Minutes*

Senate Committee on Faculty Affairs
Tuesday, October 8, 2013
2:30 – 4:30
300 Morrill Hall

Present: Joseph Konstan (chair), Chris Bourland, Kathryn Brown, Teri Caraway, Arlene Carney, Sam Gill, Sophia Gladding, Tabitha Grier-Reed, Heath Himstedt, Frank Kulacki, Theodor Litman, Karen Miksch, Peh Ng, Nicholas Poggioli, George Sell

Absent: Dann Chapman, Randy Croce, Carl Flink, Scott Lanyon,

Guests: Provost Karen Hanson; Ole Gram, Robert Rubinyi (Office of the Provost); Gregory Brown (Office of the General Counsel)

[In these minutes: (1) online courses, faculty rights, and conflicts of interest; (2) faculty retirement]

1. Online Courses, Faculty Rights, and Conflicts of Interest

Professor Konstan convened the meeting at 2:30 and said the discussion would start with an item broadly described as faculty intellectual property, online teaching, conflicts of interest, and related issues. The discussion was motivated by questions that have arisen at earlier meetings of the Committee about what faculty rights are with respect to online courses. A number of questions arise because University policies were not written with online courses in mind. So two questions before the Committee are "Where is University policy and is the Committee comfortable with it?" and "Is there any direction the Committee wishes to go on these topics?"

Mr. Brown began by thanking the Committee for the invitation to provide a framework for thinking about the answers to the questions that Professor Konstan posed. He said he welcomed a conversation about how policies and laws apply in an online environment. He said he would begin with MOOCs (Massive Open Online Courses) and consider faculty rights more generally.

To start with, Mr. Brown said, what one means by "MOOC" is open to challenge. It is like any online course, except that the University is not distributing it and, for now, it is not (usually) being targeted only to University students. That a MOOC may have hundreds of thousands of students does not change the legal conversation, nor does the fact that the students are not enrolled at the University.

Coursera offered courses that University faculty members developed with substantial contributions from University instructional support staff, and the University decides which courses will be distributed. By University (regental) policy, faculty members own the copyright in their academic works—that is "black letter law" on campus—and it is not changed because of Coursera. A faculty member must, however, sign a document that licenses the University to use the course content—but that does not change the fundamental principle of faculty ownership. The University has asked each of the six faculty members who have offered a MOOC to sign an agreement allowing the University to offer the

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

course through Coursera. So, Mr. Brown concluded, there is considerable faculty control over what is in a MOOC.

The more interesting question is how to monetize MOOCs, Mr. Brown said. No one, right now, can say that "there is gold in those hills." In a way, MOOCs are still in beta, but there is thought being given to what the best way would be to share money from MOOCs with a faculty member. He noted that at present, University faculty members are compensated to develop a MOOC; the question to come is what revenue distribution to faculty members should be. It is a faculty-driven conversation about whether the University will offer MOOCs.

Professor Konstan said that faculty members have the right to use whatever they have developed (subject to the license agreement with the University); could they take the material elsewhere and teach? In concept, they could, Mr. Brown said, but it could vary by the case.

In terms of the agreements that are negotiated, Professor Konstan said, what if the faculty member thinks a MOOC was a disaster but the University believes it would generate a lot of money; can it offer the MOOC without the consent of the faculty member? Mr. Brown said that Coursera requires that a university cannot quickly take down a MOOC nor does it have the unilateral right to do so, because Coursera needs time to develop the audience for these courses. As for the question of whether a faculty member can demand of the University that it demand of Coursera that it take down a course, Mr. Brown said he did not believe that is part of the contractual right of a faculty member. Which, he added, does not mean that the faculty member could not ask the provost to seek to take it down.

Professor Kulacki asked what the difference is between a MOOC and something he publishes. In the latter case, he receives the royalties and the University receives nothing. One question is the extent of University resources involved, Mr. Brown said. There are many even with a publication, Professor Kulacki said—his 20 years of teaching, heat, light, computers, graduate students—and he does not see a difference between MOOCs and publishing something that generates royalties. There is also a different distribution model, Mr. Brown said. What if a publication is not just a text but also software and video, Professor Kulacki asked? The challenge today, Mr. Brown said, is that everyone has a good sense of what a fair royalty looks like for a textbook; it is unclear what a fair royalty would be for a MOOC. Faculty members are now provided an up-front payment (similar to an advance from a publisher), but there is no agreement about who receives what percentage of the gross revenues.

Is there a way to evaluate the product (a MOOC), Professor Kulacki asked? So that if it does not sell, it can be revised or dropped? Mr. Brown said he did not know.

One distinction, Dr. Rubinyi said, is that if one is teaching a class, it is true that heat, light, computers, and so on are provided. But there is a much larger amount of resources that go into a MOOC, with video teams and other instructional design and development. So there is a more compelling University interest in the work. In the case of publications, the author sells the publication to the publisher and students must buy it back; in the case of a Coursera MOOC offering, the faculty member can use the content developed at no charge.

Professor Konstan said it seems like a couple of fundamental differences frame this distinction. (1) The University is making an extraordinary investment in MOOC courses, not an ordinary investment, with teams of people involved. (2) MOOCs are different because there is a contract in place, with compensation. He said he did not hear any fundamental difference from a textbook except that the University provides much more support. He said one can also ask if teaching an online course is part of the regular role of faculty members, and therefore not treated as an outside commitment.

Mr. Brown said that apropos of the distinction between publication and an online course, Professor Kulacki's analogy with textbooks is substantially correct. Where he has a question is that in the case of MOOCs, "here are X dollars to help develop the course," and now one must think about whether someone should be paid Y dollars to teach the course. Right now X and Y are conflated. He is not at the point of saying there should be a fixed amount, analogous to a publisher providing a flat amount. Conceptually, he said, he does not disagree with Professor Kulacki, just because there is no running royalty. Professor Kulacki said that in the faculty's view, it is necessary and appropriate to separate work products from preparation and performance.

Dr. Rubinyi reported that the trend nationally is to provide a one-time, small stipend to the faculty member for the development of an online course but that most institutions do not see teaching online courses as outside the teaching load (they are just using different delivery modes).

Mr. Brown went on to observe that faculty members may have outside commitments and there is a Regents' policy that governs such commitments. Faculty may consult, although there are limits on the amount of time they may do so, and they may not compete with University courses or services, nor may they use the University logo, and the consulting may not interfere with the performance of their University duties. The University of Pennsylvania example addresses the question of competition with the University (of PA). [It is here: http://provost.upenn.edu/uploads/media_items/ii-e-10-conflict-of-interest-policy-for-faculty.original.pdf] The idea of competition with the University has also been black-letter law for some time. In the case of the U of Penn example, a faculty member is prohibited from preparing content for an online course that is in competition with the U of Penn and may not provide it to a provider such as Phoenix.

The principle, Vice Provost Carney observed, is not about online courses, it is about competition with the University.

Professor Konstan asked what it means to compete. He wants to offer a course in pretty spreadsheets and his department declines to offer it; may he then offer it elsewhere, through a provider that thinks it's a great introduction to spreadsheets? Is that competing? Dr. Carney said there would need to be review and discussion. What if it is adult education for no credit? Then it would not be competing. If it is beginning spreadsheet analysis, it could be. Each is case-specific. (She noted that the prohibition on competing also only applies to employees who are 75% time or more.)

Professor Konstan said that Professor Kulacki could write his text, people could study on their own, and they might not need a course. Is that competing, to offer enough material that someone does not need a course? It likely is not, Mr. Brown said. The "teacher's exception" suggests that some level of competition, if you will, is permitted. What if it includes multi-media material, Professor Konstan asked? It is still academic work and thus permitted since it is not tied to a course offered by an educational institution, Mr. Brown said. What about 42 hours of taped lectures with the textbook for a not-for-credit course, Professor Konstan asked? That gets closer to the line, Mr. Brown responded.

Professor Konstan said that many faculty members see a MOOC as more like a textbook in that it is self-study; others see it as distance education. Professor Kulacki's point is that writing a textbook requires a lot of time, part of a faculty member's activities, and his teaching a MOOC with the University's logo is also part of his activities that need not count as outside commitments. But if he wishes to offer a course the University does not want, he can sell it to another provider; does the time spent on that course count as consulting or is that just normal outreach education? Vice Provost Carney said it depends on the amount of time the faculty member puts in and what other University obligations he or she might not be meeting—which is why there are guidelines and examples. There will not be a lot of easy "yeses."

If a company pays the faculty member nothing, and a faculty member wants to teach a course to disseminate it to the world, that faculty member has the right to do so if it does not conflict with his or her University activities and the University says the course is not competing with University courses, Professor Konstan concluded. Dr. Carney expressed doubt the University would always concur with that analysis. Professor Konstan pointed out that faculty members propose MOOCs and the University says it will do these and not those. Some people are told "no." Mr. Brown said that as it becomes more and more an online world, with courses becoming more and more specialized, they will need much more examination, and it will be more challenging to talk about "competition."

The amount of time required could be a problem, Professor Miksch said. Preparing a course takes a lot of time, so preparing one that would not be a University course could create a problem vis-à-vis other job duties. An issue related to online courses came to the Senate Committee on Academic Freedom and Tenure (AF&T) a number of years ago and Mr. Brown explained it then: faculty members feared that if they developed an online course, they could not take it with them if they leave the University. But that is not the way things work, she said, because there are contractual agreements and it is now clear. She said they have not heard anything more about the issue.

Dr. Rubinyi said that with respect to MOOCs and Coursera, if a faculty member who develops a MOOC leaves the University, he or she can take the content to another institution. But the University also has rights in the course, Dr. Carney pointed out. That is correct, Mr. Brown said, but there is no one model. Some faculty members insist that the University does not have the right to use the course if the faculty member leaves (the University has agreed), but he has not seen a case where the faculty member gives up his or her intellectual-property rights to use a course. Generally, Dr. Rubinyi said, the feeling is that both the institution and the faculty member put a lot of resources into a course and there is a mutual benefit for both to be able to use it.

Mr. Brown said that in this realm he is skeptical of categorical fixes. These arrangements are often driven by college or disciplinary norms. He asks colleges if the University and the faculty member should be able to use course materials if the faculty member leaves. He said he would not recommend that there be hard rules on the point; the question is whether the negotiation is fair.

Professor Ng asked what happens when a faculty member develops MOOC content and then retires. If the University co-owns the content, does it have a way to improve the MOOC later? Is it allowed to do so? It is, Mr. Brown said. It is a matter of the contract, and he asks departments if coursework is developed, how will they update it. He does not want them to be unable to do so and frequently suggests that the faculty member be given the first right to update a course (usually they do not exercise the right). If the faculty member wishes not to be involved in updating a course, the department should have the right to do so. The University has insisted that Coursera may not change the content;

Coursera is concerned about the need to change it but the University has reserved the right to make changes, which right flows to the faculty member. All of this is part of negotiations that must take place.

Professor Konstan said one question inspired by the U of Penn policy is that it has a very concrete statement that faculty members must give the university the first chance at offering a course he or she has developed; if the university turns it down, the faculty member can go to third-party providers. His understanding of University of Minnesota policy, Professor Konstan related, is that the University has first rights on the course, and if it competes with the University it is not a permissible outside activity. Perhaps if the University is not yet offering such a course, it would not conflict, or if the course has never been offered; the language of the policy says "offered," not "potentially offered." It does not limit the prohibition on competition to courses offered one particular semester, Dr. Carney said.

Professor Konstan said the consulting and outside commitments policy only constrains outside professional commitments, and it is not clear if outreach is included (teaching a high-school class three times per week is outreach). The University is not clear on this and maybe it cannot be. What about teaching a three-week MOOC as outreach? There may be a need for a policy or an FAQ that explains these things and who one goes to for an answer (such as the department or the dean, not necessarily always the provost's office).

Dr. Gram said there is a built-in mechanism for tiers of consulting. One day per month is not a problem. When the number reaches 12-13 days, the consultation starts in the department and goes to the dean, via the Request for Consultant or Outside Service Agreement (ROC) mechanism, so there is a way to start the conversation. If someone wants to teach a course at a local community college that is not offered at the University, there could be good reasons for doing so, such as providing a pipeline to the University, outreach, etc. The process starts with the ROC and involves a conversation with the chair and the dean—and the faculty member can appeal a decision. But a lot of the expertise is at the disciplinary and department level.

Professor Kulacki asked if there is a standard definition of outreach for faculty members. Outreach activities fully compensated by the University are clear. If outreach can be delineated more carefully, it would not be necessary to deal with so many individual cases. Dr. Carney said there are definitions in departmental 7.12 statements, which talked about service, then outreach, and now public engagement. All of these are compensated by the University. These are not the real issues, she said; the real issues are the ones raised in the U of Penn policy. The question is not doing a course for Coursera, through the University; it would be doing one for another provider, which would be outside consulting, or similar to working on a grant at another institution.

Professor Konstan concluded that the discussion has noted the state of University policy (and absence of policy) and suggested that the situation is largely one of the ongoing development of practice. He asked if the Committee wished to await more iterations of MOOCs and noted that there is still no method of recovering resources from them, so the distribution of revenues remains entirely hypothetical. He said the Committee would take note of events and revisit these issues after the third or fourth wave of MOOCs.

2. Faculty Retirement

Professor Konstan next introduced the topic of faculty retirement. At one time this was not an issue; the University had a mandatory retirement age and everyone left and collected their pension. Things changed; he said he believes pensions will disappear and now everyone is paying into retirement accounts, mandatory retirement is illegal, and people live longer and want to continue their careers longer. Moreover, the recent recession shook peoples' faith in their retirement resources and they remain concerned about health care.

The question for the Committee is whether the University is doing the right things, if it is doing them well, and if those things allow a proper transition—not unduly encourage faculty members to retire but allow them to do so in a way that the University can enrich and rejuvenate programs. This is the start of the conversation, Professor Konstan said: how the University is doing vis-à-vis its peers and what it is doing to facilitate the movement of faculty into less-than-full-time positions in teaching, research, and service. The Faculty Consultative Committee asked this Committee to look at these issues and make recommendations about whether the University needs to do anything or if what it is doing now is acceptable. He asked Vice President Brown to start the discussion.

Vice President Brown began by noting that the Faculty Retirement Program is a defined-contribution program: a certain amount of money is put into the plan by the individual and the University, based on an employee's salary. At the point of retirement the individual has the accrued funds for distribution and has many choices about what to do with them.

In addition, the University has retirement programs for faculty, Vice President Brown said. One is phased retirement, which can be taken over a period up to 5 years at X% time, and the faculty member can enter into an agreement with a chair to phase out. Another is the terminal leave program: with the agreement of the department and college, the faculty member is provided one year's salary and benefits to relinquish tenure and retire. Third is the Encore program, offered jointly by the College of Continuing Education and her office, which provides education for faculty and staff to think through what they will do when they retire. Fourth is a new program that will be offered after January 1, 2014: financial counseling from Human Resources. It will not offer investment advice but if one wants plans for retirement, child expenses, home buying, college costs, etc., employees will have professional counseling available. Those, she concluded, are the programs in place now.

Vice President Brown also reported that about one-third of the University's employees are Baby Boomers (or older), both faculty and staff, for whom retirement is in reach (that is, they are 55 or older).

The question of retirement rates and plans is an issue on every campus in the country, Vice President Brown commented; there is no reason to believe Minnesota is unique in that regard. Human resources officers from across institutions talk about the programs they have; there are no magic programs. She said she would be interested in hearing from the Committee about any ideas or programs that could be supportive of faculty and staff decisions related to retirement. They neither urge faculty and staff to retire nor do they try to talk anyone out of retiring.

Professor Konstan pointed out three things. One, in looking at the data on the faculty age distribution as of August 2013, there is a significant peak in the 55-63 age range; it is that group that will shape what happens. Two, from 2004 to the present, there has been a mild increase in the average age at retirement for faculty (up from 66 to 68), which is not out of step with national data. With the increased Social Security retirement age, the age-65 norm for retirement has disappeared. The average number of years of service has also crept up (from 31 to 32 years, although that number has fluctuated between 29 and 34 over the ten-year period, likely a reflection of different retirement incentives that have been offered). He wondered if faculty members are retiring at different rates in different disciplines. Three, although Vice President Brown did not mention it as a program (because it is not one), emeritus status carries certain benefits. One need not "retire" because one can teach and work with students and do research as one winds away from commitments—one can do what one wants. He said that he asks from time to time if faculty retirees are treated appropriately so that they want to enter emeritus status.

Professor Kulacki asked if any data stand out (e.g., differences between biology and engineering). Vice President Brown said she did not believe so, although they have looked at the composite data, but no unit stands out. She and Vice President Friedman have had a discussion about the Medical School, however, because when Medical School faculty members retire, it is a problem to recruit new faculty because fewer people are going into academic medicine. This is not a quality problem, it is a supply problem.

Vice Provost Carney observed that the University does have a number of people each year who retire without incentives—they just decide to retire. [The number, over the ten years, has varied from 8 to 60.] Vice President Brown agreed; people decide every year because they may have other things they want to do, or for health reasons, or for family reasons.

Dr. Himstedt inquired what the difference is between a regular retirement (no incentive) and a terminal agreement. Vice President Brown explained that if one simply retires, one receives the ability to continue health care at full cost, without subsidy; if one signs a terminal agreement, he or she receives the ability to continue health care, but with two years of employer subsidy. Is a terminal agreement a right, Professor Konstan asked? It is not, Vice President Brown said; it must be negotiated and be approved by the chair/head and the dean. There are very few terminal agreements. She said she had a question for the Committee: If the University had a regular program, available to all and without requiring approval, would that provide an incentive to retire? More turnover could help departments; would it help faculty members plan for retirement?

Professor Ng asked what the average number of years faculty members take in a phased retirement is. Ms. Singer said it is 2-3 years. For small departments, it could be difficult to find replacements, Professor Ng observed. The number fluctuates, Ms. Singer said; what they see most is people take a 50%-appointment for one or two years and then retire. It might be worth seeing if the number of years in the phase option should be reduced. Vice Provost Carney said that some sign up for 5 years but decide to retire after one or two years. That is unusual, Ms. Singer said; most do not sign up for the full five years. Professor Konstan concluded that the option of a longer period appears not to be needed but he suggested that there is a psychological benefit to having the five-year option and letting people decide to retire after one or two years.

Vice President Brown said that the phased-retirement option has been in place for a number of years; it could be changed slightly make it more attractive. For example, would a change to two years plus a lump-sum contribution to health-care coverage create more interest? Or would that not matter? Professor Konstan said she might want to wait, given that the number of phased retirements is at an all-time high.

There is a concrete workload with phased retirements, Professor Konstan said; have there been conflicts? Not that she has heard about, Dr. Carney responded. The questions are more about how to manage a department, as Professor Ng suggested. If there are a significant number of senior faculty members over age 60, and many of them go into phased retirement, how does the department negotiate with the dean to replenish the unit? Create a number of part-time positions? (This is an even greater problem at Morris.) These decisions can affect a graduate program; the dean may approve the phased retirements, but they can lead to a lot of discussion in the college and department about how to protect the department's reputation and program. She said she has not seen any one strategy emerge.

Professor Grier-Reed asked if faculty members who choose to retire without any incentive are required to provide notice. There is no policy requiring it, Vice President Brown said, but the professional expectation is that the notice period will be reasonable in order for the department to be able to cover the person's work in the future. Professor Konstan said that some departments ask faculty members to notify them by February 1 if they plan to retire at the end of the year, and it is rare that someone announces a retirement on May 15. Even if that happens, it is unlikely a college would try to retain someone who wants to retire. But there are faculty members who announce they are going to another university, Dr. Carney said; the University has no policy about keeping them but they should provide adequate notice.

Professor Kulacki asked if it would be work to create a target retirement rate of 3%, for example. [The rate over the last ten years has fluctuated between 1.6% and 2.8%; it was 1.8% in 2013.] At 2%, half the faculty retire every 36 years. Vice President Brown said there is no target number. Professor Konstan observed that there is also some attrition not due to retirement. At a 2% retirement rate, everyone would be at the University for 50 years, so retirement is clearly not the only source of faculty turnover. Dr. Carney agreed, and pointed out in addition that some faculty members come in at a more senior level and may only be at the University for 10 years, for example.

Professor Konstan inquired if Dr. Carney knew the average number of years of service for faculty members who spend their entire career at the University. She does not, she said. But with a mean of 32 years of service in 2013, Ms. Singer said, one can assume that the majority do so.

Other than because of financial reasons, what he hears most is that faculty members do not want to leave their health-care coverage behind, Professor Konstan said. He asked if Vice President Brown had any sense for how significant an issue that might be. Individuals can continue in the UPlan indefinitely at their own expense, Vice President Brown said, and it would be a significant cost if that expense were changed to the University. Many faculty members do continue UPlan coverage, some change. It is a major consideration for people; by offering high-quality choices to people, they can make decisions about what is best for them.

Professor Konstan asked if the University offers Medicare supplement plans, in addition to regular health care plans for retirees. Ms. Singer said the University offers retiree health care for both pre- and post-65 retirees, so yes, Medicare supplement plans are offered.

Professor Konstan asked if the University tracks the faculty activities of post-retirement faculty; it does not, Vice Provost Carney said. So those can't be promoted, Professor Konstan concluded. They can ask the college, Dr. Carney said; that information is kept locally. They have just asked the college for much information about retentions and other matters because those data are not held centrally. She said she believes that it varies widely by department. She also said, in response to a query from Dr. Himstedt, that emeritus faculty members could be among the "other" who teach classes (apart from tenured and tenure-track faculty, contract faculty, P&A staff, and so on).

Mr. Poggioli asked if there are exit interviews with faculty members who decide to retire, in order to try to get an understanding of why they do so. They do not conduct such interviews, Vice President Brown said. Dr. Carney said that she only sees phased-retirement agreements, not terminal agreements or information about those who simply choose to retire. What was a time when interviews of faculty members who left the University were conducted for this Committee, but they didn't focus on retirement. It may be that there are dissertations about faculty retirement by students in the Department of Organizational Leadership, Policy, and Development. But they do not gather the data. Mr. Poggioli asked what the University would want to know about faculty members who decide to retire if it were to think about helping design programs. Vice President Brown said she did not believe that any single piece of information would be highly predictive. The two most frequent questions that arise among the Encore program participants are about how people will spend their time and whether they will have adequate finances.

Dr. Carney commented that there was an interesting article in the *Star-Tribune* that struck her in light of these discussions about the length of faculty service. Not many faculty members retire early. The authors of the article interviewed a large number of people in different kinds of jobs who are anxious to retire (e.g., those in jobs that require a lot of physical labor, so people are worn out). There are few physical demands on faculty members that preclude them from doing their job, and faculty members look at retirement differently from people in other occupations with tedious routines or heavy physical demands.

Vice President Brown noted that the University will be doing a survey of employee engagement, and this discussion is related to engagement. If people are more engaged in their work, they are less eager to retire. The survey may yield additional information.

Professor Konstan asked if the University sends out a forecast, similar to the one that people receive for Social Security benefits, a rough income estimate. They do not, Ms. Singer said. Vice President Brown said that Securian does so, although not all employees invest through Securian. All of the companies provide an opportunity to review accounts, and starting in 2014 there will be available the financial counseling through the University that she mentioned earlier.

Professor Konstan asked Committee members if they wished to take up at greater length the topic of retirement. From the information that has been presented, it appears the University has a rich set of options. He asked Dr. Carney if she believes the University has a problem or if the faculty are retiring at a sufficient rate that programs can stay renewed. Dr. Carney said there are different answers as faculty members change their life course. In some departments there could be a problem while in others there may not be. In her view, this is not a question about age, it is about performing one's duties. The focus should be on performance. AF&T is discussing procedures for section 10 of the tenure policy, which addresses unrequested leaves of absence for reasons of disability, and what is to happen when faculty members have incapacitating conditions that prevent them from performing their duties, and how to talk to such individuals. That is a very difficult conversation. It may be that there will be more people with such conditions because the Baby Boomers are the largest group of faculty at this point.

Ms. Bourland observed that there may also be an increase in the number of faculty members with chronic conditions. Dr. Carney agreed and said that chronic conditions may or may not affect performance. The University has no policy other than section 10 of the tenure policy, which provides that faculty members may be put in involuntary leave for failure to perform their duties. One question is how to document non-performance. The University has always had the problem, but it may increase with the number of Baby Boomer faculty members who are growing older. These can be heart-breaking situations, she said, and she has no solution to offer.

Dr. Himstedt asked if these circumstances can be worked into a performance review. Some see that as mean and hard-hearted, Dr. Carney said, but it is the only mechanism available: can the person do the job? Some just do not have the fortitude to force the issue with colleagues they have worked with for years.

Professor Grier-Reed asked if employee-assistance programs are equipped to deal with these kinds of problems. They are, Dr. Carney said, and they encourage departments and family members to work with them. She repeated the point, however, that the question is about performance and maintained that it is not unreasonable to look at it that way. The University has no trouble being hard-hearted about probationary faculty members who do not perform—they are usually counseled out or they do not receive tenure.

Professor Konstan said that no set of policies can solve the problem of inadequate management and there needs to be a way to encourage department heads/chairs and deans to receive training and provide guidance on how to handle these cases. They require an expertise that is not available in every department and college, so the responsibility needs to rest in the provost's office. Dr. Carney said she spends considerable time on these cases. If someone is not teaching and not engaged in research, she asks department heads what they are paying a salary for.

Dr. Himstedt asked if there is protection for faculty members or students to be "whistleblowers," to bring problems to a department head and keep them confidential. That is not really being a whistleblower, Dr. Carney said, because it is not reporting misconduct. These are not black-and-white situations: someone may forget a class or lose their train of thought in a lecture. Many students are also fond of faculty members and will not report failings. One dilemma is that the written comments on the student ratings of teaching belong to the faculty member in some colleges. The Senate Committee on Educational Policy decided that each faculty assembly in a college would decide how the written comments would be used. When a department cannot see comments indicating that a faculty member gets confused, for example, that is a problem. At the same time, they do not want to see a couple of negative comments skew otherwise outstanding evaluations; Dr. Carney recalled that Professor Marti Hope Gonzales had presented research results to this Committee a few years ago demonstrating that negative comments can stand out and carry the day—even though they may only be 2 out of 100.

Professor Konstan said that the discussion need not go that far and can focus on someone who is unwilling to update course material or who ceases scholarly activity. He asked if there are, in cases of inability to perform because of disability, any structures of incentives or disincentives to retire. He also said that it is for the collective good of the faculty that unit heads take seriously their responsibility for post-tenure review and evaluation of faculty members; no one speaks for the faculty members who must take over the responsibilities of a failing colleague.

Professor Kulacki said that department heads/chairs tend not to have sufficient training to deal with these cases. Efforts should be made to improve training for them. He also said that it might be possible to better encourage retirement if the pot were richer, such as a one-year terminal agreement and 18 months of health-care coverage. Dr. Carney observed that Professor Kulacki's example is the reason Vice President Brown asked the Committee for suggestions. Professor Kulacki said that for a number of faculty members, such an offer might change the dynamics. It would be a significant expense, Dr. Carney pointed out. Professor Konstan asked if the University will offer any retirement incentive options; Dr. Carney said that in the past they have been more successful for non-faculty employees than for faculty members.

Professor Kulacki said he believes something must be done. In 1992 there was a 2% turnover rate—and it remains at about 2%. Nothing has changed. If the University wants to address the bulge represented by the Baby Boomers, it may have to do something that slows the re-hire rate but puts money on the table in five years. Professor Konstan asked if there is a problem if the retirement was 2% in 1992 and remains 2%.

Ms. Bourland suggested that the University could offer health-care coverage for a defined period. Not continued salary, just health insurance; that, she said, could be an incentive because it is an important factor in people's decisions. Mr. Poggioli agreed that health care would be a better incentive; the one-year salary for a terminal leave is acceptable but should not be extended.

Professor Caraway said she was not convinced there is a problem. If people nearing retirement are not doing a good job, then she would be concerned, but she has heard nothing to convince her there is a question about the quality of the faculty. The question is more whether people would like to retire but cannot because they feel insecure about their income or health insurance. If so, those problems should be addressed.

Ms. Bourland said the problems are unit-specific. In some cases over half of the faculty are near retirement age while in others it may be less than 10%. So there have to be diversified strategies. There is also need to look at the pipeline, Dr. Carney added; there are programs producing excellent academics who are unable to get academic jobs.

Professor Kulacki said the University cannot do strategic planning that includes personnel actions without addressing the demographic balance of the University's faculty. The conversation in each unit will be very different, Dr. Carney said.

Professor Grier-Reed asked about training for department heads and deans about counseling people out and into retirement. Dr. Carney said it is seen as a taboo topic and people feel they would be breaking the law if they did so. So it is necessary to have a faculty meeting and bring in the data, including Ms. Singer's information about recruitment and retention. That should happen no matter the age range of the faculty, she said.

Professor Konstan adjourned the meeting at 4:30.

-- Gary Engstrand

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