



UNIVERSITY OF MINNESOTA  
TWIN CITIES

All University Senate Consultative Committee  
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AGENDA

November 20, 1980  
626 Coffman Memorial Union, 12:30-3:00

1. Fix agenda
2. Minutes of November 6 (2 sets enclosed)
3. Report of Chair (enclosed)
4. Report of Student Chair
5. Committee reports
6. Reports from Regents meetings
7. Consent Decree grievance procedures, 1:00 p.m.,  
    Guest, Joel Tierney
8. UCBRBR closed sessions
9. OldBusiness
10. New Business--UMD and Senate
11. Adjourn



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MINUTES

SENATE CONSULTATIVE COMMITTEE

November 20, 1980

The fifth meeting of the Senate Consultative Committee of the 1980-81 academic year was called to order by Chairman Marcia Eaton at 12:30 p.m. in Room 626 of Coffman Memorial Union. Attending were Orhan Arkan, Julie Bates, Robert Brasted, Russell Hobbie, Bryan Jamison, Judy Nord, Douglas Pratt, Sue Pribyl, Dennis Sargeant, Vera Schletzer, Julie Sellgren, Donald Spring, and Patricia Swan. Guests present were Assistant to the President Carol Pazandak, Maureen Smith of University Relations, Lisa Hartley of the Daily, and for a portion of the meeting University Attorney Joel Tierney, Attorney Paul Sprenger, Kathy Olson of Measurement Services, and Professors Charlotte Striebel, Patricia Faunce, Sandra Carter, Rosalind Rubin, Janet Macy, and Al Aepli.

1. The agenda was fixed as to content, leaving sequence flexible for scheduled guests.

2. A motion to permit participation by guests who had requested to speak was passed without dissent.

3. The minutes from the November 6 SCC meeting and SCC Conversation with the President were approved as written.

4. Report of the Chair.

A. Joint-Mode Committee to study "Issues in Faculty Development": Eaton named the Senate committee representatives. From SCEP, Robert Carr of Chemical Engineering and Materials Science; alternate, Stanford Lehmborg of History; From SCFA, Joanne Eicher of Textiles and Clothing; alternate, Franklin Enfield of Cell Biology; from SCRAP, Bernadine Feldman of Nursing; alternate, Irwin Rubenstein of Cell Biology; from Research, Kenneth Reid of Chemical Engineering and Materials Science. They will meet together with Professors Shirley Clark, Mary Corcoran, Dean John Wallace, and members of the Planning Council.

B. Openness of Grievance Proceedings. (See minutes of 11/6/80.) Eaton noted that while Point 8 of the Clarifications to the Rajender Consent Decree addresses only the question of openness on the internal tribunal hearing petitions and claims under that decree, it was her understanding that the Consultative Committee still wished to have the perennial questions of opening up any or all University grievance proceedings aired. The SCC confirmed this understanding. Eaton will write a clarifying memorandum to the appropriate grievance chairpersons.

5. Report of the Student Chair. Pribyl reported on the student SCC

meeting of earlier in the day.

A. Senate Reorganization. Orhan Arkan will carry student concerns to this afternoon's joint subcommittee meeting.

B. Julie Sellgren informed the student SCC on UMD student responses to the Regental dissolution of the UMD Senate participation and the Assembly.

C. Discussion of open meeting question.

6. Committee Reports.

A. UCBRBR. Swan observed that many University people were attending the legislative appropriations hearings this day, both administration presenters and faculty and student observers including Rick Purple and Bruce Thorpe for SCC and Walter Johnson for UCBRRB.

B. Grievance. Schletzer reported that the Tenure Committee is studying and preparing responses to the report of its Subcommittee on Sexual Harrassment.

C. Senate Reorganization. Spring reported that a clean revised draft of the Senate constitution, bylaws and rules has been delivered to every committee of the Senate, including the SCC, with the request of a response by December 8. The subcommittee is prepared to make further revisions in response to those recommendations.

7. Reports from Regents meetings.

A. Faculty and Staff Affairs. Al Ward telephoned a report which he will write up. He reported that the Academic Staff proposal (the "P.A." document) was the main agenda item. The point of view of the librarians was among those discussed. He added that many Waseca staff members, susceptible to reclassification, had worried about the original "E-track" proposal. Most have now come to agree with the need for the classification and find the new document nearly adequate. What they, and others, see as still requiring precise definition, are academic freedom and job security.

Eaton will speak to the Regents at their December meeting, explaining the history of Senate action on the evolving proposal. Business and Rules is addressing the question of Senate representation for the new class. Schletzer reported that the Tenure Committee is still not ready to approve the whole document. It is only the general proposal that will come before the Regents for approval at their December meeting.

B. Regents Committee of the Whole. Hobbie reporting.

(i) UMDEA. See item 10 below.

(ii) Open meetings. Publicity about the SCC's intention to discuss under what circumstances, if any, a meeting of a Senate committee might be closed, provoked Regent Unger to request that the Regents develop a policy regarding open meetings. They will do so.

C. Student Affairs. Nord reporting.

(i) Summer fee change proposal passed.

(ii) Proposal to move student employment to the financial aid office was tabled with the request for more information.

(iii) By-laws of the Board of Student Publications will be before the Regents for action in January.

(iv) Discussion of Student Health Services.

8. Open meetings / Closed meetings. Members received a summary of statements garnered on the subject from the SCC files. Eaton read from President Magrath's extended statement of 1975 the state's open meeting statute and key portions regarding the nature of the University's compliance. In that statement he requested that the Senate express its position. In response to SCC Chairman Rick Purple's request a year ago, a number of Senate committees individually submitted statements on their policies regarding open meetings. UCBRR and SCC are among the committees which have not yet submitted a statement. Eaton said the SCC should define its policy.

Spring stated that it was probably not appropriate for each committee to develop its own policy independent of its parent committee. Roberts Rules of Order, under which the Senate operates, allows for executive sessions. The Senate itself should determine what kind of latitude is allowable. It would be appropriate, he said, for the SCC to advise the Senate on the question.

(The meeting interrupted this item to move to consideration of Consent Decree grievance procedures and the new committee establishment motion, recorded below, following the end of this item.)

MOTION: Professor Swan moved that the SCC Chair, Associate Chair, Student Chair and Vice Chair of the Senate meet to draft a statement of policy on open meetings to govern Senate committees, to recommend to the Consultative Committee and the Senate.

Discussion: University Attorney Tierney stated that his office has advised the president that the president's statement announces a wise policy; it is the belief of the legal staff, however, that the statute does not pertain to committees within the University. Spring recalled that the President last year recommended to the SCC that it try to meet the spirit of the state law. He pointed out the efficacy of resolving the question for inclusion in the new Senate constitution. The writers of the new constitution did not feel they could settle the issue themselves, but have included an item in the draft to evoke responses. The SCC expects that the committee of four can advise the joint subcommittee in time to have their recommendation included in the public forum in January.

VOTE: The motion carried without dissent.

9. Rajender Consent Decree.

A. Grievance Procedures. Eaton introduced Professors Faunce and Striebel, and three faculty members on the ballot for the Class membership on the new University committee introduced themselves: Sandra Carter, Rosalind Rubin, and Janet Macy. Mr. Tierney gave a clarification of terms and brief explanation of each item in the document drafted by Attorney Charles Mays entitled "Recommended Claim and Petition Procedures Under Rajender Decree." He emphasized that the procedures were not yet firm, but that they will have to be firmly established soon as the special masters have already received a number of petitions. Regarding compensation claims, he said most departments have a

mechanism in place and that what is still needed is the mechanism for sending their recommendations to the President.

Striebel addressed the meeting on the first of her two concerns regarding the draft recommendation: Burden of proof. The consent decree, she said, requires explicitly that the burden of proof before the hearing committee must be as described in Title VII (of the Civil Rights Act of 1964). The University proposal in question places a much higher burden of proof on the claimant at the initial stage. She stated that these procedures have not worked well enough in the past, that they leave the possibility of harrassing the claimant, and that the University could find itself in trouble with the court because the internal hearings lack objectivity. She stressed that it is the duty of the faculty and the administration to set up procedures which assure that cases can be assessed objectively.

The change she and others are requesting is to substitute for part of the procedures the text of a document which describes the sequence of (1) the claimant attempting to establish a prima facie case of discrimination; (2) the University attempting to establish a legitimate nondiscriminatory reason; and (3) the claimant attempting to establish that the reason is actually a pretext, in which (2) and (3) each may occur if the preceding point has been established. All members of the SCC had copies of this text. Striebel urged that "Burden of Proof" comprise a separate section in the document on procedures. Faunce asked if it was the responsibility of the SCC to approve the internal grievance procedures. Mr. Tierney replied that it was not, but was instead up to the Tenure and Judicial committees.

Striebel's second concern was with regard to compensation claims. Traditionally, the Judicial Committee has served as the appellate body on compensation claims. The recommended procedures under the consent decree seem to have removed that appellate provision and left only the departmental mechanism to hear such claims. She suggested that, if time permits only one hearing, that it be before the Judicial Committee, whose further remove from the department being challenged permits the possibility of a more objective determination.

Schletzer asked, given the already heavy load of the Judicial Committee how much more it could handle, and how quickly? Spring asked whether, if there were not the 180 day limit (summers excepted) on compensation claims, the women's advisory committee would rest content with retaining the option of Judicial as an appellate body? Schletzer said a claimant does not necessarily forfeit objective consideration of the claim in the departmental ad hoc grievance units, since everyone has the opportunity to put people on that grievance committee.

Striebel said that she was generally very distressed by the cavalier way the consent decree has been handled by the University, as demonstrated in three ways: (1) the burden of proof shift; (2) the wording of the motion approved by the University and by the committees involved, to establish the mandated University Committee on Equal Employment Opportunity for Women, which deliberately omits important language from the consent decree; and (3) the University's apparently ignoring the request to review the secrecy aspect of the Judicial Committee's proceedings.

MOTION: Swan moved that this committee (SCC) indicate its concern that the way in which the burden of proof is placed and the way in which proof

is accepted not be different in fact or intent from that indicated in the consent decree, that it appears to the SCC that there has been some shift from the intent of the consent decree in the draft document in hand ("Recommended Claim and Petition Procedures Under Rajender Decree") and that the SCC would like to see that shift adjusted.

VOTE: The motion carried without dissent.

MOTION: Professor Hobbie moved that the University Attorney be instructed to meet with Attorneys Charles Mays, Paul Sprenger, and the Chairpersons of the Judicial (Rippie) and Tenure (Wolfram) Committees to discuss "Recommended Claim and Petition Procedures Under Rajender Decree," especially with regard to the SCC's concerns expressed in the above motion.

Discussion: Mr. Tierney said that the Chairpersons of internal grievance-related units should work to make their proceedings as similar as possible to the requirements of Title VII. There was some discussion as to whether the meeting should include members of the class and others from grievance bodies. A friendly amendment was added that the meeting include "others as deemed appropriate by Chairs of Tenure and Judicial." Spring moved to amend the motion by withdrawing that phrase. The purpose was to keep the group small. Striebel pointed out that the group proposed lacked anyone who has advised an aggrieved party. The motion to amend carried without dissent.

VOTE: The motion to instruct the University Attorney to convene the meeting with Mays, Sprenger, Tierney and Rippie carried without dissent.

B. University Committee on Equal Employment Opportunity for Women.

Swan observed that the establishment of the new committee and the wording of the motion for its establishment are Senate matters. She said that perhaps there had not yet been sufficient consideration of whether the extra passages in question should be included for this committee while for no other committee. The passages are that the University agreed in the consent decree that the new committee would be selected "to reflect the general interest of the University in the pursuit of excellent in teaching and research as well as the special interest of women" and that "Service on the Committee shall be treated as a positive contribution to the University and to the academic unit in which the Committee member is employed. In connection with any decision involving the terms and conditions of employment where contributions to the University or the academic unit are relevant, the same weight will be given to service on this Committee as to service on any other University or Senate Committee."

Striebel asserted that the omission of the consent decree's wording from the committee establishment motion lays open the University and the committees bringing the motion to the charge of ignoring those parts of the decree. It is her interpretation that the University and the Senate are under court order to be explicit in defining this committee. Mr. Tierney said there had been no intent to do violence to the language in the Consent Decree. The motion is simply to amend the Handbook by establishing an additional committee. Striebel said the violence happened, albeit unintentionally, and the omission indicates a lack of appreciation of the importance of those passages.

Pribyl read pertinent portions of the consent decree, pointing out that the charge to the committee does not include the language in question, but that that language is instead in the description of the committee. In her view the

reasons for omitting the first phrase was that what the committee should do is understood. Striebel wondered how the question had been raised even suggesting incompatibility between excellence at the University and the interests of women. Eaton explained that the persons who believed the clause should be dropped believe there is no such contradiction but that the wording conveyed that implication, which men and women alike on the moving committees (Business and Rules, SCC) found reprehensible. It was suggested that perhaps the wording could be adjusted to erase any such implication.

Faunce stated that it was her information that the Committee on Committees does not know how strictly the President follows its instructions to him on choosing from paired names on the submitted double slates. Dr. Pazandak stated that wherever names are paired, the President selects one from the pair. When the Committee on Committees requests a preferred nominee, the President honors that request. She explained that the reason for the double slates has been that, excepting searches for chairpersons, people are generally not asked in advance and some decline the opportunity to serve. Professor Spring explained that the single slate committee selection process contained in the new constitution provides for nominations to go directly to the Senate for ratification.

Faunce said that the concern of the women advisors is that women on campus who have been active in promoting the interests of women faculty not be overlooked in the formation of this committee. Since the committee is very specifically constituted for the interests of and fairness to women, the charge needs to be explicit in this one case.

Bryan Jamison observed that that argument implied that only if the need is stated do women's interests need to be considered and that hence they don't need to be considered in other committees where there is no explicit statement.

Eaton pointed out that the motion to establish the new committee is amendable from the floor of the Senate at the December 4 meeting. An amendment to be considered must be submitted in writing to the Clerk of the Senate at least 48 hours in advance of the meeting.

Mr. Sprenger voiced the hope of the plaintiffs that no one with a prejudice against women become a member of that committee. The wording in the consent decree should serve as criteria for the University's five appointments to the committee of seven. It is his opinion that the University does not have the choice of removing the language.

Eaton stated that she would write to Vice President Hasselmo stating the two motions the SCC had passed, summarizing the discussion regarding objectivity in grievance bodies, and noting the constraints of time upon the grievance and appeal procedures to be used.

10. Old Business: Duluth Representation in the Senate. Eaton presented the resolution for the Senate approved unanimously by the Committee on Business and Rules requesting renewed participation by non-medical Duluth faculty in the Senate, and asked if the SCC wanted to co-sponsor the resolution. Hobbie then reported on the information and discussion from the Regents Committee of the Whole which had voted November 14, on advice from the University attorneys, to expel the Duluth faculty from the Senate and to dissolve the Duluth Assembly. Hobbie distributed his written report of that meeting, and summarized it orally.

He quoted the statute which was the basis for the attorney's ruling that expulsion was legally necessary in the wake of the faculty's naming a collective bargaining agent. The Regents, he said, appeared to believe that faculty governance as we know it has ended at Duluth and that everything there is now up for negotiation.

Eaton summarized the widely varying opinions she had garnered from telephone conversations with faculty members on various sides of the question. Noting that there are two strong labor people on the Board of Regents, she stated her belief that the move was not punitive in intention and that the Regents believed the law left them no choice. However, there are many faculty members who believe an interim policy could have been or could still be established. She hopes that in the interim before a contract is signed all Senate units can continue to meet. The December 4 Senate meeting will surely address the issue and a resolution in advance would help to focus the discussion. Law faculty members Fred Morrison and Bob Morris did not urge the committees against bringing the resolution.

Swan stated that the Regents have unilaterally altered the membership of the Senate and hence its constitution, which had prior Regential approval. While that was perhaps legally necessary, she added, one would hope that in good faith they would have first conferred with the Senate. She acknowledged that President Magrath had informed the FCC a few days before he sent the resolution to the Regents, but she found that different from consultation. Hobbie observed that labor law and the state's PELRA are now injected into the business of the University Senate. He recommended a resolution asking that the President by an executive order of the same sort by which he reinstated tenure and grievance procedures reinstate, in the interim preceding a contract, all Duluth Senate participation, and to express the SCC's dismay that the consultative process was not followed on this issue. Eaton said such a resolution would assert the Senate's wish to continue operating under its constitution regardless of varying interpretations of the statutes.

Spring called attention to the parallel threats to the Senate's integrity arising from the Consent Decree and the PELRA law, and said it is unthinkable that anyone should rewrite the Senate's constitution outside the due process. The Regents seem to regard themselves as able to determine what constitutes the University Senate. That position depicts Senate participants as puppets and undermines the credibility of the Senate system. He acknowledged that the President plainly felt he had to request this action of the Regents before the first Senate meeting following the bargaining agent election, or stand in violation of the PELRA law. While Spring appreciates the legal difficulties, he supports the reinstatement by executive order of all Duluth Senate participation.

Hobbie pointed out that the tradition has grown up, although without a legal basis, of the Administration and the Regents listening to the Senate. The Senate does best to make a request, not a demand, since a rejected demand demonstrates that the Senate has no real power.

Pribyl urged the SCC to include several "whereas" clauses in any resolution to make clear to the University community that the group had seriously considered the question and its complexities.

Dr. Pazandak was asked to add information on the background to the administration's decision. She suggested that the Regents action had not been "unilateral" since first the UMD faculty had voted to move out of the existing governance structure and into a union.

Hobbie moved to amend the resolution from Business and Rules by adding to the first paragraph the sentence,

"The Senate requests the President to restore by administrative order the Duluth non-medical faculty's voting powers, as described by our Constitution and By-laws, until the collective bargaining contract has been reached."

and by deleting the second paragraph of that resolution.

The SCC, while it did not want to develop the wording of the "whereas" clauses with undue haste, did want to forestall the possibility of numerous UMD/Senate related motions coming before the Senate on December 4, by being able to publish a resolution in the docket. The meeting developed the following general explanatory clauses:

"Whereas an interim procedure is necessary to allow the Senate to be able to operate as a body while collective bargaining is carried on; and

"Whereas it is appropriate for the University Senate to continue its consultative process."

Hobbie, Eaton and Spring will consult with Professor Sullivan of Business and Rules immediately following the SCC meeting and attempt to draft the new resolution. The Consultative Committee approved this procedure without dissent.

The meeting adjourned at 3:15 p.m.

Respectfully submitted,

*Meredith B. Poppele*

Meredith B. Poppele,  
Secretary to the SCC