

Minutes\*

**Senate Committee on Faculty Affairs**  
**Tuesday, February 19, 2002**  
**3:07 – 5:00**  
**238A Morrill Hall**

Present: Richard Goldstein (chair), Josef Altholz, Carole Bland, Carol Carrier, Daniel Feeney, Roland Guyotte, Darwin Hendel, Robert Jones, Nan Kalke, Cleon Melsa, Harry Savage, Wade Savage, Tom Walsh, Carol Wells, Timothy Wiedmann

Absent: Kent Bales, William Garrard, Roberta Humphreys, George Seltzer

Guests: Martha Coventry, Sharon Grimes, Kathy Yaeger (University Relations); Tracy Smith (Office of the General Counsel)

[In these minutes: (1) advice on possible changes to BRIEF and KIOSK; (2) the grievance policy and emeriti faculty; (3) more on the lack of electronic privacy and implications therefrom; (4) student evaluations of instruction and treatment of women faculty; (5) post-tenure reviews and changing standards for faculty]

**1. Discussion of BRIEF and KIOSK**

Professor Goldstein convened the meeting at 3:07 and welcomed Mss. Coventry, Grimes, and Yaeger to discuss the BRIEF and KIOSK publications.

Ms. Yaeger explained that University Relations produces both BRIEF and KIOSK and distributes them to all faculty and staff. They recently did a readership survey to determine whether the publications meet the needs of those who receive them. She described the survey numbers and results. In general, BRIEF is widely read and appreciated. The reviews of KIOSK were mixed; they are trying to figure out if it should be changed or if it acceptable that 61% of recipients skim or do not read it. (One problem may be that it is not individually addressed, which it will be in the future.) Is there a way to improve it or people do not want to read it?

Ms. Yaeger reviewed four options they are considering: keep the two publications as they are, keep KIOSK as is and distribute BRIEF by email; combine them into a weekly 4-page newsletter combining elements of the two; or combine them into a biweekly 8-page tabloid that combines features of the two.

Committee members offered a number of comments.

-- Combining the two would not be a good idea; people read BRIEF because it is brief and KIOSK is not.

---

\* These minutes reflect discussion and debate at a meeting of a committee of the University of Minnesota Senate or Twin Cities Campus Assembly; none of the comments, conclusions, or actions reported in these minutes represent the views of, nor are they binding on, the Senate or Assembly, the Administration, or the Board of Regents.

-- BRIEF by email would defeat the purpose (not all have email; many will not read more than two lines on the screen). (They distribute 13,000 paper copies of BRIEF; about 200 people have elected to receive it electronically, which is an option.)

-- If sent by email, BRIEF would be easier to keep and it would not be necessary to discard so much paper. (BRIEF is on the web.)

-- Keep BRIEF as it is. It was the first University publication that was reliable, unbiased and without propaganda; that should be valued. (Several others on the Committee concurred.) One thing is unclear: who selects the upcoming events to list, given all that happens on the campuses?

-- Keep the orange color; that makes it distinctive. In terms of KIOSK, have they done studies of other campuses? Maybe KIOSK is successful compared to what other institutions do. (There is no information on readership evaluation from other campuses; they all have some kind of publication similar to KIOSK.)

-- KIOSK offers opinions as well as facts so should be treated differently from BRIEF. KIOSK is a place that offers the opportunity to explain issues in greater depth.

-- What is the distribution system in the AHC? (It is not well organized, but should be improved with individual addressees.)

-- The great value of BRIEF, besides being factual, is that it provides information the University believes all faculty and staff should know. It has become part of the culture; there are few things everyone look to and BRIEF is one. It would be a loss to the University if it disappeared.

-- One problem with KIOSK is that much of the news is late because the publication is so infrequent. People have already read about much of it in the DAILY or metropolitan newspapers. What KIOSK could do is follow up on issues and provide a different perspective.

-- Some people don't read KIOSK because of overload. Something needs to be done to make it more eye-catching. Some people do not read personality profiles, which some of KIOSK's lead articles are. They should think about what front page will attract readers. (KIOSK used to start with a column by FCC, but the chairs no longer have time to write them. They know controversial issues will have greater interest, but it is difficult to get people to commit to writing articles, Ms. Yeager commented.) How about putting writing columns or articles into the job descriptions of administrators, and the chair of FCC? Whoever writes articles must be people who have a handle on the issues. (Even if it were part of administrator job descriptions, it would be something they would not get around to.) The only way something will be written is if the task is delegated to a communications person; there could be a rotating responsibility to write articles on important topics. It is difficult to write articles about important issues on a calendar schedule; if something important comes up, something needs to be written, and otherwise one is just filling a paper.

-- Will it cost more to put individual addresses on KIOSK? (It will not. But it will cost significantly more in staff time to put individual copies in specific mailboxes, Professor Goldstein pointed out.)

-- KIOSK is a good publication that provides background information and should be used to archive important issues. It is a valuable part of the University and a way to share information with multiple approaches.

-- The University community should not have to depend on committee minutes for information. Intercollegiate athletics and health cares issues should be covered, and it might also look at research (why is it the local newspapers cover research results but not the University?).

-- One of the frustrating things about writing articles for KIOSK is that there is never any reaction. One asks why one is bothering.

-- The challenge for KIOSK is that it is a lot of different things in one publication and people no doubt look to different parts of it. It does not fall in a category, like BRIEF; it has varied components. If it continues, should it stay as it is--diverse--or become more focused? (It is designed to be diverse; if everyone read one or two articles important to them, perhaps that would be acceptable, Ms. Yaeger said. KIOSK replaced FOOTNOTE because it was thought something with broader appeal was needed.)

The consensus appears to be that BRIEF should be left alone and the question is what to do with KIOSK, Professor Goldstein summarized. Perhaps develop a contact group and get advice. The results from focus group discussions have been very mixed, Ms. Yaeger said. There is also THE SOURCE, on the web, which contains news that is updated daily.

Ms. Yaeger thanked the Committee for the opportunity to meet with it.

## **2. Grievance Policy**

Professor Goldstein next turned to Professor Altholz to begin a discussion of the revisions to the grievance policy. Professor Altholz, who noted that he had been a grievance hearing officer for seven years and had gotten to know the policy well, said he only reviewed the changes that have to do with emeriti faculty.

Professor Altholz had two suggestions that the Committee discussed at some length with Vice President Carrier and Vice Provost Jones. First, why not allow specific performance--just DO it--rather than limiting the solution to a cash settlement? Specific performance should be allowable as a remedy and it could save the University money. Second, let emeriti faculty use Stage I and Stage II of the grievance process, which are entirely mediatorial and informal. Again, this should be permitted, even if not required.

Dr. Carrier said that the language with respect to remedy had been worked out over a number of months with a group of faculty and administrators that included Professors Morrison and Cooper, who have been very much involved in the administration of the policy. They wanted to limit access to the grievance policy so that every possible disagreement between emeriti faculty and an administrator would not be grievable; as a result, that is why the language provides that "an emeritus faculty member who is not currently an employee of the University may file a timely grievance alleging a violation covered under . . . this policy only: 1) if such violation occurred prior to termination of employment; or 2) if a written contractual obligation executed during the employment period pursuant to a valid delegation of authority is violated after the employment terminates; provided, however, that the remedy in such a case

will be limited to a financial remedy." The reason for the "valid delegation of authority" clause is that someone had to have the authority to make a commitment before it will be grievable.

Even if they could agree on a non-financial remedy, Professor Altholz objected, this policy does not permit it. Dr. Carrier said they hoped that that kind of agreement could be reached in the informal dispute resolution system. Professor Altholz agreed, however, that if the language applied ONLY to this part of the grievance policy, then it was acceptable.

It seems that the administration is worried there will be a lot of complaints that will take a lot of time, Professor Goldstein reflected. Dr. Carrier said grievances DO take a lot of time, which is the reason they want to constrain access to the system for emeriti faculty, and hope that the informal system will be used for milder disputes. She said she also hoped that people would not make commitments that they cannot follow through on (e.g., committing to providing an office to an emeritus faculty member and later realizing that a new probationary faculty member will not have an office if the commitment is honored).

There is a vast difference between departments in how they treat emeriti faculty, Professor Goldstein observed; some are not very nice to retirees (so they never come in) while some treat them well (and they do come in). Right now that difference is arbitrary and he favors access to the grievance policy because of that variability. It is beneficial to the University and the individual departments that retired faculty stay active.

Professor Goldstein expressed surprise that Professor Morrison had agreed to this language, because he (Professor Morrison) had expressed the view that people who had spent many years at the University should be able to grieve. He was involved in the development of this compromise language, Dr. Jones responded.

Dr. Carrier affirmed, in response to a question from Professor Bland, that only certain kinds of cases involving emeriti faculty could end up in the grievance process. If the informal dispute resolution system does not produce a result the emeritus faculty member likes, there is no automatic resort to the grievance process. The content of the dispute determines whether or not it goes to the grievance process. This means there is an incentive for administrators never to resolve a dispute, Professor Bland objected. If an agreement is in writing but the administrator cannot or will not abide by it, the University will be able to pay rather than provide the remedy the grievant prefers. The UNIT will pay, Dr. Carrier pointed out.

Professor Goldstein said he hoped that units will write agreements in a reasonable way. Some units do so gracefully. In some units, faculty are afraid to retire because they fear they will be "tossed out" and lose all connection with their colleagues. There is also a problem that goes beyond the grievance policy, Professor Savage added; people need to understand how they should handle these agreements with faculty because an assurance is not a contract. Dr. Carrier agreed that no one wants people to be misled and that there is much the University could do help people in this respect. There needs to be work with department heads, Professor Savage said, because faculty rely on their promises. Deans also have to be sure that department heads do not write agreements that will not work, Dr. Jones added.

Moving on to Professor Altholz's second point, whether or not emeriti faculty could use stages I and II of the grievance policy will take some discussion, Dr. Carrier said; she said she did not know about the workload of the grievance office. The former grievance officer said they could handle these cases,

Professor Altholz reported. This could require a change in the emeriti faculty policy, Dr. Jones said, which does not provide for third-party mediation. He said he would be uncomfortable proposing such a change.

Perhaps the access need not be written in policy, but simply made known to people, Professor Altholz suggested. Professor Bland suggested it be written in an administrative procedures document which is prepared for policies. Drs. Carrier and Jones thought this suggestion might be workable.

### **3. Electronic Privacy**

Professor Goldstein now welcomed Tracy Smith from the Office of the General Counsel (again) to discuss electronic privacy (again). He said he would like to see a clear statement (perhaps in KIOSK) about the lack of privacy at the University, a distilled discussion that would get to the faculty.

There are two things involved, Professor Walsh said. One is a policy, which would include a statement of principles and goals. That is different from a statement ("if you think you have any privacy, you are wrong"). There is need for a policy, Professor Altholz said.

Professor Walsh said he was puzzled about the situation. If someone from the outside requests access to his 10 gigabytes of records accumulated over 30 years, which would be about 10,000,000 pages, who will decide what to redact? How can there be a disclosure policy when the volume of data can be so large? Can the material not be revealed, or must all of it be?

Ms. Smith said there is no exception for burdensomeness in the law. There could be a request for all public data at the University, but that has not happened; requests are related to specific topics. Her office works with the unit to find the information and charge the requestor for the costs of finding it (if the requestor wants copies). The cost does include salaries of employees who must spend time gathering the information; sometimes the cost deters the request. But there is no charge if the requestor only wants to see the information but does not want copies. Then the University must pay the cost. There is, she agreed, a weird dichotomy in the law between who pays when copies are requested and who pays when they are not.

What about when there are gigabytes of data, Professor Walsh asked? The University would never provide access unless it knows the information is public; the information would have to be reviewed. Usually it is an administrator or staff member who would have to dig out the information; if the request involved a PI, that person would have to spend time and the requestor would be charged (if copies were requested).

What research data are not public, Professor Bland asked? The law does provide protection for trade secrets data, Ms. Smith said. While that does not really fit the University, the University uses that provision to protect research data that a faculty member will eventually publish. "Really old" data (e.g., from the 1950s) would not be protected, she said. And if one presents data at a national meeting, it would no longer be protected, Professor Goldstein surmised; Ms. Smith agreed: if the data are known to others, they are no longer protected.

What happens when someone obtains information and realizes that there is still more that has not been released, Professor Walsh asked? Then they would have to find the information and provide it, Ms.

Smith said, because it would be public. If someone asked for reimbursement records for 1995-2000, and received the records for 1995-1998, they would have to find the additional two years of records. Ms. Smith said she could not think of an instance when this had happened, however.

Is she or her office obligated to follow up if data suggest illegal activities, Professor Walsh asked? She would follow up, Ms. Smith said, if she saw evidence of a crime. The President would insist on it, she pointed out. Would she "subpoena" faculty records if she suspected a crime, he asked? The University would look at records if a crime were suspected, Ms. Smith said.

Are all faculty research notes and findings protected by the trade secret provision, Professor Savage asked? Unpublished data are, Ms. Smith said, although not old data. There is no legal recourse to stop someone from examining data unless they have trade secret protection, Professor Savage asked? That is outrageous!

What about data collected from human subjects, Professor Bland asked? Those data are private, Ms. Smith said. Even if the data are 100 years old? They are still protected, Ms. Smith affirmed.

If someone alleges academic fraud against a faculty member, Professor Walsh observed, responding to the allegation could occupy people for years and tie them up. If the accuser has the right to mine emails and files, the allegation (no matter how unfounded) could be difficult to cope with. That is a great way to stop someone whose research might be impinging on outside financial interests. Or whose research someone has a moral disagreement with, Professor Bland added--animal rights groups and cigarette companies have used these tactics a lot. Professor Walsh observed that there may be a new class of people--data terrorists.

The best that can be done is to disseminate widely a report to the faculty about this issue, Professor Goldstein said. He asked Professor Walsh to work with Ms. Smith to develop a statement.

Professor Savage said that if faculty research does not fit into the trade secret provision of the law, and must be made public, then the law should be changed. A data terrorist might be the problem, or someone might want to obtain results or ideas (not yet published). The idea of this is repulsive to a researcher and the law should be changed, he said.

There was an effort to change the law to deal with research data, Ms. Smith said, and there was no enthusiasm for it in the legislature, even if the proposal did not say that ALL research data were private. There would still be a need to prove trade secret value, which is difficult to do if there is no intellectual property value in the data. And if trade secret value can be demonstrated, the data need not be turned over.

Professor Savage said information could be part of the corpus of someone's work. He has papers from 1958 that still generate ideas. The University would only turn over the information if it no longer had trade secret value, Ms. Smith repeated. It would be rare if unpublished research data were public, but they could be (e.g., data from the 1950s gathered by people who are no longer at the University). For current faculty, their data would be protected.

What is irrational about this is that the legislature does not pay for most of the research, Professor Walsh observed. It pays for education, not research.

Professor Goldstein said it is important to get information out to the faculty. There is no doubt this is an invasion of privacy, and if the faculty feel it important they could try to get the University to lobby for a change in the law. But first people must know about the law.

Are poems from the 1940s trade secrets, Professor Savage asked? They are, Ms. Smith said.

Professor Feeney said he knows, from experience with animal rights activists, the effect these kinds of requests can have on INDIVIDUALS; this is more than just data privacy. A demand for research results for 20 years can open an individual up to all kinds of things that would be published because they were not trade secrets but rather disagreements. The individual is left to hang out to dry in those cases, he said. Or one can make the requests out of simple maliciousness, Professor Altholz said: if one does not like the position he takes, he or she can ask for drafts and see if there was an infelicitous phrase used. Ms. Smith agreed that if someone kept the drafts of a published paper, they could be requested.

Professor Goldstein thanked Ms. Smith for joining the meeting.

#### **4. Student Evaluations**

Professor Goldstein said he has heard a lot of stories about students who are disrespectful to women faculty, which concerns him a great deal. The message must be gotten out to students about the way they behave towards women faculty. This kind of disrespect cannot be allowed.

Professor Wells related a number of incidents in which she had been involved in which male students treated female faculty differently from the way they treat male faculty.

Dr. Jones said he has heard the same issues raised in reviewing promotion and tenure files and is equally concerned. One way this can be approached is through the review of the Student Conduct Code that is currently underway: rude and disruptive behavior in the classroom can be grounds for sanction. This is an issue institutions across the country are looking at; some have a separate document for this behavior.

Usually students are fearful of faculty, Professor Goldstein said, because the faculty member decides the grade. That is true, Professor Savage agreed, but there is a problem with grade inflation. The dean of CLA is asking faculty if they contribute to the problem. Students today are not "afraid" of faculty like they were earlier, and there is clearly gender bias involved, although students are also rude to male faculty.

What is the overall charge to the subcommittee on teaching evaluation, Professor Savage asked? The overall impact on the University and whether or not it is a good thing, Professor Goldstein said.

#### **5. Post-Tenure Review**

Professor Bland related that she has had conversations with faculty about post-tenure review. Faculty sometimes find themselves in a situation where the standards by which they are evaluated for post-tenure review are different from the standards under which they were hired some number of years

ago. They are now being judged against standards that they do not meet in post-tenure review and they could ultimately be asked to leave.

Things change, disciplines change, the world changes, she said, but there seems to be an injustice when senior faculty are not "in synch" with new standards. That has led her also to raise the question "where is the faculty ombuds person?" She has no place to send faculty members who raise these kinds of questions.

Fields change and so must faculty, Professor Goldstein said. Fields change in various ways, Professor Altholz agreed, but the only ones who can abuse the changes are faculty themselves. There are departments where ideology is explicit but it is called a change in standards when it really is not.

Do the faculty in the unit determine the substance of performance, Professor Bland asked? Can they stipulate what journals someone must publish in? That is an academic freedom issue, Professor Feeney said; the department cannot tell someone where to publish or what to study and it doesn't matter if the department agrees with what the faculty member is doing.

Have the individuals gone through the first step of the post-tenure review process, Professor Goldstein inquired? It is at that point that the unit is supposed to identify ways for the faculty member to be a productive member of the department. There could also be a misinterpretation of what post-tenure review is supposed to be, Dr. Jones added; there seems to be a disconnect here. Post-tenure review is not to punish people who are being productive or not doing what the department expects.

One problem is in departments that rely heavily on grant funding, Professor Bland said; what about when the standards in the department have changed as a result and faculty are expected to publish in a field that brings in grant funds?

There is no post-tenure review case until there has been a recommendation to the dean, Professor Savage pointed out. Dr. Jones agreed and said that if that point has not been reached, some resolution should be sought.

These are delicate issues, Professor Savage reflected. The department is the best group to set the academic standards for the department and it would be a bad idea for anyone outside the department to do so. At the same time, there are divisions within departments that are not always academic; in any event, no one should tell a faculty member what journals to publish in. (Usually, if a faculty member does not publish in the top journals in the field, he or she will be ranked accordingly when it comes time to deliver salary increases.) It would be best if this kind of problem could be mediated before questions of academic freedom arise.

In departments that depend on grant funding, Professor Bland said, they cannot afford to hire someone who does not bring in money. If the department were to take action on that basis and the case went to the Judicial Committee, it would probably overturn the department even if the faculty member published in second-rate journals, Professor Goldstein speculated. What if one is in a department that expects faculty to publish in areas that generate funding and you choose not to do so, Professor Bland asked? If a department uses post-tenure review to try to get rid of someone on that basis, Professor Savage said, this Committee should be concerned. It was not intended to be used for that purpose.

The department [tenure-code-required section] 7.12 statements (on standards for evaluating faculty) have all been approved, Professor Feeney noted, and nothing in them says anything about bringing in funding. There have been a lot of articles about "the kept university" and how the University is in bed with corporate interests; what are we, he asked? If the primary criterion for a faculty member is whether they bring in external funding, the University is in trouble. Dr. Carrier responded that there are 7.12 statements that DO include grant productivity as one of the criteria.

How did those get in, Professor Walsh asked? He said he did not recall, from the Senate discussion of post-tenure review, that grant productivity would be part of the system. The departments voted on the standards, Dr. Carrier said. How do they know they conform to Senate policy, Professor Walsh asked? There is nothing in the Senate policy that bars the use of external funding as a standard, Professor Bland said. Then why doesn't a department include as a standard "general disagreeability" for evaluating faculty, Professor Walsh asked? And some agencies are known not to fund grant applications from older faculty; there is age discrimination. Using grant productivity as a standard in post-tenure review does not conform to the Senate discussion about post-tenure review not being harmful but rather intended to help people, he concluded.

Post-tenure review leaves up to colleges and departments the responsibility for setting the standards, Professor Savage said; the post-tenure review policy only requires that the standards be clear. If faculty do not meet them, that is cause for initiation of the post-tenure review process. But the standards are set by colleges and departments, not by the post-tenure review policy. That sounds like a great way to get rid of older faculty, Professor Walsh replied: the department does not like what they are doing so send them to compete against younger faculty in seeking grants. They will not be as successful so the department can use the post-tenure system to get rid of them.

The post-tenure review policy also recognizes that as careers advance, priorities and interests change over time, Dr. Jones reminded the Committee. That could lead to a refocusing of effort, Professor Savage agreed; termination only comes in the egregious cases, and at the end of a college review.

The system is perverted when a department needs external funds and it cannot have a faculty member redirect efforts to teaching and administration without the department budget going in the red as a result, Professor Bland said. It is difficult to tell a department that it must pay because one of its faculty is not generating money. Of course it can, Dr. Jones rejoined; that just depends on the unit's priorities.

This is something the Tenure Subcommittee should look at, Professor Goldstein said. Dr. Jones said that they will do a detailed analysis of post-tenure review and they need to know about these kinds of things because they are a cause for concern.

Professor Goldstein adjourned the meeting at 5:15.

-- Gary Engstrand