UNIVERSITY OF MINNESOTA
TWIN CITIES

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

MINUTES APPROVED 12/1/83

FACULTY CONSULTATIVE COMMITTEE
November 10, 1983
B-12 Morrill Hall
10:10 - 12:10

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

1. Senate docket for November 17, as printed in Minnesota Daily.

FCC members were startled by the entry printed under the heading, "Questions to the President." The paragraph, of which FCC members had been completely unaware, refers to SCC's discretionary power to combine or delete some questions submitted. Professor Fredricks summed up FCC reaction when she said she objected strenuously to the language. Professor Howe will ask Marilee Ward about the paragraph and will assure the Senate on the 17th that the SCC has no intention of censoring questions.

2. Professor Howe reported on known progress toward awarding the designated $300,000 to especially meritorious units for faculty salary raises. Vice Presidents Keller and Vanselow received about 35 nominations via the deans. Dr. Keller talked with the special ad hoc faculty group regarding the list and the process of selecting about 18 recipient units from the nominations. He talked about it in general terms with the Senate Finance Committee. Public announcement is believed imminent.

3. Intercollegiate athletics.

The SCC will ask the President at its next meeting with him whether there is any likelihood that the University will ask the legislature for operational support for men's intercollegiate athletics. While a number of faculty members hold strong views about the search process and salary posibilities for a head football coach, FCC is not in a position to raise salary questions when the operation is entirely self-supporting.

4. Central administrative changes in college plans.

There are reports that central administration has provided for CLA four positions for women's and minorities' programs which were not part of the CLA budget plan. If additional funds were made available to the college, CLA

will not have been further financially injured, but the planning process would still seem to have been violated. FCC would like to know how CLA responded to the change orders. This alteration brings to mind the criticism made in a recent AAUP statement that University decisions are being made from the top down instead of from the departments up. If the CLA plan was not acceptable to central administration, noted Professor Fredricks, Academic Affairs should have returned the plan to CLA with its comments.

SCC or FCC will ask the President about the matching of college planning decisions and central administration planning decisions.

5. The Tenure Code.

A. Comments to communicate to the Tenure Committee.*

i. Need to draw public attention to the shortcomings of the 1945 document.

- Be aware that there is a faculty perception that the 1983 proposal is the administration's document. Faculty perceive the document as removing privileges they now have.

- The 1945 code is inadequate and in some ways downright dangerous. The only reference in it to financial emergency is in the Preface, which would not have legal standing in court.

- Lawsuits filed after the retrenchment of the early 1970's turned on arguments the University hadn't sufficiently specified its procedures.

ii. Amount of detail desirable in procedures.

- We need to know what the contemporary legal system requires of the University in terms of specificity of procedures.

- The Regents have unlimited authority; the tenure code is not the place to spell that out.

- We should spell out in clear language that consultation will occur in case of financial emergency, and the provision that if it doesn't occur, the Judicial process will take over.

- The FCC's position on the need for consultative procedures is well-documented. It is our responsibility as a consultative committee to see that there are adequate procedures in place for consultation.

- We should seek an indication from the Faculty Senate on which basic way they want to go-- to a specific or a general document. Presently every discussion on the code draft gets hung up on the fundamental dilemma: there are those who believe the greatest protection lies in a very general tenure code under which initiatives for change must originate in the departments and colleges, and those who believe that future financial stringency is so likely that the University can only protect quality by having procedures in place for strategic cutting.

* Forward to the Tenure Committee Donald Spring's two helpful memos which point out controversial items and differences with the 1973 document.

iii. Section 13: First go-around.

- If we're to have credibility we need to take a position on the issue of cutting faculty for reasons of programmatic change. Tenure Code should permit no dismissal of tenured faculty for programmatic reasons.

- Keep a Section 13 but make it positive. State the importance of programmatic planning and change. Enter some positive language respecting concentrating on building quality through hiring and tenuring the best people rather than through firing people.

B. What role should the FCC play in the University process of considering a new tenure code?

Prof. Stuthman said FCC's purpose is to facilitate University discussion of the draft. Professor Merwin said it is up to FCC to help get a document that the Regents as well as the Senate will approve, and so we need to learn the Regents' outlook and relay that to the faculty. We should ward off a we/they attitude.

Professor Stuthman asked that FCC begin a philosophical discussion of what kind of a tenure code we want and need. We should deal directly with this question because it keeps intruding into every other question.

C. Structuring the November 17 Faculty Senate time devoted to the tenure code.

i. Address the question of why the 1945 document is inadequate.

ii. Explain faculty initiative in addressing that inadequacy.

iii. Engage people in the broad philosophical debate.

iv. Have several people speak to the general questions.

D. Planning the FCC's November 10 discussion with the Regents.

i. Make each other aware of our respective processes and schedules.

ii. Instruct them on the points where faculty concerns are coming to a focus. Inquire what the Regents think are the major problems to be resolved in order to get a document approved.

iii. Be ready to provide some background.

iv. As with the Senate, address the inadequacy of the 1945 code and the faculty's role in addressing that problem.

v. Note the problems faculty and Regents have in common regarding a tenure code: the need for a definition of financial emergency; implications for the University and the faculty of a financial emergency; need for a plan to handle the possible future and question of whether procedures should be spelled out so we'll both be able to handle events under the emergency and protect the University from legal suits by having been able to handle adequately the changes internally.

The FCC meeting adjourned at 12:10 p.m.

M. Poppele

Circ SCC 12-1

UNIVERSITY OF MINNESOTA
TWIN CITIES

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

November 22, 1983

Professor Richard Purple, Chairperson
Senate Committee on Business and Rules
Department of Physiology
5-267 Millard Hall

Dear Rick:

As you know from my comments at the recent Senate meeting, my colleagues and I on the Consultative Committee are uneasy over some of the language that was printed under the entry, "Questions to the President," on the Senate Docket. In particular we were surprised to find ourselves placed in the position of screening questions to the President in the manner of censors. To the best of our knowledge, the Consultative Committee has not done that in the past. We don't wish to do that now.

We have, I think, some notion of why that language is present in the interpretation of the Senate and Assembly Rules, and there may be need for some kind of ultimate authority to withhold a truly outrageous question. But we wonder if you and your colleagues on Business and Rules might not be able to find some alternate language that would soften the impact, especially of sentence number two as it presently stands.

Cordially,

John Howe, Chairperson
Senate Consultative Committee

JH:mp

SENATE AND ASSEMBLY RULES

a. The meeting room shall provide a clear and definite identification of the area reserved for senators; no non-senator (except authorized alternate) shall have access to the Senate floor except with the explicit permission of the chair. There shall be a system for identifying senators (or authorized alternates) in order to permit their seating and appropriate voting.

b. At any regular or special meeting, a majority of the membership shall constitute a quorum.

c. In deliberations, priority of recognition shall ordinarily be given to senators (and chairs of committees) over non-senators.

d. If the chair of the Senate committee, standing or special, or, in his/her absence, a single member designated by him/her, is not a senator, such chair or member shall be extended the privileges of the Senate floor, including making motions, in connection with a report of that committee or any activity of the Senate which pertains to the business of that committee. He/she may not vote, however.

e. Any member, upon being recognized by the chair, may yield time in debate to a non-member.

f. Senators and non-senators will be limited to a maximum of 3 minutes' time on each occasion they are recognized for participation in debate.
Interpretations and Understandings:
1. The traditional practice of alternating speakers for and against a proposal will continue.
2. The traditional practice of not recognizing members who have already participated so long as there are would-be speakers who have not will also continue.
3. The usual rules of germaneness and decorum will apply both to senators and non-senators.
4. In the event a senator yields time in debate to a non-senator, both shall be considered to have participated in the debate.

g. The time limits as specified on the agenda will govern the maximum amount of time for debate o items for action. The limit may be extended for a specified length of time by a majority vote.
Interpretations and Understandings:
1. The time limits set only a maximum time for debate; a call for the question is in order before the expiration of the time limit.
2. At the expiration of the maximum time for debate, the chair will put the question to a vote

h. No amendment to a motion in the printed docket shall be in order unless it has been submitted in writing to the clerk of the Senate at least 48 hours in advance of the meeting at which the motion is to be considered so that the amendment can be circulated at the beginning of that meeting and can be submitted to the chair of the committee making the motion. This rule may be suspended by majority vote.
Interpretations and Understandings.
Amendments to motions in the printed docket will be transmitted to coordinate campus senators over the telephone hook-up approximately 10 minutes before the beginning of the Senate meeting at which the motion is to be considered.

i. An item of new business presented at a meeting of the Senate by an individual member shall be referred to the Committee on Business and Rules for consideration and presentation at the next regular meeting of the Senate; but such an item of business may be considered and voted on at the meeting at which it is introduced by a two-thirds majority vote of the members of the Senate present and voting on a motion for immediate consideration (not debatable). An item on the agenda for information may be sent back to the committee reporting it, for presentation as an item for action at a later meeting, by a simple majority vote; it may be considered for action at the meeting at which it is reported for information by a two-thirds majority vote of the members of the Senate present and voting on a proposal for immediate consideration as an item for action.

j. The motion to table shall be debatable.

k. At each regular meeting, Questions to the President shall be an item on the agenda.
Interpretations and Understandings:
Questions shall be submitted in writing to the clerk eight calendar days before the meeting. The Consultative Committee shall review the questions. Because only one-half hour of meeting time is allotted to answering questions, it may be necessary for the Committee to combine similar questions and to withhold others. The Committee will also be guided by the breadth of interest in the issue. All questions received, together with the names of the questioners, shall be distributed at the meeting. The Consultative Committee shall group questions by general topic and shall indicate those which have been forwarded for answers. The person answering a question may, if he/she chooses, entertain additional questions from the floor which extend the original question.

OVER

PLEASE RETURN TO: UNIVERSITY SENATE
4th FLOOR MORRILL HALL

PRINCIPAL RULES GOVERNING MOTIONS

Order of precedence	Can interrupt?	Requires second?	Debatable?	Amendable?	Vote required?	Applies to what other motions?
PRIVILEGED MOTIONS						
1. Adjourn	no	yes	no	no	majority	none
2. Recess	no	yes	yes[r]	yes[r]	majority	none
3. Question of privilege	yes	no	no	no	none	none
SUBSIDIARY MOTIONS						
4. Postpone temporarily	no	yes	no	no	majority	main motion
5. Vote immediately	no	yes	no	no	⅔	debatable motions
6. Limit debate	no	yes	no	yes[r]	⅔	debatable motions
7. Postpone definitely	no	yes	yes[r]	yes[r]	majority	main motion
8. Refer to committee	no	yes	yes[r]	yes[r]	majority	main motion
9. Amend	no	yes	yes	yes	majority	rewordable motions
10. Postpone indefinitely	no	yes	yes	no	majority	main motion
MAIN MOTIONS						
11. a The main motion	no	yes	yes	yes	majority	none
b Specific main motions						
Reconsider	yes	yes	yes	no	majority	main motion
Rescind	no	yes	yes	no	majority	main motion
Resume consideration	no	yes	no	no	majority	main motion

No order of precedence	Can interrupt?	Requires second?	Debatable?	Amendable?	Vote required?	Applies to what other motions?
INCIDENTAL MOTIONS						
a Motions						
Appeal	yes	yes	yes	no	majority	decision of chair
Suspend rules	no	yes	no	no	⅔	none
Object to consideration	yes	yes	no	no	⅔ neg.	main motion
b Requests						
Point of order	yes	no	no	no	none	any error
Parliamentary inquiry	yes	no	no	no	none	none
Withdraw a motion	yes	no	no	no	none	all motions
Division of question	no	no	no	no	none	main motion
Division of assembly	yes	no	no	no	none	indecisive vote

[r]=restricted

(over)

UNIVERSITY OF MINNESOTA
TWIN CITIES

Department of Physiology
Medical School
6-255 Millard Hall
435 Delaware Street S.E.
Minneapolis, Minnesota 55455

January 6, 1984

Professor John Howe, Chair
Senate Consultative Committee
614 Social Sciences
West Bank

Re: Letter of Nov. 22, 1983 with respect to Rule K of Senate and Assembly

Dear John:

The Committee on Business and Rules has considered your request to look into restructuring Rule K for the Senate and Assembly dealing with Questions to the President, and below we offer a wording that we hope you will find satisfactory. But first, B & R would like to make a stern observation.

The Senate Consultative Committee is the elected steering committee of the Senate, and as such has the responsibility for setting Senate Meeting Agendas. As an elected, representative, deliberative body, the Senate is not open to all as a free forum for the expression of views, and the Consultative Committee has both the right and the responsibility to restrict the agenda to items it considers germaine, thus protecting the Senate from frivolous and untimely intrusions. Therefore, Rule K, placing restrictions on the overall scope of questions submitted to the President at Senate Meetings, should not be viewed as censorship, but instead should be viewed as an ordering of business. The Senate does not restrict the right of people to address the President directly in writing. Neither should any individual, particularly non-elected members, be in a position to dictate to the Senate what should be placed before it at its meetings. Business and Rules believes that is properly the interpretation of Rule K which you alluded to in your letter of November 22, 1983.

On the other hand, we are sympathetic to your request to soften somewhat the language of Rule K to put it more in keeping with a spirit of openess. We would be very much opposed, however, to a Consultative Committee attempting to abdicate its responsibility to order the business of the Senate. We therefore propose the following language for Rule K:

"Questions shall be submitted in writing to the clerk eight calendar days before the meeting. The Consultative Committee shall review the questions. Because only one-half hour of meeting time is alloted to answering questions,

it may be necessary for them to combine similar questions and to withold others. The Committee will also be guided by the breadth of interest in the issue. All questions received, together with the names of the questioners, shall be distributed at the meeting. The Consultative Committee shall group questions by general topic, and shall indicate those which have been forwarded for answers. The person answering a question may, if he/she chooses, entertain additional questions from the floor which extend the original question."

If this meets with your approval, we will go ahead and print up the new wording as an action item for the agenda of the next regular meeting.

Sincerely yours,

Richard L. Purple

Richard L. Purple, Chair
Business and Rules

RLP:jh

W. D. Spring
November 1, 1983

Section 13 Dismissal of Faculty Pursuant to Discontinuance of Programs
(There is no counterpart in the 1973 document)

#1 13.2 Program Defined (see very helpful "Comment on 12.7--Principle d")
The definition includes entities not usually considered programs and excludes entities thought of as programs. For example, it includes an entire college even if the separate departments have fewer than five faculty; it excludes most graduate programs because most graduate faculty have undergraduate program obligations as well.

#2 13.3 Procedure to Decide to Discontinue a Program
13.4 Administrative Action
The VP Academic Affairs initiates consideration to discontinue a program; the SCC deliberates and only if the SCC (or delegated body) recommends discontinuance may the VP recommend such action to the Regents. In its deliberation, SCC consults with faculty and committees in the program, with larger unit of which it is a part, with other units affected, or even with other Senate committees. It must hold an open meeting on the proposed action. SCC can augment itself in deliberating or delegate their entire responsibility to an ad hoc group.

#3 13.5 Method of Discontinuing Programs
A. Probationary faculty allowed to finish current appointment terms.
B. Tenured faculty can be dismissed only after five years after noticed served. (cf. 13.6 certain rights to transfer, as well).
C. Non-regular faculty finish their terms but if over 5 year term, then terminate after five.

#4 13.71 Grounds for Review of Termination
This section does not include the right to challenge the substance of the SCC's recommendation to VP Academic Affairs to discontinue a given program.

#5 Section 13 in its entirety--should it be included in the tenure code?

Section 11. Disciplinary Action...for Cause

#6 11.1 (b) Unprofessional conduct--new.
(c) misuse of...position--new.
(d) conduct destructive of academic freedom--new.
(1973 document had "destruction of individual rights" and stipulated that offender must have been convicted in a court of law.)

#7 11.2 Preliminary Procedures
11. 27-28 (p. 19)--consultation with VP Acad. Affairs--new.
11. 4-9 (p. 20)--informal resolution of matter--new.
11. 12 (p. 20)--faculty advice via written recommendation.
(1973 document:faculty advice via faculty meeting and vote)
--not clear how binding faculty advice is.
(1973 document says initiating administrator is free to act)
11. 3-6 (p. 21)--action by grievance committee--new
11. 7-19 (p. 21)--action by grievance committee--new.

#8 11.3 Formal Action
VP Acad. Affairs decides whether disciplinary action should be taken (1973 doc--Initiating Administrator decides).

#9 11.4 Protective Suspension Pending Final Action
VP Acad. Affairs may suspend
(1973 document--Pres. may suspend)
11. 20-22--VP shall consult with panel of three (from one Consultative Cte.)
(1973 document--panel of three from Judicial Committee)

-(1973 document also has an "informal hearing panel" before Judicial Committee)

#10 11.53 (1973 document allows Judicial Committee to "remand the case to the initiating Administration" for further consideration.)

#11 11.61 Submission of Objections
11. 26--the President shall grant oral argument
(1973 document--has "may grant")

#12 11.62 Presidential Review
11. 15-6--President may request all members of Judicial Committee to give further consideration to the case--new.
(1973 document--President may remand to initiating administrator)

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MINUTES APPROVED 12/1/83

FACULTY CONSULTATIVE COMMITTEE
November 17, 1983
626 Campus Club
9:45-11:50

Members present: Virginia Fredricks, Phyllis Freier, Marv Mattson, John Howe, Jack Merwin, Irwin Rubenstein, Donald Spring, Deon Stuthman, John Turner.

Guests: Richard Bale, Maureen Smith.

1. Fees Committee nominations. Professor Howe and Professor Fredricks proposed four names for the two vacant faculty positions on the Student Services Fees Committee: Susan McClary (CLA), Bill Schwabacher (GC), Nancy Roberts (SOM), Bob Brasted (IT). FCC voted to send forward the first two names and use the other two as back-ups.

2. Analysis of effect of last spring's all-merit salary decisions. Academic Affairs has now assembled the data. Several Senate committees are interested in discussing with Academic Affairs the data and the outcomes, and Professor Howe has offered to coordinate the discussions. The committees are Faculty Affairs, Equal Employment Opportunity for Women, Finance, and the FCC. The morning of December 1 is tentatively set for that discussion.*

Discussion followed on the importance of also looking at the combined effect of the distribution of the special retention monies and the distribution of the all-merit 1983-84 salary increases. Professor Rubenstein noted that essentially two-thirds of the special monies are being used in a merit sense too. FCC members want a second meeting, presumably during winter quarter, to discuss the effect of the special awards in combination with the University-wide merit increases. It will be necessary to know the average base salary in each category as well as the percentage change.

3. Regents' announcement of a review of President Magrath's second five years. Professor Howe will tell the Senate today that the FCC is interested in faculty involvement in the review. Professor Turner said that the faculty, along with the Regents and the outside community, all have an important stake in the excellence of the review process.

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* The SCFA subcommittee does not yet have all the data they need. This meeting will be held early in winter quarter.

4. The Tenure Code. Third FCC discussion.

Professor Howe reported that President Magrath has told him he found the November 10 FCC-Regents discussion helpful and constructive and that five Regents had telephoned him to give a similar assessment. Professor Howe has proposed and the President has agreed that the FCC have a substantive discussion with the Regents early in the winter quarter.

Professor Howe reported briefly on the Tenure Committee's second open hearing, November 15th. The hearings are serving the valuable purpose of giving faculty direct access to the Tenure Committee; comment has tended to be of one sort and has focused on certain paticulars. Frequently one hears the view that the 1945 document is all right as a basis and should just be modified slightly, a course he said he would find unfortunate.

Professor Spring gave his understanding that some people who are opposed to a given specificity or complexity in the proposal would not favor settling for the 1945 document if that particular problem were fixed. Controversy is arising, he noted, over Section 7 which concerns how promotion and tenure are awarded.

Professor Merwin finds that some faculty statements imply that we have gotten safely beyond the conditions that provoked the 1973 and 1983 documents; times are going to be O.K. and we do not need those provisions after all.

FCC would like to retain a Section 13 and entitle it "Rights of Faculty Pursuant to Programmatic Planning," (as recommended by Professor Rubenstein). It should recognize that under the planning process there will be a need from time to time to change and end programs, and it should identify the inviolable minimum safeguards for tenured faculty. Professor Turner asked that a statement citing the legitimate means to accomplish educational changes be in the code. Professor Freier called for a statement of guarantee of what faculty rights are when a member's program is changed.

There was some discussion of the ambiguity of exactly where one's tenure resides. Although one is given tenure in a department, sometimes a college consolidates departments and some people subsequently hold their tenure in a new department, for example.

Professor Spring described a middle ground between the extreme positions of (1) freedom to terminate faculty in discontinued programs and (w) freezing all programs forever because any change would infringe on the academic freedom of the program's faculty: It would be announced when a program were going to be allowed to atrophy; people with the initiative to grow, change, and/or move would do so; those who would not do so would be provided by the University with minimal support until they should depart.

Professor Merwin asked whether any effort has been made to learn what other major research universities are doing with respect to programmatic change. Professor Spring said Ohio State, for one, has a very extensive provision in its tenure code regarding programmatic change.

Section 12. Financial Exigency.

Definition of 'program'. If a new kind of Section 13 of the sort FCC favors replaces the proposed section in the current draft, the definition of 'program' there will be moot. However, a definition will still be critical for the section on financial emergency - Section 12.

Professor Turner said a section on financial exigency is essential, but with certain changes. Section 12.2, "Reduction or Postponement of Faculty Compensation" should be changed from providing that "the President may convene the Faculty Senate..." and the "Faculty Senate may approve..." to "the President must convene the Faculty Senate..." and "the Faculty Senate must approve...". The document should also specify that other avenues for saving money must be explored (such as voluntary reductions in pay for a limited time).

Professor Merwin pointed out that the document needs to leave room for different kinds of responses depending upon whether a crisis is immminent and critical or of a long-range nature.

Professor Turner said that if we carried out the procedures accurately, "financial exigency" would define itself as an emergency we cannot sufficiently cope with even taking all the intermediate steps allowed. Professor Freier added that the process should not allow too many actions that injure faculty and their tenure rights without the Regents having to declare financial exigency.

Professor Turner added that before the University arrives at a financial emergency we should have accomplished by planning the elimination of any duplicative programs.

Professor Turner concluded this part of the discussion by saying we should work out a set of uniform steps of faculty consultation that must be taken for any kind of reduction in faculty compensation.

Section 7. Personnel Decisions Concerning Probationary Appointees. Judicial Procedures and Burden of Proof.

Professor Spring finds that most of the argument over being able to appeal to the Judicial Committee only on procedural grounds comes out of people's concern over the content of Section 13 in the current draft.

FCC members noted that while the Tenure Code provides that the burden of proof for termination of a probationary appointment or denial of indefinite tenure rests with the faculty member, and while the Judicial Committee accepts that in principle, in practice the burden of proof has been shifted to the administration, and people have become used to that practice. Hence although the language in the tenure code proposal is consistent with the language in the existing code, it is different from the practice that people have grown accustomed to. Professor Freier stated the burden of proof should remain upon the faculty member appealing. Professors Spring and Stuthman, while not disagreeing, said that realistically we must recognize the prevailing societal expectation that anyone above the minimum is O.K.

Professor Turner declared we should not water down what has been achieved in terms of emphasis on the equal importance of teaching and research in evaluating probationary appointments, which the Koffler memorandum, for one, has helped to establish.

Professor Howe told FCC he would prepare and send for their comments a draft of FCC's report to the Tenure Committee upon the proposal before us.

FCC wants to schedule a substantive meeting on the Tenure Committee's revised draft after that is ready. (SCFA has announced it wants to do the same.)

Meeting adjourned at 11:50 a.m.

MBP

UNIVERSITY OF MINNESOTA | University Senate Consultative Committee

November 29, 1983

Professor Fred Morrison, Chairperson
Senate Tenure Committee
324 Law School
West Bank Campus

Dear Fred:

The Faculty Consultative Committee has met on three occasions to discuss the proposed Tenure Code. We have not gone over it line by line, but have instead tried to focus our attention on the major issues that seem to lie at the center of debate. On a good many points, the committee reached concensus. I'll point that out where it occurred. Where we didn't achieve concensus, either because we didn't seek to or because people continued to disagree, I'll highlight the questions and arguments that individuals raised.

Let me begin by affirming our unanimous belief that the proposed 1983 draft is a substantial improvement over the existing 1945 code, and should remain the basis of our deliberations. We think the 1983 draft requires alteration, but we're persuaded that it's a strong document and that it can be successfully revised to take necessary changes into account. The hearings and debates in which we're now engaged offer promise of satisfactory revision, and we should carry that process through to completion.

The new draft is clearer, better organized, and more responsive to our present circumstances than the existing code. Moreover, we believe that it does a better job of specifying and protecting faculty rights. For example, it recognizes the importance of any decision to declare financial emergency and requires, far more carefully than does the 1945 document, that faculty have a central voice in that process. Moreover, it places the discussion of tenure protection under conditions of financial emergency in the body of the Tenure Code where it belongs. The 1945 document mentions such concerns but briefly only in the preamble to the Code.

Secondly, we note with concern that Section 11 of the 1945 Code declares that a faculty member may be removed for unspecified causes which "seriously interfere with...his [sic] usefulness to the University", or for "refusal...to submit to a physical or mental examination prescribed by the University...." The counterpart section of the 1983 Code (also Section 11) is much more carefully drawn.

In addition, Section 9 of the 1945 Code, which deals with "Non-Reappointment during Probation", stands in direct conflict with our present open files laws and with our actual operating prodecures. Section 7 of the 1983 draft is,

once again, clearly superior. Further reasons for preferring the new draft to the existing Code could be listed, but we think the point is clear. To our colleagues who fear that we are trying to do too much, too quickly, we respond that the changes being proposed have been refined over a long period of time and that they represent the cumulative work of three Tenure Committees advised by Judicial, Faculty Affairs, and Consultative Committees, as well as dozens of individual faculty members. Moreover, two Faculty Senates will have been involved before the new document goes to the Regents for approval. All of this gives us considerable confidence in both the justice and the wisdom of the outcome.

We do think that the 1983 draft can be improved in several important ways, and we want to suggest how we think that might be done. First of all, we share the broadly held view that Section 13 is unacceptable as presently written. We do not recommend, however, that it be dropped, but that it be re-written to emphasize the importance to the University's well-being of educationally based programmatic planning, to specify the mechanisms by which programmatic decisions should be made, and to provide for the protection of faculty tenure rights when programs are being phased down or discontinued. Given the necessity of programmatic change, including the occasional elimination of individual programs, and the implications of such decisions for the faculty affected by them, we continue to think that Section 13 is necessary. But we urge its redefinition so that it separates planning from tenure considerations and emphasizes the University's obligation to provide for tenured faculty in targeted programs through appropriate transfers, retraining, early retirement options, buy-outs, and the like. The title of a revised Section 13 might be something like, "Rights of Faculty Pursuant to Programmatic Planning".

We have talked at length about the balance that should be struck in the Tenure Code between general statements of principle and procedural detail. Here, I suppose, our individual positions mirror the diversity of opinion among the faculty generally. Recognizing the extent to which decision-making procedures often determine outcomes, some of us think it necessary to specify the steps by which critical decisions are to be made, expecially in crisis situations such as financial emergency. Such procedural specificity is believed essential if faculty rights are to be adequately safeguarded. The same persons often point out that in these litigious times, when questions of procedural adequacy are much on our minds, to say nothing of the minds of judges and lawyers, it's necessary to have our procedures clearly laid out.

Others, however, argue that a Tenure Code should be limited to statements of general principle and that matters of procedures should be spelled out in supplementary Rules and Interpretations such as the Koffler/Ibele Memorandum, procedures of the Judicial Committee, and the like. Procedures, after all, are likely to need frequent revision, and are more easily changed if they are not imbedded in the Tenure Code itself. In addition, to specify procedural details in the Tenure Code may invite endless litigation, build rigidities into our processes, and render decision-making unacceptably cumbersome.

There is general agreement among members of F.C.C. that the 1945 Code pays inadequate attention to procedure, that the 1973 draft was unworkably complex,

and that the 1983 version represents a distinct improvement over both. On balance, I suppose our advice would be to simplify, to use supplementary documents for procedural elaboration, and to specify procedural safeguards in the Code where absolutely essential. The sections where reductions in procedural detail might be attempted include numbers 7, 11, 12, and 13. In deciding what should stay and what might go, we should keep in mind the strong desirability of handling our affairs internally. Thus we need to devise a system that is both appropriate for ourselves and defensible in a court of law.

The members of the F.C.C. are unanimous in believing that Section 12, "Financial Exigency", should be retained, though not in exactly its present form. Our recent experience has given immediacy and substance to the formerly abstract notion of financial emergency. We have recently come closer to it than we care to remember. We need to remember that the Regents have the authority to make such a declaration, and we should reach agreement with them both on the circumstances under which and the steps by which such a decision would be made. Declaring financial emergency should be difficult to do and should require careful faculty consultation. At the same time, we must recognize that in an extreme financial crisis, decisions would have to be made with a certain amount of dispatch.

Some members of the F.C.C. believe that the procedures for declaring financial emergency, as presently specified in Section 12, are overly complex. Others, however, argue that here, above all, Regents and administration should be tied to close consultation. Several persons on the committee find the distinction between financial debility and fiscal emergency confusing and think it ought to be dropped. On balance, however, most members believe the distinction useful and urge that the same consultative procedures be required in both situations. That would insure that a move to fiscal emergency could come only after all intermediate and less drastic steps had been considered and declared inadequate. While recognizing that a full range of fiscal strategies ought to be considered in any period of financial crisis, we think it unwise to require any specific step, such as reductions in faculty compensation. Better to leave the full range of responses open in each situation. Whatever the final shape of Section 12, it's important that it encompass both sudden crises and longer term, cumulative situations.

We have talked as well about the concerns faculty have voiced over access to the Judicial Committee and the "burden of proof" in appeals situations. These two issues arise in connection with Sections 7.6, 8, 11.5, 12.10, 13.7, 15, and 16. It's our belief that these sections, as written, parallel rather closely the existing, stated procedures of the Judicial Committee, though we understand that in fact the committee has come to place a somewhat heavier burden of proof on the administration in most situations and that it has not always limited its jurisdiction to issues of procedural safeguards, academic freedom, and civil rights.

We agree that aggrieved faculty should have fair and open access to appeals processes, but we also believe that judicial hearings are not the place to

reevaluate the wisdom of academic policy and programmatic decisions. The question, perhaps, is how explicit the Tenure Code should be in delimiting the Judicial Committee's jurisdiction, or to what extent that should be left to experience and precedent. Though individual members of the F.C.C. would raise objection to specific language here or there, we think the Tenure Committee has done a good job in these sections of balancing faculty rights and institutional needs. It seems to us reasonable in appeals situations, for example, that probationary faculty should be called upon to demonstrate the merit of their appeal.

On a related matter, we urge that the present emphasis on the equal and primary importance of teaching and research be maintained in the evaluation of probationary faculty.

These, then, are our thoughts and suggestions on this important and complicated business. We hope they are of help. And we want to express our thanks to you and your colleagues on the Tenure Committee for the great service you are rendering all of us. It is exactly this kind of contribution that supports and legitimizes the whole concept of faculty governance.

Cordially,

John Howe, Chairperson
Senate Faculty Consultative Committee

JH/bh