

Minutes*

Faculty Consultative Committee
Thursday, April 19, 2001
11:30 – 2:00
471 Law

Present: Fred Morrison (chair), Wilbert Ahern, Muriel Bebeau, Arthur Erdman, Dan Feeney, David Hamilton, Joseph Massey, Gwen Rudney, Charles Speaks, Billie Wahlstrom

Regrets: Linda Brady, Susan Brorson, Les Drewes, Richard Goldstein, Marti Hope Gonzales, Marvin Marshak, V. Rama Murthy, Paula Rabinowitz

Absent: none

Guests: Ms. Susan McKinney, Ms. Tracy Smith (Office of the General Counsel); President Mark Yudof

Other: Cathy Gillaspay (Office of the Board of Regents); Elizabeth Wroblewski (Office of the Chief of Staff); a DAILY reporter

[In these minutes: (1) Research data privacy; (2) health benefits advisory committee, newspaper article on salaries, stadium, consultation, athletics finances, University ranking (U.S. News and World Report); (3) discussion with the President]

1. Research Data Privacy

Professor Massey convened the meeting at 11:40, noted that Professor Morrison would be late because of a meeting of the Health Benefits Advisory Committee, and welcomed Mss. McKinney and Smith to discuss the privacy of research data.

Ms. Smith began by identifying herself as Associate General Counsel and Ms. McKinney as the University's Records Manager (who reports to the General Counsel). Ms. McKinney coordinates with departments on retention of records and responds to requests for data.

Ms. Smith then itemized the kinds of data requests the University receives and provided a broad-brush overview of state and federal laws governing research data. Ms. McKinney is the "first line" person who deals with requests when they come in and is available to help administrators respond to requests for data.

One kind of data request comes from those who have a political agenda (e.g., animal rights, tobacco). Another comes from those with commercial interests (e.g., water contamination) who are concerned that University research may have an impact on their business. The University also receives requests for data from litigants in private disputes. Most infrequently, there are requests from other

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researchers (competitors) who want to take advantage of University research. With respect to the last, Professor Speaks commented that there is paranoia; he has asked faculty in his unit to file with his office a copy of any grant proposal they make; some fear that if others see the proposals they may try to steal the ideas.

Ms. Smith agreed that such feelings may exist but observed that most researchers abide by codes of ethics. In state law, however, the motive of the individual requesting information is irrelevant; if the information is public, it's public, and it must be provided. The Minnesota Data Practices Act is the governing state law; if there are federal funds involved, the Freedom of Information Act will also come into play.

The Minnesota law is a one-size-fits-all approach; it is not tailored to the University or a research institution. In the case of both the state and federal laws, all data are presumed to be public unless the statute makes them private. There are two exceptions: trade secrets and personnel data. The state law protects trade secrets in order to protect value; the federal law is applied by each agency.

On its face, the trade secrets provision does not fit research data very well (it is often difficult to identify the commercial value of research data), but the University has had success in district court in litigation involving turning over research data that were requested. The decisions have not been challenged in a higher court. There was an attempt to get legislation adopted that would protect active research data but the proposal received a very hostile reception from the legislature (which may in part because it was proposed at the time of the ALG problems). The University has not pursued a legislative change since then because it has been successful in the courts in protecting data.

The University often receives requests for copies of grant proposals. University policy prohibits secrecy in research, which ensures that the results of research (funded) will be public (an investigator is told that he or she has the opportunity to redact results to protect trade secret information, but there is no question that the nature and fact of funded research will be public). With respect to unfunded research, most consider that private (NSF clearly does so; with NIH it is the practice). Grant proposals and animal usage forms are the items most requested; private data is redacted but much remains public.

If a proposal is reviewed but not funded, or still under review, is it public, Professor Speaks asked? Ms. Smith said she would argue that at least parts of it are private. The dichotomy is not that clear; there is probably a difference between unfunded and "dead" and it is unlikely a court would issue a firm rule with respect to unfunded research.

For medical research there is additional protection afforded by medical privacy statutes; there is no similar protection in social science research, Ms. Smith related. At the same time, she could not recall any time when privacy rights were compromised in social science research. It would be useful to have a state law to protect the privacy of subjects, she said, especially when the research is about touchy subjects (e.g., sexual habits), but there is no such law. There is, however, a provision in Minnesota law that provides for temporary classification of data; the legislature then reviews the matter to determine if the classification should be made permanent.

There is a lot of risk in data, Ms. Smith concluded, but the University does not receive a lot of requests. The most frequent is for research using animals. These requests are extremely burdensome and she said she believes the University has been pretty good about protecting that research.

What if the faculty member has no data, Professor Massey asked? The law only covers data that exist, Ms. Smith said; if there are no data, they cannot be provided. Professor Rudney observed that the Use of Human Subjects form filled out by investigators promises that data will be kept private. Mr. Smith said she sometimes worries about over-promising confidentiality. The form is mandated by the Internal Review Board and it will move through the system fastest if confidentiality is guaranteed, Professor Rudney told her. Ms. Smith said she would inquire of Barbara Shiels, another member of the General Counsel's staff, about this issue. This is where it would be helpful to have broader legal coverage for research data, she said, but she worries if the IRB requires confidentiality but the University were ordered to turn over data.

There was the idea of faculty indemnification, Professor Feeney recalled; there have been cases reported in the Chronicle of Higher Education where business may victimize a faculty member by requesting data. Does the University have a policy? The University provides indemnification to cover acts by faculty members in the course of their duties. So if a faculty member is conducting research that may have negative commercial ramifications, the faculty member is protected? Ms. Smith affirmed that he or she would be.

Ms. Smith related one instance when the University had a research grant involving the Great Lakes and paper mills; a large New York law firm wanted a lot of data (all financial and administrative, all public). The University can charge for employee time in gathering information and for copies (it was expensive but they paid for it). This was very difficult for the researcher, who (legitimately) felt targeted, but there is no way to stop these requests and nothing to protect the University (and faculty) from burdensome, harassing requests. The information must be provided if it is public.

Is there any statute of limitations, Professor Feeney asked? If one is doing controversial research, and publishes the results, the law provides an incentive to get rid of all the data. If it is archived, must one dig it out even if it was something one did as a graduate student years ago? It is what one produces as an EMPLOYEE, Ms. Smith noted, and she said the University had requests for information about LSD experiments in the 1950s (the University had nothing but the information would have been public if it did).

There have been high expenses associated with the animal care requests for information, Ms. Smith said, but some state agencies receive huge requests from individuals or organizations on a mission to change the agencies. There is a difference between harassment and a difference of opinion.

Does the University really make people pay when they request materials? If they ask to inspect the information only, they cannot be charged, Ms. Smith said, but once they ask for copies, they can be. Ms. McKinney affirmed that the University does indeed make organizations pay; they are also asked to prepay before copies are provided, Ms. Smith said. At the same time, Ms. McKinney said, if the cost of the request is less than \$5, the University does usually not ask that for payment; it does, however, with large requests. The amount of revenue generated is negligible. Employee time is usually not captured in the charges, Ms. Smith said; the University received a large number of requests during the NCAA investigation of the men's basketball team and there was no way to recapture employee costs. That is true for all organizations faced with these large data requests, she said, not just the University.

Is it permissible to use the University's public information (e.g., data, memos, charts, etc.) for case studies in classes, Professor Wahlstrom asked? It is, Ms. Smith said.

Is it reasonable for Sponsored Projects Administration to keep the scientific portion of research proposals, Professor Hamilton asked? That is for audit purposes for federal agencies, Ms. Smith said. It seems to be superfluous to managing money, Professor Hamilton said, and eliminating it would reduce the amount of information the University would have to give out. These requirements also take away time from the SPA staff for customer service for investigators (that is, for faculty), he pointed out.

Professor Massey thanked Ms. Smith and Ms. McKinney for joining the Committee.

2. Various Items of Business

HEALTH BENEFITS ADVISORY COMMITTEE

Professor Morrison joined the meeting and reported on the activity of the Health Benefits Advisory Committee (HBAC). The HBAC has made progress and it has proposals that a selection committee is evaluating. The plans call for continuation of the present benefits package subject to copays and premium changes. The state may release the plan design for state employees soon; the HBAC will evaluate it.

Is there any expectation that the Commissioner's plan will mirror the state, or could it be different, Professor Speaks asked? The state plan is bargained between the state and the unions, Professor Morrison noted; traditionally, the Commissioner's plan has been a carbon copy but there is reason to believe it could be different.

The Commissioner wrote an editorial in the St. Paul Pioneer Press on why the University should take the state plan, Professor Morrison observed, but he did not tell the University what the cost or design would be, so the University is expected to take it on faith. The Commissioner is asking the University to reject all bids and stay with the state. His view, Professor Morrison said, is that the University can do that only if it knows the cost and nature of the plan from the state. He agreed that there are many reasons the Commissioner may not want to release that information (in part because doing so could affect bargaining position with the unions), but the University must make its choice. "Here are plans A, B, C, and a friendly commissioner," he said; the University has to look at its options. This is a game played every year, Professor Bebeau said; Professor Morrison agreed and said it has worked every year. This is the same game, he concluded.

What about the assertion that being independent from the state would cost more, Professor Speaks asked? The HBAC has been told that as between a group the size of the University and the size of the state there is almost no difference in purchasing power: once a group gets to 5,000 to 10,000, the price is the same. The assertion is probably not true.

In terms of administrative costs, the University is paying the Commissioner about \$400,000 per year for administration costs on top of the premium charges. The University would have to pay for administrative costs. There could also be a need for cash reserves. But the charge that the cost to the University of separating from the state would be in the tens of millions of dollars is almost certainly not accurate.

Professor Hamilton said the state was playing a game with smoke and mirrors but he said there are risks beyond the next biennium if the University separates from the state. By 2004, it may not find its negotiating position with providers to be as good. Costs are going up 15-18% per year, Professor Morrison agreed. If the University can get a better deal than the state, the rates could still go up; would they catch up to the state? If the University starts cheaper and stays that way, it should separate; if the University will end up with higher costs, it should not separate. This is something the HBAC will look at over the next few weeks.

REGENTS' BUDGET FORUM

It was agreed that four members of the faculty should present at the Regents' budget forum in May. The four will be Professors Gonzales, Massey, Speaks, and McGowan (the first three members of FCC; the last the Senate Parliamentarian).

PIONEER PRESS ARTICLE ON FACULTY SALARIES

The Pioneer Press article on faculty salaries was not helpful, Professor Morrison said. The article picked out a few pieces of data and made it look as though the University were competitive.

The article changed the ground rules for comparing salaries, Professor Hamilton said, and it is incumbent on the University to defend the use of the list it does (the top 30 research universities as determined by the National Research Council).

CONSULTATION

Professor Speaks next recalled that he had spoken with the President, at an earlier FCC meeting, about the refusal of mid-level administrators to talk to the Committee on Finance and Planning unless an item had gone first to the President and the Board of Regents. The same thing has happened again. The Committee discussed tuition and retrenchment and asked when data would be available from the legislature; when the Committee asked that it be presented, along with tuition and retrenchment proposals, the answer was that the information would not be given to the Committee before it went to the President and the Regents. The Committee would be unhappy if he did not raise this issue here, Professor Speaks concluded.

ATHLETICS - STADIUM

Professor Speaks distributed copies of two motions that had been adopted by the Committee on Finance and Planning concerning the stadium, one about the lack of a operating consulting mechanism for the Twin Cities Campus Master Plan (thus the stadium) and one calling for a "stadium impact study." He reported that Professor Emeritus Warren Ibele had joined the Committee and put campus planning in context. He noted that the campus master plan did not have any provision for a 19-story stadium and the Committee was concerned because the campus master planning committee is not functioning.

Professor Hamilton asked if this Committee should act on the resolutions. Professor Morrison asked if there were a motion to endorse them; there was and the Committee voted unanimously in favor of them. The two resolutions read as follows:

1. The Senate Committee on Finance and Planning expresses its concern about the campus master planning process and wishes to know (1) why the Campus Master Planning Advisory Committee is not being used for consultation on the stadium and on campus planning issues generally, in accord with Regents' policy, and (2) if the advisory committee is not to be used, what group will replace it in order to provide faculty, staff, and student advice on the campus master plan?
2. The Senate Committee on Finance and Planning calls on the administration to prepare a stadium impact study. The Committee asks that the study be conducted by a group that has no involvement in the current discussions about a stadium.

ATHLETICS - FINANCES

Professor Feeney said he had raised at the Finance and Planning Committee the question of whether the revenue sports are really revenue-producing and if, for example, the lawsuit costs were paid from athletic or from academic funds. What does the whole athletic enterprise cost? Has any outside audit been performed on the actual costs of intercollegiate athletics?

Professor Speaks agreed that such an audit should be called for. He noted that the Finance and Planning Committee has discussed the stadium three or four times; it would be premature to take up a motion now because there is not enough information available. In none of the discussions, however, has there been ONE VOICE in support of the stadium. He reported that he and Professor Campbell had been members of a focus group about the stadium; the group included students. The latter favored the stadium on campus as long as there was no student money involved in it.

Professor Hamilton agreed it would be a good idea to examine athletic department financing; there are issues with respect to the salary of the football coach and to debt forgiveness for the department, he said. Why is this not a function of Ms. Klatt's office, Professor Speaks asked? Because her office is small and there are 250 units at the University and the largest risk is violating federal regulations. If the Committee wants a review of athletics, it will need to ask her.

Professor Speaks suggested he bring this issue to the Finance and Planning Committee; he suggested that the audit should be both financial and programmatic.

UNIVERSITY RANKING

Professor Wahlstrom asked if anyone had been discussing the University's standing in the most recent U.S. News and World Report (hereinafter USNWR) rankings. It is now listed in the second-tier institutions, along with places one would not think of as comparable to the University. There are 50 institutions in the first tier, she said.

Professor Morrison said this point must be emphasized: "it is beginning to show."

The University also has 9% alumni giving; no other institution in the top groups has giving from alumni in single digits, Professor Wahlstrom commented.

Professor Speaks maintained that the Committee and University should not be sidetracked by admittedly good arguments about the methodology of the rankings. It is abominable, he said, BUT there is a lot of traffic in those rankings; a lot of parents use them and a lot of decisions are based on them. Professor Morrison said he would defend the USNWR rankings: there are 20 ways the law school rankings are suspect, he said, but if one looks at the list, the top 20 are correct. So one should worry that if the University is in the second 50, there may be some truth to the ranking.

Professor Wahlstrom said she thought the Committee should review the data and recommend steps to "fix it." SOMETHING does need to be fixed, Professor Morrison agreed. Professor Wahlstrom said that the Committee must address the issue, because "we as faculty are now associated with a second-tier institution." She suggested looking at the chronological data to see if the University has slipped.

3. Discussion with President Yudof

Professor Morrison now welcomed President Yudof to the meeting. The topics of discussion included:

- the royalties the University receives from the AIDS drug marketed by Glaxo-Wellcome
- legislative issues and possible outcomes
- health care benefits and the work of the HBAC
- tuition, retrenchment, and the nature of consultation (a small subset of Finance and Planning will be asked to consult on the possibilities for tuition and retrenchment)
- the tuition discount program
- University rankings in USNWR
- salary comparisons in the Pioneer Press and top 30 research universities
- the stadium

Professor Morrison thanked the President and adjourned the meeting at 2:00.

-- Gary Engstrand