

Minutes*

Faculty Consultative Committee
Thursday, May 2, 2002
1:15 – 3:45
238A Morrill Hall

Present: Joseph Massey (chair), Wilbert Ahern, Muriel Bebeau, Susan Brorson, Daniel Feeney, Richard Goldstein, Marti Hope Gonzales, Candace Kruttschnitt, Leonard Kuhi, Marvin Marshak, Judith Martin, Paula Rabinowitz, Charles Speaks

Absent: Les Drewes, Arthur Erdman, Marc Jenkins, Scott McConnell, Jeff Ratliff-Crain

Guests: Professor Fred Morrison, President Mark Yudof, General Counsel Mark Rotenberg; Executive Vice President and Provost Robert Bruininks, Chancellor Donald Sargeant (University of Minnesota, Crookston)

Other: none

[In these minutes: (1) committee chair stipends; (2) statement on tuition increases; (3) discussion with President Yudof (various topics, including the University Press); (4) Minnesota's U.S. Supreme Court case and internal dispute resolution processes; (5) Crookston campus issues; (6) health plans update; (7) Nominating Committee and Committee on Committees appointments]

1. Committee Chair Stipends

Professor Massey convened the meeting at 1:15 and turned to Professor Bebeau for an interim report from the ad hoc committee on committee chair stipends.

Professor Bebeau said the group does not have recommendations ready yet but has considered several issues.

-- Stipends for committee chairs who serve on FCC have not increased since 1993, including that of the FCC chair. There is a question of how wise it might be to suggest increasing stipends when the budget is tight, so there may be a recommendation for a phase-in period if changes are to be made.

-- They would like to identify what the stipends were tied to when they were originally set (there seems to be no rationale for the amounts that were selected). The ad hoc committee will look at possible benchmarks, such as (1) the average full professor's salary in 1992-93 and currently and (2) an RA stipend in 1992-93 and currently (as a measure of the cost of a course buy-out, for example).

-- The workload on committees changes over the years. The caseload for the Judicial Committee, for example, has declined considerably, while the work of the Senate Research Committee has increased.

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-- The amount of time spent by the chair of FCC on governance responsibilities has probably increased significantly over the years. Professor Morrison, the former chair of FCC (and member of the ad hoc committee), said that the tasks have expanded and the 25%-released-time appointment should probably be reconsidered. In addition, the responsibilities of the FCC vice chair have expanded considerably.

Committee members offered several observations.

-- The workload of committee chairs has changed, Professor Goldstein agreed; those who now also serve on FCC/SCC have seen a big increase in demands on their time, inasmuch as FCC meets two or three times per month. Professor Ahern agreed; there is a big difference between coming to FCC or SCC when there is a specific agenda item related to the committee one chairs and serving as an ex officio member, which means one is expected to attend every meeting. Professor Kuhi also agreed, recalling that when he chaired the Senate Research Committee, it was the period when the University was trying to get off "exceptional status" and there were reviews of a large number of University policies; that was a big job.

-- Funding for committee chairs is not the most important thing, Professor Goldstein said; most important is time. It is important that the person to whom a chair reports understands the time required, and the chair of FCC and the Executive Vice President should send a letter to the department head or dean emphasizing the importance of the service these individuals provide to the University. There must be a commitment on the part of the department and college.

-- At Penn State, the equivalent to the FCC chair receives released time AFTER serving as chair, Professor Bebeau reported. Faculty often cannot hire someone to do their faculty work while serving as FCC chair, so they must work extra hard that year; providing a research assistant and some released time after serving as chair would be a big help for many.

-- Professor Martin recalled that she had chaired the Committee on Educational Policy for two years; that responsibility took close to half her time and it would have been very helpful to have an RA. The workload for committees changes on a cyclical basis and does not just include the meetings; there is much work associated with chairing committees that piles up behind the scenes. This suggests the need for a more frequent review of workloads and committee chair stipends, Professor Bebeau concluded.

-- Professor Speaks said he did not know there was a stipend attached to the position when he was asked to serve as chair of the Committee on Finance and Planning. The Finance and Planning workload has been enormous the last couple of years, but that is something that the chair can control to some extent (by deciding what will be on the agenda). The chairs who receive the stipends do have the option of saying "no" to other activities. He said he did not believe it would be prudent to try to provide a course buy-out for chairs, because the costs vary too much across colleges, nor should there be an attempt to provide an RA for some chairs. He said he was not convinced a stipend for committee chairs is warranted.

-- Professor Ahern took a different view. He said he did not know of the stipend when he agreed to serve as chair of the Committee on Educational Policy, but with it, and with some help from his campus, he was able to get a one-course release. Being able to use the stipend to hire help is important for committee chairs, he said.

Professor Bebeau said she would take these comments to the ad hoc committee and that it would bring back recommendations in the near future.

2. Statement on Tuition

Professor Massey reported that it would be helpful for the administration if this Committee were to adopt a statement endorsing the tuition proposal being brought to the Board of Regents as part of the 2002-03 budget plan (that is, increasing tuition by about 16%). Committee members supported the idea, and voted unanimously in favor of a statement (which it agreed it would vote on by email the following day, when specific language would be presented). Committee members offered several observations.

-- Professor Rabinowitz suggested the statement incorporate a reference to the cut in state funding as the justification for the tuition increase, and that the University (and this Committee) support it for that reason, not just because it wants higher salaries for faculty.

-- Professor Marshak said that tuition banding will make the best educational opportunity out of a bad situation. He also noted that Northwest Airlines pilots will be receiving salary increases of 4.5% and 5% in the next two years, despite the bad financial situation of the airline.

-- Professor Speaks reported that he will speak at the May 13 Regents' forum on the budget.

-- Professor Martin volunteered to speak at the forum as well. The Committee endorsed the idea that she do so.

3. Discussion with President Yudof

Professor Massey now welcomed the President to the meeting. The President and the Committee discussed a number of matters:

-- the tuition increase and the implications for the University budget if the increase is not approved

-- legislative issues

-- the 13-credit rule and the need to keep an eye on course access, advising, and the demand for exceptions

-- the "riot" after the national championship hockey game

-- the controversy about the recent book issued by the University Press (The President told the Committee he would not decide what the Press should publish and that he has told legislators and the public that if the University took any action to stop the publication or to curtail a second run or anything like that it would be sued on First Amendment grounds and it would probably lose. There will be a review of the process the Press uses to decide what books to publish, which will involve only people from other university presses and will be prospective only. Professor Ahern expressed concern about the timing: it seems there is a review group appointed after an outcry over a book brought pressure to bear on the Press; the decision to conduct a review suggests the University is not as supportive of free speech principles as the President has said it is. President Yudof said that as a matter of law, there is no constitutional right to any particular review or publication process and he emphasized that the review would be prospective only. He said he was not going to second-guess the Press on publication of this book but did want the process looked at. He said he is being

protective of the University; he will not budge on publication of this book but does not see the review as a threat to academic freedom because it will be conducted by those involved in university presses. He affirmed that he will defend the autonomy of the University Press but that perhaps things can be learned from others who run such presses.)

4. Minnesota's United States Supreme Court Case

Professor Massey welcomed Professor Morrison and General Counsel Mark Rotenberg to discuss the recent U. S. Supreme Court case to which the University was a party. He asked Professor Morrison to begin.

Professor Morrison said he did not wish to argue about the merits or outcome of the case. The case involved broadcast technicians who claimed they had lost their jobs as a result of age discrimination; it went through many processes and then to both state and federal court and involves the very complex law of federal jurisdiction (which, he said, more resembles theology than law). As a technical matter, he said, he believed the case was correctly decided.

His concern, however, is that the University is increasingly trying to avoid independent reviews of claims made against it (violations of agreements, of laws, and so on). That leads him to ask if the University is really observing or trying to observe laws and agreements or if it is trying to get by with as little as it can. He urged the Committee and the President to think about allowing claims to have independent reviews. He said he understood that claims are reviewed up the administrative line, but once the first-level administrator makes a decision, the second-level administrator will usually not conduct an independent review. Is the internal University determination an independent review or administrative affirmation of the decisions of subordinates, he asked? Those are two very different processes. That administrative review process continues up the line until the issue reaches the courts or the Grievance Office or the Senate Judicial Committee. What he has seen the last few years is that if an issue reaches the grievance process, the administration often argues against it on procedural grounds; he said he takes issue with this approach.

The President responded that the Supreme Court case was not about these issues but agreed that the two processes were quite different.

Mr. Rotenberg said that there had been independent review of the complaints in the case that went to the Supreme Court. Two different agencies, the Minnesota Department of Human Rights and the Equal Employment Opportunity Commission both considered the cases and issued "right to sue" letters--which means that they did not find merit in the complaints so would not pursue them, releasing the complainants to sue the University. Both agencies will readily hear claims made by employees against employers and will investigate them (some believe the agencies pursue claims too slowly, but that is not something the University can do anything about).

There is also an internal mechanism, Mr. Rotenberg said. Individuals can file a claim with the Equal Employment Opportunity and Affirmative Action office, which will conduct a review at no cost to the employee. That office is independent of decanal and vice-presidential lines of authority and issues its report to the administration. His office will use the report to advise the administration, and is ready to say, if the report suggests it is appropriate, that someone made a mistake and his office will not defend against the claim. So there are ways an individual can obtain an independent review, Mr. Rotenberg concluded.

What is the message one should take away from this meeting, Professor Speaks inquired? Professor Morrison said the message should be that the University ensures there is review of claims independent of the usual administrative channels (and independent of the Office of the General Counsel, which defends the usual administrative channels). Some may go to the Grievance Office, some may go to the EEOAA office, and some may go to the Judicial Committee. But the repeated University use of jurisdictional defenses is bothersome.

In terms of the right to sue, Professor Morrison added, that is issued by an agency for one of two reasons: because the time for an investigation has expired OR after an independent review concludes the claim does not have merit. It is not clear which reason operated in this case.

President Yudof said the University should be as fair as it can be internally. Once the University has been served with notice of a legal proceeding, however, he will NOT instruct the General Counsel not to raise all defenses possible. But the precursor to a lawsuit, the internal determinations, must be fair and reach the merits of the claim.

Professor Morrison said he agreed completely with the President: if there is an internal process available to everyone, then the University should play hardball in outside litigation. But internally it should not be making jurisdictional arguments the center of its response to claims. There seems to be an increased resistance to hearing claims in the grievance process; in the five-year report from the Grievance Office, six of seven hearings were on procedural grounds and only one on the substance, which leads him to wonder if the process is addressing the underlying problem rather than turning on procedural technicalities.

This is an issue to be worked through next year, the President said. He agreed that the internal processes should reach the merits of a claim and that he would look at jurisdictional bars to reaching the merits.

In terms of the application of the grievance policy to emeriti faculty, the President said he has given half a cake and more than most members of the administration wanted; it is unusual to give non-employees access to a grievance process. He said he is prepared to make an exception for former faculty members if the complaint relates to their employment.

Professor Morrison said he agreed with the limitations on faculty emeriti use of the grievance policy as they have finally been proposed. Anything that is to be enforced should be in writing. His worry was about language that would not be clear to many people or that a grievance would be rejected if it were not on the right form. The President said he has changed the language so that emeriti faculty know where to go if they have a complaint and that no standard form will be required.

Professor Marshak said he had been interested to learn, earlier in the meeting, that the caseload for the Senate Judicial Committee had declined in recent years. Should this be viewed as progress, he asked? The President said he thought so. It may be that policies and procedures are in place and that deans and colleges are following them. They may be taking the rules more seriously. He said he also now finds himself sustaining the Judicial Committee's findings, something he did not always do in the past. Professor Morrison agreed; through the work of the central officers, including the Provost and the General Counsel, the number of cases has dropped because departments understand what they must do. Professor Martin concurred as well, saying that faculty are much more aware of things like the department 7.12 statements.

Professor Kruttschnitt cautioned that the decline in cases may simply reflect a time lag. For a period, there were few new hires; more recently there have been many more new faculty hired, but many in that cohort have not yet reached the tenure decision, so there have not been denials.

Professor Bebeau said there is still need to be watchful. She was on the Judicial Committee a number of years ago; since then, faculty are much more aware of the rules and policies. At the same time, however, a new chair may not be aware of the issues and there will be problems if deans and vice presidents do not make sure that department heads are educated. The President said that people must blow the whistle early in order to avoid cases; in a non-threatening way, faculty must convey the message that it is time to convene the chairs for some gentle training.

5. Crookston Campus Issues

Professor Massey next welcomed Executive Vice President Bruininks and Chancellor Sargeant to the meeting to discuss progress in responding to the recommendations of the "Collins Committee" made in the spring of 2000. He accepted a motion to close the meeting, which was approved unanimously.

The Committee, the Executive Vice President, and the Chancellor talked for about 45 minutes about the state of governance, faculty appointments, and various other matters related to the Crookston campus. Committee members emphasized that their objective was to help Chancellor Sargeant and the campus, not to level accusations or blame people for whatever perceived problems exist. Four of the salient points were these:

- UMC might consider using faculty from other campuses on promotion and tenure committees.
- Faculty, in departments or divisions, could talk about the work they are doing.
- It is important for administrators to celebrate faculty work; it is atmosphere that makes the difference.

Professor Massey thanked Drs. Bruininks and Sargeant for joining the meeting; Dr. Sargeant said he appreciated the opportunity for the discussion and the advice he had received.

6. Health Plans Update

Professor Massey turned back again to Professor Morrison, (speaking now as chair of the Benefits Advisory Committee, or BAC), who now introduced Dann Chapman, Acting Director of Health Programs, and Tonya Soley, Assistant Manager of Health Programs. Professor Morrison said he was present to respond to concerns and complaints that have been raised about the health care providers.

Professor Rabinowitz said the report should be more than about complaints; it has been six months since the University separated from the state and began offering its own health care plans so the Committee should receive an update. It has only been four months, Professor Morrison observed, and any time there is a new program there is also a lag time; in the case of the problems that have been reported, it may be billing not sent rather than the insurance companies not paying.

In terms of payments made, in January there were virtually none (because the plans had just started), there were a few in February, more in March, and April is probably the first month that will be close to normal. It is too early for a review, he said, because they do not have six months of data yet.

They are, however, doing informal reviews of the plans. The problems with Definity have already been identified and addressed; they are getting caught up on payments. There has been a problem with Choice Plus in identification of providers; Choice Plus needs to address this. The BAC will receive a report in the fall on how the plans are doing; they will continue to conduct the informal reviews through the summer and will raise questions with each provider. In the case of health care systems and the identification of providers, Mr. Chapman said that questions should be addressed by members to the systems. The systems need to be told they are not providing the information needed by consumers.

Has the new plan saved any money, Professor Martin asked? It is too soon to tell, Professor Morrison said. They are now receiving first-quarter reports, Mr. Chapman added, but only have full results from the first six weeks of claims—which are artificially low. They have learned that integrated plans, such as HealthPartners, gets bills out in about 20 days, Professor Morrison reported, while the typical clinic, dealing with a lot of insurance companies, will get bills out in about 40 days, and the small physician's office can take up to 60 days. HealthPartners bills come quickly while Preferred One bills take awhile.

Professor Massey thanked Professor Morrison and Mr. Chapman for the report.

7. Nominating Committee and Committee on Committees Appointments

Professor Massey recalled that at the Senate meeting last week, the bylaw amendment to allow confirmation of individuals to be appointed to a second term on the Nominating Committee and the Committee on Committees, rather than conducting an election, had failed to pass only because there had been an insufficient number of people present and voting. As a result, the individuals presented for confirmation in a second term could not be reappointed. At the same time, however, the Senate had adopted a "sense of the Senate" resolution authorizing this Committee to act on behalf of the Senate to reappoint the individuals pending a second vote on the bylaw amendment (which vote would approve the change).

The Committee voted unanimously to confirm the reappointment of Professors French and Stuthman to the Committee on Committees and Professors Campbell and Wells to the Nominating Committee.

Professor Massey adjourned the meeting at 3:45.

-- Gary Engstrand