assistance, etc., to be made available for every retired scholar who desires to utilize these facilities for scholarly work. Ideally such facilities should be in or near the department of the scholar in order to be meaningful; but in cases where such space is not available, the college or campus may provide such facilities. Continued access might depend on the degree of utilization by the retired person; sharing of space is appropriate when it is scarce or when utilization is part-time.

An enlightened approach to the employment relationship includes developing a positive model of retirement. Retirement is a normal part of the life of the successful scholar. A good model of retirement involves opportunities to remain closely associated with the academic community when the scholar wishes to remain close. The prospect of being cut off from these facilities will prompt some faculty to remain longer than they would if access to such facilities were to continue to be available after retirement. The lack of this access after retirement therefore operates as a barrier to retirement.

participant's account under the plan are the funds of the faculty member, set aside for investment under the requirements of the Internal Revenue Code for deferral of taxation of these allocations under the compensation agreement.

14. The \$5,000 notch was originally intended to integrate the faculty retirement plan with the Social Security wage base and benefits. Changes in Social Security taxation rendered the \$5,000 notch obsolete long ago.

Continued listing in department and college bulletins, and continued invitations to unit events, are costless and basic parts of a good retirement model. Departments should review current practices and consider revisions to include present retirees, as well as future retirees. Present practices concerning access to parking, athletic-event seating, library, are sound and should be continued. Free tuition even for courses taken for credit should remain a fringe benefit after retirement.

The resources required to implement this recommendation are not necessarily great. We urge departments to provide these facilities if they are able to do so, and to make plans for future facilities based upon these anticipated needs. Obviously proposals to charge departments for space will create negative pressures with respect to these allocations for retired members; such proposals need to take the needs of retired members of the community into account adequately. If the department cannot provide these facilities, the college or the campus should provide them on at least a modest basis. In many cases shared facilities will meet the need.

Any assignment of facilities before or after retirement should be evaluated from time to time in terms of performance and the competitive uses for such facilities.

While departmental facilities will reduce the barriers to retirement better than more remote facilities, there are some additional benefits which would flow from a University facility. Centers for emeriti at other institutions have produced vibrant, productive organizations with many rewarding opportunities for teaching, scholarship, and service. Significant contributions to their communities and to their universities have resulted. We note that a modest beginning has been made in providing facilities to our Retirees Association in North Hall on the St. Paul campus for their volunteer-service program.

Recommendation 4.5

The University should implement a program of health insurance for retired faculty and their spouses.

The loss of health insurance coverage is a major barrier to retirement. Individuals may today have to spend almost \$5,000 out of after-tax earnings to cover such costs when retiring before age 65. Even after 65 the cost of full coverage is substantial. It would be desirable to cover spouses, as well, since spouse coverage may be as much of a barrier to retirement as is coverage for the faculty member. While access to insurance is now provided for retirees, the high cost of such insurance delays many retirements.

The cost of such coverage may be financed by taxing it to the unit which receives the salary line upon retirement, or from a one-time allocation of a portion of recurring funds available for salary increases, or from a small allocation of such funds each year for several years. We estimate the cost of covering present retirees and future retirees with health insurance to be a one-time allocation of recurring funds of only one percent of the faculty compensation base. In order to be affordable, or in order to cap future costs, it may be necessary to fund only a portion of the costs for a retired faculty member. We understand that the Health Insurance Task Force will be considering this subject.

While some financial resources are required to implement this recommendation, it must be remembered that decisions to delay retirement primarily because of this barrier are potentially very costly. Moreover, we are behind competitively in these benefits; many peer institutions already provide such coverage.

Recommendation 4.6

The University should authorize an optional faculty contract which will provide for transition to retirement via a terminal appointment at 50% pay, with full medical insurance and full retirement plan contributions (based upon the salary for a 100% appointment), for a term of years not to exceed 10 years for faculty members who have served at least 10 years and who are at least 55.

This procedure provides a phasing of retirement which is very attractive to many scholars, and it funds an entry-level position in many cases out of savings from the reduction in the appointment. We predict that the increased cost of the benefits and retirement contributions will be compensated, on average, by much more than half-time performance by the faculty member. Therefore this arrangement does not involve economic waste, and it should be generally available for scholars who have served with distinction for many years. The assignment of duties could reflect seasonal preferences of the scholar. The percentage of pay and duties could be set by agreement in individual cases at any point in the range of 50% to 100%. While we encourage appointments for less than 50% in another portion of this report for retired faculty, we do not believe that fringe benefits should be provided for such appointments beyond what is required by law.

The optional contract might be offered with a five-year ceiling initially, in order to assess effects before offering a longer contract period.

Recommendation 4.7

The University should use a period of terminal leave for faculty very sparingly, with approval only by the Academic Vice-President, and with regular auditing of the use of such resources by the Senate Committee on Faculty Affairs. We specifically recommend that "buy outs" not be used in serious problem cases as a substitute for more direct remedies.

Early-retirement incentive programs have been available since 1982 at the University. Such plans consume resources, and have been the subject of severe public and faculty criticism in certain cases involving nonacademic staff at the University. Their use for academic staff is likewise subject to criticism, both on grounds of inequity and of waste of resources. While these plans are not explicitly entitlement plans, they may come to be used as an entitlement. When that happens, the expectations by faculty of the use of such benefits become built into the decision-making process. It is clear that these expectations are becoming established at our University. Therefore resources are wasted because a substantial number of those taking advantage of the benefits would have retired soon anyway.

The utility of these plans for dealing with problem cases is also doubtful. If the case is one in which discharge is appropriate, the use of major economic resources to save the unit head from the turmoil of discharge proceedings may not be justified. Furthermore, productive members of the faculty are outraged by the use of large resources in problem cases; the message delivered is that to get these resources you need to become a problem case.

Even where these plans are used for programmatic reasons, or in cases of resource reduction, the literature clearly indicates that infrequent use of the technique is more efficient than a permanent plan.

Recommendation 4.8

The University should remove mandatory retirement as soon as possible as a feature of the employment arrangement for tenured faculty.

The federal law requires elimination of mandatory retirement as of December 31, 1993. Approximately 120 faculty members are scheduled for retirement before that date. Civil-service and professional and administrative staff already have the right to decide for themselves when to retire. Several states have enacted legislation prohibiting mandatory retirement of employees

including faculty, and some universities have already removed mandatory retirement as a feature of their employment arrangements. Considerations of equity make it desirable for the University to take action as soon as possible to discontinue mandatory retirement for faculty members. The public policies expressed by the ADEA are no less persuasive today than in 1994; early implementation of those policies by the University would be consistent with the principle of age as irrelevant in the terms of employment of faculty members.

Approximately half of the faculty scheduled for mandatory retirement between now and December 31, 1993, say that such a change would not affect their decisions about when to retire, and that they would retire on or before age 70. Those in the other half indicate that they would stay a little longer, often with very specific reasons, such as a research project or students who are completing work under them. Only a few indicate intentions of remaining long after 70.

AAUP has recently urged early "uncapping" in unusually strong terms:

Since 1986 it has been the public policy of the United States that discrimination in employment because of age alone is illegal. There are only a few exceptions to this policy. The one that troubles the American Association of University Professors is the provision that, until January 1, 1994, bars tenured faculty from the full benefits of the law. Tenured faculty members can still be compelled to retire when they reach age seventy. The Association believes that this exclusion, which still has almost four years to run, is unjust and is itself discriminatory.¹⁵

We should "uncap" now at the University of Minnesota in order to provide the same freedom of choice for these scholars as will be mandatory for all in 1994. We should not retain the accident of birth date as the barrier which denies them the same freedom of choice.

15. AAUP Council Committee on Retirement, "Ending Mandatory Retirement in Higher Education." Academe, January-February 1990 52-54. The full text is provided in Appendix B.

TABLE OF RECOMMENDATIONS

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The Faculty Senate should establish a policy for a system of major post-tenure performance reviews to be conducted by the faculty at least every five years.

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The University should adopt a performance-based pay system with the following features: adequate review and corresponding salary increases and grievance features, including a strong faculty ombudsman office.

Recommendation 3.4

In order to develop a consensus and to provide notice of expectations about performance at any age, the faculty of each unit should adopt post-tenure standards of desired levels of performance in teaching, research, and service.

Recommendation 3.5

The procedures governing temporary and permanent suspension for medical reasons should be reviewed by the Senate Committee on Faculty Affairs or a task force to develop procedures consistent with the needs of the University to terminate or suspend any faculty member for medical reasons and to make determinations in cases of temporary or permanent medical disability.

Recommendation 4.1

The administration should contract for an evaluation of our retirement counseling facilities by an outside consultant with experience in retirement matters.

Recommendation 4.2

The University should make special efforts to encourage voluntary, tax-sheltered savings.

Recommendation 4.3

The University should amend the Faculty Retirement Plan to provide for a uniform 13% contribution by the University for each dollar of line-item salary received by members of the plan.

Recommendation 4.4

The University should adopt a policy providing for office space, and normal office facilities for mail, xerox, telephone, postage, computer access, secretarial assistance, etc., to be made available for every retired scholar who desires to utilize these facilities for scholarly work. Ideally such facilities should be in or near the department of the scholar in order to be meaningful; but in cases where such space is not available, the college or campus may provide such facilities. Continued access might depend on the degree of utilization by the retired person; sharing of space is appropriate when it is scarce or when utilization is part-time.

Recommendation 4.5

The University should implement a program of health insurance for retired faculty and their spouses.

Recommendation 4.6

The University should authorize an optional faculty contract which will provide for transition to retirement via a terminal appointment at 50% pay, with full medical insurance and full retirement plan contributions (based upon the salary for a 100% appointment), for a term of years not to exceed 10 years for faculty members who have served at least 10 years and who are at least 55.

Recommendation 4.7

The University should use a period of terminal leave for faculty very sparingly, with approval only by the Academic Vice-President, and with regular auditing of the use of such resources by the Senate Committee on Faculty Affairs. We specifically recommend that "buy outs" not be used in serious problem cases as a substitute for more direct remedies.

Recommendation 4.8

The University should remove mandatory retirement as soon as possible as a feature of the employment arrangement for tenured faculty.

APPENDIX A



UNIVERSITY OF MINNESOTA

University Senate Consultative Committee
305 Alderman Hall
1970 Folwell Avenue
St. Paul, MN 55108

May 1, 1989

Stephen Scallen, Law School, chair
Richard Arvey, Carlson School of Management
Jeanne Bader, School of Nursing
Mario Bognanno, Carlson School of Management
Thomas Clayton, College of Liberal Arts
Mary Corcoran, College of Education (emeritus)
Richard Goldstein, Institute of Technology
Rebecca Goodman, Management Planning and Information Services
Joseph Latterell, University of Minnesota, Morris
Ann Pick, College of Education
George Sell, Institute of Technology
Suzanna Sherry, Law School
David Swanson, Employee Benefits, ex officio
James Vaupel, Humphrey Institute of Public Affairs
Carol Carrier, Academic Affairs, ex officio

Dear Colleagues:

We want to thank you for agreeing to serve on a task force which we view as having considerable importance, one which will review the implications of the elimination of mandatory retirement for faculty and which will make recommendations to us as a result of that inquiry.

As you know, and by way of background, recent University planning reports have taken notice that after January 1, 1994 (unless the U. S. Congress votes to continue the exemption), amendments to the Age Discrimination in Employment Act forbid the setting of a mandatory retirement age for most employees, including tenured faculty members. In the "Faculty Policy" section of the Academic Priorities document, the following statement is made about retirement (p. 13):

Retirement

Administration position: The administration will in 1988, in consultation with the Senate, begin a review of policy questions associated with retirement that is not based automatically on age. Explicit recommendations to the Regents will await completion of this review.

Rationale: By Federal law, after 1994 there will be no mandatory retirement at age 70 for faculty members. This change will make it incumbent on the University to have in place clear performance-based standards for continuing appointment of tenured faculty, that avoid age discrimination, and to examine the structure of its policies related to retirement, so as to assure continuing faculty turnover and vitality.

Nationwide, higher education institutions are (or soon will be) engaged in predicting how the expected abolition of mandatory retirement--as well as demographic changes in demand for scholars--will affect future faculty staffing needs. The National Academy of Science is expected to conduct a national study on the ramifications of the anticipated change; Congress, however, has not yet allocated the funds needed to finance it. In the meantime, individual institutions are more or less on their own with only a few limited-sample studies available to provide basic data and alternative policy responses.

Some observers have expressed concern that without a mandatory retirement age institutions will be left with a surplus of costly older academics who are no longer productive and a shortage of positions for more recently-trained, younger scholars. Others such as Howard Bowen and Jack Shuster (American Professors: A National Resource Imperiled) have concluded that serious faculty shortages may develop in many fields in the next 25 years if faculty retirement age patterns continue as in the past.

You should deal with several sets of issues as a basis for making policy recommendations. The first set focuses on development of demographic and behavioral data:

1. What is the demographic profile of University faculty, by department and college?
2. When do Minnesota faculty retire?
3. What role does the existence of a mandatory retirement age play in those decisions?
4. What does this evidence suggest that faculty members will do when mandatory retirement is abolished?
5. What do faculty members themselves plan to do when mandatory retirement is abolished? And what factors do they feel will affect the timing of the retirement decision?

There are at least three other sets of issues that deal with institutional policies which could (at least theoretically) be modified in response to the removal of the mandatory retirement age: Tenure, Salary, and Retirement Incentives.

The tenure issues include:

1. Should the probationary period be extended?
2. Should a system of post-tenure faculty evaluation be developed and instituted? If so, what should be its purposes, its design, and its consequences? What are the legal implications? Morale and vitality implications?

The salary issues include:

1. Should annual salary reviews be more like tenure/promotion reviews in their intensity?
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The retirement incentives issues include:

1. How do we move towards a "managed retirement" system that functions to encourage less productive people to retire earlier and more productive people to remain active longer? What are the legal implications? Morale and vitality implications?
2. What are the costs and benefits of incentive early retirement programs?
3. Should we have a variety of programs that include financial incentives, phased retirement, or partial retirement options?
4. How do University-provided amenities and fringe benefits, especially health insurance, influence faculty planning and decision-making about retirement?
5. Should departments with problematic age profiles receive special assistance (e.g., mortgages on faculty line items)?
6. Should the University wait until 1994 to "uncap" mandatory retirement?

As you can well understand, we look forward with considerable interest to the results of your inquiries and recommendations. The Office of the Vice President for Academic Affairs will furnish funding to conduct the research which will be

Task Force on Mandatory Retirement
May 1, 1989

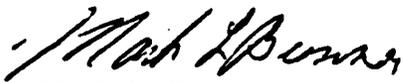
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necessary to provide answers to the questions we have posed; we anticipate that much of the data-gathering can be completed during the summer of 1989.

We would very much appreciate it if you would consider the end of Fall Quarter, 1989, as the target date for completion of your work.

Thank you very much for your willingness to assist the University in this important endeavor.

Cordially,



Mark L. Brenner
Chair, Faculty Consultative
Committee



Shirley M. Clark
Provost and Senior Vice President
for Academic Affairs

cc: President Nils Hasselmo
Barbara Muesing, Executive Director, Board of Regents
University Vice Presidents
Chancellors
Faculty Consultative Committee

Ending Mandatory Retirement in Higher Education

Appendix B

This report, prepared by the Council Committee on Retirement and presented to the Council and the Annual Meeting in June 1989, is intended to supplement and undergird the 1989 statement, Faculty Tenure and the End of Mandatory Retirement, approved by Committee A, adopted by the Council, and endorsed by the Seventy-fifth Annual Meeting (Academe, September-October 1989, 48).

Since 1986 it has been the public policy of the United States that discrimination in employment because of age alone is illegal. There are only a few exceptions to this policy. The one that troubles the American Association of University Professors is the provision that, until January 1, 1994, bars tenured faculty from the full benefits of the law. Tenured faculty members can still be compelled to retire when they reach age seventy. The Association believes that this exclusion, which still has almost four years to run, is unjust and is itself discriminatory. Professors have no characteristics that make them automatically unfit to serve after they turn seventy. Indeed, this report will argue that faculty members may be more fit for continued activity than may be the case for others. The seven-year deferment that Congress voted in 1986 chiefly served the convenience and apprehensions of university administrators (Holden and Hansen, 1989, 28). Their preferences cannot outweigh the public policy of the Age Discrimination in Employment Act, as it has evolved since 1967. Their fears, we believe, are unwarranted.

If Congress will not act to accelerate the 1994 liberation of older faculty, we call upon the state legislatures to act. A number of states have already "uncapped" retirement within their borders; all are legally free to do so. So also are private institutions. We support any sector of higher education in taking the initiative to uncap soon. While the exclusion does remain in place, it provides an opportunity to adapt earlier rather than later to the state of affairs that will prevail when the statutory exclusion fades away.

We do not think that it is any longer necessary to make the general case against age discrimination. Age discrimination, for some people, may not arouse disapprobation as intense as does discrimination on account of race or sex. Yet, like race and sex, aging is immutable. Aging is also a process, terminating ultimately in death. But it is increasingly clear that no instant of biological age, certainly not a birthday, tells us much about the capacity of any individual to carry on with his or her work. That perception is not only embedded in law, it has support from the behavioral sciences (Levine, 1988).

One can make stereotypical observations about the decline in acuity or energy or attentiveness in people of advanced age. One can find the same shortcomings in much younger people. Some people are old by age fifty; others are alert at eighty. It is all a matter for individual determination. Objective observation of older people by psychologists tends to undermine the stereo-

types—even the image of the absent-minded professor becoming ever more absent-minded from memory loss. Close analysis of the different functions that a professor performs—teaching, writing, counseling, university service—shows little correlation with age for any of them (Blackburn and Lawrence, 1986). Even if faculty members who defer retirement do, in fact, exhibit some decline in their ability as teachers or scholars, there is a positive offset in the likelihood that maturity and long experience will enhance their judgment and wisdom.

These are all considerations, we repeat, that vary tremendously among individuals. It seems almost obvious that, compared with other sectors of the work force, the duties expected in higher education are not particularly stressful nor particularly debilitating. Indeed, one of the fears most frequently voiced about ending mandatory retirement is that teaching is easy to keep on doing. It is said that professors (like many others) will be able to go through the motions long after they have lost the spark.

It may well be that those who fear the consequences of ending mandatory retirement (and we do not mean to suggest that only administrators have such fears) are most moved by the apprehension that, when capacities do decline, too many veterans will simply hang on.

There are several rejoinders to this concern. No one of them is decisive, but cumulatively they should be reassuring. First, many people, in higher education as in our society as a whole, welcome retirement even before it is compelled. They may do so on grounds of health, from a wish to pursue other interests, or simply because they do not want to work any more. Early retirement is widespread in other occupations; retirement well before age seventy is increasingly socially acceptable. Second, virtually all professors, we assert, are persons of responsibility who would not wish to outstay their usefulness. Third, peer pressures reinforce responsibility. Student evaluations, if they turn negative, will not go unheeded. Fourth, the possibility of removal for cause stands always in reserve; on balance, it is not seriously impeded by age discrimination law (Finkin, 1988).

A concern related to that of diminished competence is that older faculty are likely to saddle the academic enterprise with obsolescent knowledge and fields no longer in demand. Of course obsolescence is a concern, as the frontiers of knowledge keep advancing at an ever faster pace and as student interest shifts from classics to computers. The impact of these changes can hit

faculty members in any field at any age. The response is not to discriminate against those at the elderly end of the spectrum, but to expand for all ages the very modest programs for continuing development and redirection of faculty talents that can now be found in our colleges and universities.

If, as we believe, fears that our students and institutions will be afflicted with senile or outmoded teachers are overdrawn, so also are concerns that the continued presence of some over-seventy professors thwarts the recruitment and advancement of younger faculty. The first point to be made is that this is not a cumulative obstruction. Assume that the *average* length of full-time service, for those who stay after age seventy, is four years. Once four years have elapsed after "uncapping," openings will be created at the same rate as before. This is therefore a short-term drag on replenishing a faculty.

The short-run delays in recruitment and promotion that will flow from uncapping mandatory retirement are expected to occur at about the same time that shortages of young Ph.D.'s are predicted (H. Bowen and Schuster, 1986; Mooney, 1989; Sovern, 1989). This shortage will occur because of the expected massive retirements of those who were hired in the great post-war expansion of higher education. There is near-consensus among those who measure student and faculty demographics that student enrollment will not decline, and that the number of well-qualified teachers surely will, owing to the slowed rate of Ph.D. production in the 1980s. While estimates vary about how large the faculty deficit will be, and when it will become acute, there seems to be little doubt about the trend (W. Bowen and Sosa, 1989; c.f. Cheney, 1989). This is a fortunate, though fortuitous, counterbalance to those who fear a closing of opportunities.

We have addressed concerns about the competence of those who will delay retirement, and about the consequences of such decisions in making room on the promotion ladder. There is a third (and last) set of alarms that need quieting. That is the discomfort felt by administrators (and budget-minded faculty) about the financial burdens of delayed retirement.

These costs are not crushing, but they may not be trivial either. Senior faculty ordinarily get top salaries. At the same time, senior faculty in research institutions (which may have more than their share of late retirements) usually have the prestige that attracts grants and students. These contributions should be kept in mind. They may offset a hasty assumption that to keep on paying senior salaries costs the difference between them and a junior replacement.

If delayed retirement becomes a financial problem after uncapping, are there ways to encourage faculty for whom retirement seems timely to accelerate that decision? There are indeed, if two conditions are satisfied. The first is an adequate retirement income (see AAC-AAUP, 1988), which any reputable institution can and should offer anyway. Reliance on retirement incomes may be impaired by fear of inflation, but that is mitigated to some extent by the indexing of Social Security.¹ Recipients of annuities (in private institutions) must by law start receiving them in their seventy-first year, whether or not they have retired. It remains to be seen what effect if any this quirk will have on a professor's insistence to keep on drawing a full salary as well. That and other imponderables are

best resolved by emphasizing the second and dominant requisite to inducing retirement: make retirement status more attractive.

It would unbalance this report if it presented a full catalog of the benefits, most of them not costly, that can be offered to make the retiree feel, and be, a useful and valued part of the academic community (see Albert, 1986; Benjamin, 1989). The most impressive betterments, which do require resources, are to provide office space for those who will use it, and to provide opportunities for part-time teaching. Part-time teachers do not necessarily have to be paid at full-time rates, so long as part-timers are treated equally and fairly. In any event, a part-time salary yields value received; and that, even when combined with an office, costs a great deal less than a full salary.

Other arrangements that smooth the path to retirement include phased retirement sequences, which deserve more attention than they have been given in higher education. Another is to offer forthright payments for accepting retirement. Such buyouts, however, can be expensive, and should be developed with great care, avoiding provisions that themselves can be age-discriminatory and coercive in their application (McMorrow, 1988).

CAVEATS AND CONCLUSIONS

This report makes rather confident assertions that look toward generally benign outcomes of ending compulsory retirement. A belated note of caution is in order. No one knows what the precise behavior of our colleagues in higher education will be following 1994. Although mandatory retirement has already been ended in several states, little of value has been published about experience in those states. Two studies of the general topic are underway. One, by the National Research Council, was mandated by Congress as part of the 1986 legislation. It did not effectively commence until early 1989. The other, foundation-financed, is moving forward under the aegis of several educational organizations, including this Association.² Everyone concerned looks forward to the completion of these studies.

¹Some state plans are also indexed; and a limited form of indexing is offered by TIAA-CREF.

²The Project on Faculty Retirement is supported by the Mellon, Carnegie, and Hewlett Foundations, and sponsored by the American Association of University Professors, the Association of American Universities, the Consortium on Financing Higher Education, and the National Association of State Universities and Land-Grant Colleges.

Meanwhile, the Council Committee on Retirement respectfully considers this general statement worth making. As for faculty behavior come 1994, we speak neither in best-case nor worst-case terms; we only offer our considered estimate of what is likely to happen. We believe that any disruption costs and money costs of uncapping will be modest and tolerable. Whatever the event, on principle we assert that mandatory retirement fails to respect individual capacities, that it has been appropriately declared unlawful, and that the exclusion of academics from equal protection of the law should promptly end.

Council Committee on Retirement

RALPH S. BROWN (Law),
Yale University; *chair*
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Michigan State University
MARY W. GRAY (Mathematics),
American University
KAREN C. HOLDEN (Economics),
University of Wisconsin, Madison
MAITA F. LEVINE (Mathematics),
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BARBARA LOWERY (Nursing),
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PAUL M. NATHANSON (Law),
University of New Mexico
WILLIAM STEPKA (Pharmacology),
Medical College of Virginia
ERNST BENJAMIN (Political Science),
Association Staff

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UNIVERSITY OF MINNESOTA

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May 1, 1989

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Mary Corcoran, College of Education (emeritus)
Richard Goldstein, Institute of Technology
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Ann Pick, College of Education
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5. Should departments with problematic age profiles receive special assistance (e.g., mortgages on faculty line items)?
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As you can well understand, we look forward with considerable interest to the results of your inquiries and recommendations. The Office of the Vice President for Academic Affairs will furnish funding to conduct the research which will be

Task Force on Mandatory Retirement
May 1, 1989

4

necessary to provide answers to the questions we have posed; we anticipate that much of the data-gathering can be completed during the summer of 1989.

We would very much appreciate it if you would consider the end of Fall Quarter, 1989, as the target date for completion of your work.

Thank you very much for your willingness to assist the University in this important endeavor.

Cordially,



Mark L. Brenner
Chair, Faculty Consultative
Committee



Shirley M. Clark
Provost and Senior Vice President
for Academic Affairs

cc: President Nils Hasselmo
Barbara Muesing, Executive Director, Board of Regents
University Vice Presidents
Chancellors
Faculty Consultative Committee



UNIVERSITY OF MINNESOTA
TWIN CITIES

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November 6, 1989

Steve Scallen, Professor
Law School
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229 19th Avenue South
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Dear Steve:

Your article in the October 24, 1989 issue of Footnote regarding uncapping mandatory retirement at the University is a thoughtful piece on a topic of interest to me. I especially appreciate your invitation to submit comments for consideration by your committee. I have been pressing for this type of dialogue for over two years so I have generated a file on this topic that is several inches thick. The statements below are, to a large extent, summaries of points that I have included in letters to various university administrators, attorneys, regents, and The Daily. I have chosen to put my statements in outline form to be brief. The thrust of my argument is that we should remove the mandatory retirement cap now.

1. The civil rights argument.

The mandatory age retirement policy at the University discriminates against a very small powerless minority on the basis of an immutable human condition, namely age. Such discrimination is immoral, contrary to public policy, uniformly condemned by state and federal courts, and violative of the constitutional guarantee of equal protection under the law.

Regrettably this University's record on civil rights issues is not an enviable one. We have grudgingly granted rights to racial minorities, women, gays, and lesbians after they have been mandated by statutes and court orders. This is not becoming of the University in a state that is generally recognized as a model of human rights.

Again, the University is faced with a choice on a civil rights question. We can wait until the last minute when a federal or state law or a court tells us to stop discriminating, or we can act. Surely we have learned by now that resistance to the advancement of civil rights is self defeating.

Time is running out on this issue. The University will certainly experience a major age discrimination suit before 1993 when federal law will force us to abandon our current policy. The suit will not be limited to the

mandatory age retirement policy. The scandalous early retirement policy also will be challenged. Clearly that policy, which ties early retirement benefits to age, is inconsistent with numerous recent federal court opinions. There are several potential plaintiffs who have chosen early retirement and whose benefits have been determined by the age formula that is in our early retirement policy.

2. The best practices argument.

The best universities in the nation have already repealed mandatory age retirement policies or they never had them in the first place. Examples include the Universities of Chicago, Michigan, Wisconsin and all 19 campuses of the University of California. These institutions and many more highly prestigious institutions have provided a model for us to follow. It seems that we like to be identified with this group of research universities when we speak of quality at this University.

3. The self-interest argument.

Data collected from budgets at this University show that senior professors receive larger merit salary increases than junior faculty and the difference increases with age. Using merit salary increases as a proxy for productivity, one must conclude that the most senior professors are also the most productive. Accordingly, it is not in our best interest to require our most productive employees to retire at the peak of their productivity.

4. The legal argument.

The law on this topic was summarized very well in your October 24 article in Footnote. However, there is one addition that I would make. At least three state supreme courts have held that mandatory age retirement policies are violative of state human rights statutes. The states are Florida, New York, and Pennsylvania. Further, as you stated in your article, the trend in the law is clearly in favor of older workers.

5. A response to the "reduced productivity" argument.

You explained in your article that 85 percent of the college and university presidents contacted in a survey predicted poorer faculty performance on account of uncapping mandatory retirement. My first observation is that these same administrators made similar predictions in 1974 when ADEA was broadened to include federal and state employees. The law at that time protected workers to age 65. Again in 1978 these administrators resisted the amendment that raised the top age to 70. Finally, in 1986, these prophets of doom swarmed on Congress once more and lobbied successfully for the tenured faculty exemption that expires in 1993.

Professor Steve Scallen
Page 2

The truth of the matter is that administrators like to hire people. Numerous surveys show that educational administrators rate "staffing" as the most satisfying part of their job. Indeed, one dean at the University of Minnesota makes no bones about it. He has boasted that he keeps a "faculty" birthday book" at his elbow on his desk. He has told senior professors that they will be forced to retire soon, then he can select some professors of his choice. Incidentally, three female professors in that college have won sex discrimination suits during this dean's tenure.

In summary, it is important to remember that the University has but one choice to make. It can remove the cap now or it can wait until federal or state law or a court removes it. All of this talk about tenure, improved evaluation procedures, and changes in retirement benefits is important but unrelated to the issue of uncapping retirement age. These topics are perennials that flower each academic year. Raising them in the context of removing the retirement cap creates a suspicious cloud over the academic garden. Could it be a smoke screen for age discrimination in employment?

In closing, remember we senior faculty members are not asking for an awful lot from the University. We are not asking for any of the golden parachutes that seem to be in abundance at the University, especially for incompetent administrators. We are not asking for special treatment. Rather, we simply request that we be given the same treatment as others.

Sincerely,



Clifford P. Hooker
Professor

CPH:ds

cc: Warren E. Ibele, Chair, Faculty Consultative Committee



UNIVERSITY OF MINNESOTA
TWIN CITIES

Office of the Dean

College of Liberal Arts
215 Johnston Hall
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October 30, 1989

To: Professor Stephen Scallen, Law School

From: Craig Swan, Professor and Acting Dean *Craig*

Subject: Early Retirement

I was quite surprised to read in the Faculty Consultative Committee minutes for October 19 that your Task Force on the elimination of mandatory retirement had come to the conclusion that early retirement inducements should be eliminated. The minutes do not report any evidence to support the conclusions of "adverse selection and a waste of time". I would be interested to know what evidence does support that conclusion as it could not have come from the College of Liberal Arts. Currently policies are extremely valuable. To eliminate them would be a serious mistake. I would like to meet with the Task Force if there is a serious chance that it will recommend the elimination of these policies.

CS/sk

cc: Warren Ibele ✓
Leonard Kuhi



UNIVERSITY OF MINNESOTA

University Senate Consultative Committee

305 Alderman Hall
1970 Folwell Avenue
St. Paul, MN 55108
(612) 626-1850

May 1, 1989

Stephen Scallen, Law School, chair
Richard Arvey, Carlson School of Management
Jeanne Bader, School of Public Health
Mario Bognanno, Carlson School of Management
Thomas Clayton, College of Liberal Arts
Mary Corcoran, College of Education (emeritus)
Richard Goldstein, Institute of Technology
Rebecca Goodman, Management Planning and Information Services
Joseph Latterell, University of Minnesota, Morris
Ann Pick, College of Education
George Sell, Institute of Technology
Suzanna Sherry, Law School
David Swanson, Employee Benefits, ex officio
James Vaupel, Humphrey Institute of Public Affairs
Carol Carrier, Academic Affairs, ex officio

Dear Colleagues:

We want to thank you for agreeing to serve on a task force which we view as having considerable importance, one which will review the implications of the elimination of mandatory retirement for faculty and which will make recommendations to us as a result of that inquiry.

As you know, and by way of background, recent University planning reports have taken notice that after January 1, 1994 (unless the U. S. Congress votes to continue the exemption), amendments to the Age Discrimination in Employment Act forbid the setting of a mandatory retirement age for most employees, including tenured faculty members. In the "Faculty Policy" section of the Academic Priorities document, the following statement is made about retirement (p. 13):

Retirement

Administration position: The administration will in 1988, in consultation with the Senate, begin a review of policy questions associated with retirement that is not based automatically on age. Explicit recommendations to the Regents will await completion of this review.

Rationale: By Federal law, after 1994 there will be no mandatory retirement at age 70 for faculty members. This change will make it incumbent on the University to have in place clear performance-based standards for continuing appointment of tenured faculty, that avoid age discrimination, and to examine the structure of its policies related to retirement, so as to assure continuing faculty turnover and vitality.

Nationwide, higher education institutions are (or soon will be) engaged in predicting how the expected abolition of mandatory retirement--as well as demographic changes in demand for scholars--will affect future faculty staffing needs. The National Academy of Science is expected to conduct a national study on the ramifications of the anticipated change; Congress, however, has not yet allocated the funds needed to finance it. In the meantime, individual institutions are more or less on their own with only a few limited-sample studies available to provide basic data and alternative policy responses.

Some observers have expressed concern that without a mandatory retirement age institutions will be left with a surplus of costly older academics who are no longer productive and a shortage of positions for more recently-trained, younger scholars. Others such as Howard Bowen and Jack Shuster (American Professors: A National Resource Imperiled) have concluded that serious faculty shortages may develop in many fields in the next 25 years if faculty retirement age patterns continue as in the past.

You should deal with several sets of issues as a basis for making policy recommendations. The first set focuses on development of demographic and behavioral data:

1. What is the demographic profile of University faculty, by department and college?
2. When do Minnesota faculty retire?
3. What role does the existence of a mandatory retirement age play in those decisions?
4. What does this evidence suggest that faculty members will do when mandatory retirement is abolished?
5. What do faculty members themselves plan to do when mandatory retirement is abolished? And what factors do they feel will affect the timing of the retirement decision?

There are at least three other sets of issues that deal with institutional policies which could (at least theoretically) be modified in response to the removal of the mandatory retirement age: Tenure, Salary, and Retirement Incentives.

The tenure issues include:

1. Should the probationary period be extended?
2. Should a system of post-tenure faculty evaluation be developed and instituted? If so, what should be its purposes, its design, and its consequences? What are the legal implications? Morale and vitality implications?

The salary issues include:

1. Should annual salary reviews be more like tenure/promotion reviews in their intensity?
2. Should the basis of individual faculty salary increases be changed (e.g., part base salary increase, part bonus)?

The retirement incentives issues include:

1. How do we move towards a "managed retirement" system that functions to encourage less productive people to retire earlier and more productive people to remain active longer? What are the legal implications? Morale and vitality implications?
2. What are the costs and benefits of incentive early retirement programs?
3. Should we have a variety of programs that include financial incentives, phased retirement, or partial retirement options?
4. How do University-provided amenities and fringe benefits, especially health insurance, influence faculty planning and decision-making about retirement?
5. Should departments with problematic age profiles receive special assistance (e.g., mortgages on faculty line items)?
6. Should the University wait until 1994 to "uncap" mandatory retirement?

As you can well understand, we look forward with considerable interest to the results of your inquiries and recommendations. The Office of the Vice President for Academic Affairs will furnish funding to conduct the research which will be

Task Force on Mandatory Retirement
May 1, 1989

4

necessary to provide answers to the questions we have posed; we anticipate that much of the data-gathering can be completed during the summer of 1989.

We would very much appreciate it if you would consider the end of Fall Quarter, 1989, as the target date for completion of your work.

Thank you very much for your willingness to assist the University in this important endeavor.

Cordially,



Mark L. Brenner
Chair, Faculty Consultative
Committee



Shirley M. Clark
Provost and Senior Vice President
for Academic Affairs

cc: President Nils Hasselmo
Barbara Muesing, Executive Director, Board of Regents
University Vice Presidents
Chancellors
Faculty Consultative Committee

Comments from Phil Frickey about the Task Force on the Elimination of
Mandatory Retirement

1. Rather than have a lawyer from the Tenure Committee or law faculty, there should be liaison or membership from Steve Dunham's office. Phil thought Karen Schanfield would be the most appropriate one.
2. The Task Force, or its appointing authority, might want to have a legal memorandum from Steve's office about age discrimination (and, presumably, any other appropriate legal issues).
3. There should be liaisons from, or membership from, Employee Benefits and Academic Affairs (Betty Robinett's office).
4. The chair should perhaps be a distinguished and respected member of the senior faculty. The position, and report, could be very controversial; such a person could diffuse much of the possible criticisms. Perhaps a Regents Professor should be chosen.
5. The issues of representation are sticky--junior faculty might have different interests from senior faculty. The membership will have to be chosen with care.

For mandatory rot.
task force

SSFA:

Scallan
Carrie Sullivan
Neal Gault.

Note to Sue

Note to Dick
re: opt. of research of
Enckow/Ten etc
letter recommending
names

SSD (or designee)

~~asset~~ barriers to retirement

health benefits; annuity shopping
incentive early retirement → continuation
Demographics of this U faculty, present system
↳ MPIS

Sullivan, Scallen, Weiler

Mike Prognano Art Williams

Jack Flayler (labored)

1/2-time grad student - or use Weiler

How does early ret prog work / characteristics
of those who did

Implications of market crash

Review - post-tenure

Look at cos. used to ~~not~~ mand ret.

Keeping on p-time after formal retirement
phased deprt.



UNIVERSITY OF MINNESOTA
TWIN CITIES

Industrial Relations Center
537 Management and Economics Building
271 19th Avenue South
Minneapolis, Minnesota 55455



February 18, 1988

FYI
- Phil

W. Phillips Shively, Chair
Faculty Consultative Committee
1480 Social Sciences
267 19th Avenue S.
Minneapolis, MN 55455

Dear Professor Shively:

Here are my recommendations concerning the kinds of talent needed to serve on the Task Force on the Elimination of Mandatory Retirement for Faculty as well as some composition elements:

1. I believe that the task force should be keep somewhat small, perhaps in the neighborhood of 4-6 individuals.
2. I believe we should have somebody well acquainted with labor law. In addition, should we include someone who is familiar with the litigation in this specific component of labor law? What about including Dunham or somebody from the University legal services?
3. It also makes sense to include constituents near retirement age (as presently defined).
4. Perhaps we might include someone from who could cost out the financial impact on both individuals and the university of retirement at different ages (Art Williams?).

As I indicated, I am interested in serving on such a task force, but will be out of the country on an exchange visit to Japan from March to July. Perhaps this won't preclude membership later.

Let me know if you need additional comments or suggestions.

Cordially,

Richard D. Arvey
Professor

RDA:sje



UNIVERSITY OF MINNESOTA

University Senate Consultative Committee
1480 Social Sciences
267 19th Avenue South
Minneapolis, Minnesota 55455
Telephone: (612)626-1850

April 20, 1988

Professor Phil Frickey, Tenure Committee
Professor Geoff Maruyama, Faculty Affairs Committee
Professor Steve Scallen, Retirement Plan Committee

Dear Colleagues:

As perhaps you know, the Faculty Consultative Committee will be appointing a Task Force to examine the implications of the elimination of mandatory retirement for the faculty beginning in 1994. I enclose with this letter a copy of a memo that Shirley Clark prepared setting forth some preliminary thoughts on the charge and composition of the task force.

FCC has asked me to contact the three committees that you chair to seek your views on the questions which should be addressed to the task force as well as possible members to serve on it. I would appreciate it if you could respond as soon as possible; we would like to have the task force appointed this spring in order to give it time to direct the staff to gather required information over the summer months. The task force would thus be in a position to begin serious work during Fall Quarter.

Thanks for your help.

Cordially,

W. Phillips Shively, Chair
Faculty Consultative Committee

cc: Professor Shirley Clark



UNIVERSITY OF MINNESOTA

University Senate Consultative Committee

1480 Social Sciences
267 19th Avenue South
Minneapolis, Minnesota 55455
Telephone: (612)626-1850

February 8, 1988

Richard Arvey
Shirley Clark (chair)
Geoff Maruyama

Dear Colleagues:

Thank you for all agreeing to serve on a small working group to develop the proposed charge and membership of a Task Force on the Elimination of Mandatory Retirement for Faculty.

Your responsibilities hardly need belaboring. We must soon appoint a group to look at the institutional and individual implications for the elimination of mandatory faculty retirement. Inasmuch as all of you have expertise to bring on various aspects of the issue, I shall not outline possible items of the charge. My only suggestion, in accord with sentiments expressed at a meeting of the Faculty Consultative Committee, is that the Task Force charge be as broad as possible. So also should the membership (although breadth, in this case, need not necessarily imply size). You should not exclude yourselves from service on the Task Force.

I have asked Gary Engstrand to serve as staff to your group; it is my assumption that he would also serve as staff to the larger Task Force.

I would appreciate it if you could have a set of recommendations prepared no later than February 29, 1988.

Again, please accept my thanks.

Sincerely,


W. Phillips Shively, Chair
Faculty Consultative Committee



UNIVERSITY OF MINNESOTA

University Senate Consultative Committee
1480 Social Sciences
267 19th Avenue South
Minneapolis, Minnesota 55455
Telephone: (612)626-1850

March 29, 1988

MEMORANDUM

TO: W. Phillips Shively, Chair
Faculty Consultative Committee

FROM: Shirley M. Clark

RE: Task Force on the Elimination of Mandatory Retirement for Faculty

In late February, Richard Arvey, Geoff Maruyama, Gary Engstrand and I met to discuss your request that we serve as a small working group to develop the proposed charge and membership of a Task Force on the Elimination of Mandatory Retirement for Faculty. Subsequently, I had the opportunity to discuss Task Force composition with Mike Bognanno and institutional research and policy issues with Bill Weiler.

As you know, and by way of background, recent University planning reports have taken notice that after January 1, 1994 (unless the U. S. Congress votes to continue the exemption), amendments to the Age Discrimination in Employment Act forbid the setting of a mandatory retirement age for most employees, including tenured faculty members. In the 'Faculty Policy' section of the Academic Priorities document, the following statement is made about retirement (p. 13):

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Rationale: By Federal law, after 1994 there will be no mandatory retirement at age 70 for faculty members. This change will make it incumbent on the University to have in place clear performance-based standards for continuing appointment of tenured faculty members, that avoid age discrimination, and to examine the structure of its policies related to retirement, so as to assure continuing faculty turnover and vitality.

Nationwide, higher education institutions are (or soon will be) engaged in predicting how the expected abolition of mandatory retirement--as well as demographic changes in demand for scholars--will affect future faculty staffing needs. The National Academy of Sciences is expected to conduct a national study on the ramification of the anticipated change. However, Congress has not yet allocated the funds needed to finance it. In the meantime, individual institutions are more or less on their own with only a few limited-sample studies available to provide basic data and alternative policy responses.

Some observers have expressed concern that without a mandatory retirement age institutions will be left with a surplus of costly older academics who are no longer productive and a shortage of positions for more recently trained, younger scholars. Others such as Howard Bowen and Jack Shuster (American Professors: A National Resource Imperiled) have concluded that serious faculty shortages may develop in many fields in the next 25 years if faculty retirement age patterns continue as in the past.

The proposed Task Force on the Elimination of Mandatory Retirement at the University of Minnesota should deal with several sets of issues as a basis for making policy recommendations. The first set focuses on development of demographic and behavioral data:

1. What is the demographic profile of University faculty, by department and college?
2. When do Minnesota faculty retire?
3. What role does the existence of a mandatory retirement age play in those decisions?
4. What does this evidence suggest that faculty members will do when mandatory retirement is abolished?
5. What do faculty members themselves plan to do when mandatory retirement is abolished and what factors do they feel will affect the timing of the retirement decision?

Other sets of issues deal with institutional policies that could (at least theoretically) be modified in response to the removal of the mandatory retirement age, in three areas: tenure, salary, and retirement incentives. Tenure issues include:

1. Should the probationary period be extended?
2. Should a system of post-tenure faculty evaluation be developed and instituted? If so, what should be its purposes, its design, and its consequences? What are the legal implications? Morale and vitality implications?

Salary issues include:

1. Should annual salary reviews be more like tenure/promotion reviews in their intensity?

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1. How do we move towards a "managed retirement" system that functions to encourage less productive people to retire earlier and more productive people to remain active longer? What are the legal implications? Morale and vitality implications?
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3. Should we have a variety of programs that include financial incentives, phased retirement or partial retirement options?
4. How do University-provided amenities and fringe benefits, especially health insurance, influence faculty planning and decision-making about retirement?
5. Should departments with problematic age profiles receive special assistance (e.g., mortgages on faculty line items)?

Regarding Task Force membership, the following persons have been suggested for consideration and additional nominations should be sought:

Richard Arvey, Industrial Relations (unavailable until Fall Quarter)
Mario F. Bognanno, Industrial Relations (former SCFA member and chair)
William C. Weiler, MPIS
Constance Sullivan, Spanish and Portuguese (representing SCFA)
Thomas Clayton, English (former SCFA member and chair)
Andrew Whitman, Insurance (former SCFA member)
Arthur Williams, Insurance (former SCFA member and chair)
Laura Cooper, Law School
Roger Feldman, Hospital Administration
Richard Goldstein, Mechanical Engineering (former SCFA member)
Neal Gault, Medical School
Tim Nantell, Associate Dean, Carlson School (former SCFA member)
Stephen Scallen, Law School (representing SCFA)

Membership composition needs attention. The usual issues of geographic representation and expertise apply to this Task Force. The Faculty Consultative Committee should also consider whether a P. A. representative and a University faculty retiree should be included.

Although this is a rough cut of the Task Force charge and only a partial listing of membership possibilities on which Geoff and I can work further, perhaps FCC would be ready to react to these ideas and to add others.

cc: Richard Arvey
Geoff Maruyama



UNIVERSITY OF MINNESOTA
TWIN CITIES

Law School
285 Law Center
229 19th Avenue South
Minneapolis, Minnesota 55455
(612) 625-1000

August 3, 1988

Professor W. Phillips Shively, Chair
Faculty Consultative Committee
University of Minnesota
1480 Social Sciences
267 19th Avenue South
Minneapolis, MN 55455

Dear Professor Shively:

The Retirement Planning Committee designates me to serve on the task force on the elimination of mandatory retirement. The new chair, Richard Goldstein, concurs in this designation.

I am actively working on some research on this problem and I would like to have the names of the other members of the task force.

Sincerely,

A handwritten signature in cursive script that reads "Stephen B. Scallen".

Stephen B. Scallen
Professor of Law

SBS:pah

cc: Richard Goldstein



UNIVERSITY OF MINNESOTA

University Senate Consultative Committee

1480 Social Sciences
267 19th Avenue South
Minneapolis, Minnesota 55455
Telephone: (612)626-1850

April 20, 1988

Professor Phil Frickey, Tenure Committee
Professor Geoff Maruyama, Faculty Affairs Committee
Professor Steve Scallen, Retirement Plan Committee

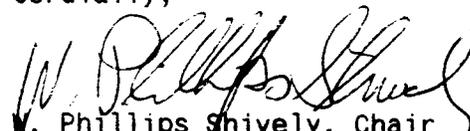
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FCC has asked me to contact the three committees that you chair to seek your views on the questions which should be addressed to the task force as well as possible members to serve on it. I would appreciate it if you could respond as soon as possible; we would like to have the task force appointed this spring in order to give it time to direct the staff to gather required information over the summer months. The task force would thus be in a position to begin serious work during Fall Quarter.

Thanks for your help.

Cordially,


W. Phillips Shively, Chair
Faculty Consultative Committee

cc: Professor Shirley Clark



UNIVERSITY OF MINNESOTA

Office of the Clerk of the Senate
427 Morrill Hall
100 Church Street S.E.
Minneapolis, Minnesota 55455
(612) 625-9369

May 10, 1988

To: Phil Shively, Chair, Faculty Consultative Committee
From: *Geoff Maruyama*
Geoff Maruyama, Chair, SCFA
Re: Task Force to examine implications of elimination of
mandatory retirement

Recently you asked for possible questions for the task force to address. Beyond those described in Shirley Clark's March 29 memo, we came up with the following:

- (1) How will the end of mandatory retirement affect the mortgaging of faculty positions?
- (2) Are there possible technological advances (e.g., any that might alter "on-site" teaching) that will potentially change the way faculty resources are used?

Also, we were particularly concerned about retirement incentive issues #2, 3, and 4 (adding life insurance as well, since faculty lose their state and faculty group coverage when the employer-employee relation ends).

Thanks for the opportunity to give you input. We think the committee will be very important.

GM:mw



UNIVERSITY OF MINNESOTA
TWIN CITIES

Law School
285 Law Center
229 19th Avenue South
Minneapolis, Minnesota 55455
(612) 625-1000

May 2, 1988

Memorandum

To: W. Phillips Shively, chair, Faculty Senate Consultative Committee

From: Philip P. Frickey, chair, University Senate Tenure Committee *Phil*

Re: Task Force on Mandatory Retirement

The Tenure Committee has discussed Shirley Clark's March 29 memorandum concerning the task force. The committee has two suggestions. First, we think that the task force should have ex officio members from Academic Affairs and Employee Benefits. Second, we think the task force should address the question whether the University of Minnesota should forego mandatory retirement prior to 1994, out of fairness to faculty members who are subject to mandatory retirement between now and then.

The committee wishes to compliment Professor Clark on the memorandum. In addition, the committee was impressed with the quality of the discussion of the mandatory retirement question in the recent issue of Footnote.



UNIVERSITY OF MINNESOTA
TWIN CITIES

Law School
285 Law Center
229 19th Avenue South
Minneapolis, Minnesota 55455
(612) 625-1000

Memorandum

TO: Shirley M. Clark
FROM: Stephen B. Scallen *Steve Scallen*
DATE: April 25, 1989
RE: Task Force on the Elimination of Mandatory Retirement
for Faculty

The charge could be based on your letter of March 29, 1988, to Professor Shively with the addition of paragraph 6 in the last section. You might add some brief language about funds and University resources for the studies the Task Force may propose to you shortly.

My plan will be to call the membership together in May to get acquainted, and to define the issues for further study. The studies, fact gathering, and analysis would proceed during the summer. In the fall we would meet several times for analysis and discussion.

cc: Marc Brenner
Gary Engstrand

As you know, and by way of background, recent University planning reports have taken notice that after January 1, 1994 (unless the U.S. congress votes to continue the exemption), amendments to the Age Discrimination in Employment Act forbid the setting of a mandatory retirement age for most employees, including tenured faculty members. In the 'Faculty Policy' section of the Academic Priorities document, the following statement is made about retirement (p. 13):

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