

Minutes*

Senate Committee on Faculty Affairs
Tuesday, November 6, 2001
3:07 – 5:00
238A Morrill Hall

- Present: Richard Goldstein (chair), Josef Altholz, Kent Bales, Robert Fahnhorst, Neil Graf, Darwin Hendel, Robert Jones, Nan Kalke, Cleon Melsa, Harry Savage, Wade Savage, Tom Walsh, Carol Wells
- Absent: Carole Bland, Carol Carrier, Daniel Feeney, William Garrard, Joan Howland, Roberta Humphreys, George Seltzer
- Guests: Associate Vice President Steve Cawley (Office of Information Technology); Professor James Perry (Fisheries and Wildlife)

[In these minutes: (1) report on subcommittee work; (2) policy on electronic privacy and related issues; (3) 9-month versus 11-month appointments and work expectations for faculty with extension appointments; (4) minority faculty hiring, role of term faculty in department governance, salary increases as increments rather than additions to the base]

1. Committee Business

Professor Goldstein convened the meeting at 3:07 and noted several items:

- The Tenure Subcommittee is moving, new members have been appointed, and there are a number of items it will take up.
- The salary subcommittee is running into problems getting information.
- The Retirement Subcommittee has seen a number of interesting things come up this year which will be brought to this Committee later in the year.

2. Privacy Policy

Professor Goldstein now welcomed Associate Vice President Cawley to the meeting to talk about electronic privacy issues and policy.

Mr. Cawley said he was pleased to be asked to address the issue and reviewed the April 24, 2001, minutes of the Committee, which contained the last Committee discussion of electronic privacy. He noted that Tracy Smith from the General Counsel's office had joined the meeting at that time and had led with a disclaimer that she was not a technology expert. He, Mr. Cawley said, would lead with the disclaimer that he is not a lawyer. He used as a reference, he said, attorney Tracy Smith's comments as

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recorded in the Committee minutes. He explained that state and federal electronic privacy laws with the limited exception of University Student/Staff directory information govern data privacy at this public institution. He also underscored the importance of the Committee's understanding that his office acts in coordination with the Office of the General Counsel, State and/or Federal authorities in all instances where investigations require access to electronic information and/or systems. What he brings to the Committee is what he also provided to the Board of Regents' Audit Committee, a summary and overview of University privacy and technology policies. As the Committee considers recommendations it might make, along the lines of the Penn State policy, this may be of assistance, he said.

[The Penn State privacy policy, distributed to the Committee, reads as follows:

PURPOSE:

To set forth the University's position regarding the privacy of its employees and students.

POLICY:

This University recognizes its obligation not to infringe upon the rights of its members in their individually assigned offices, laboratories, and personal residences, or in relation to their personal papers, confidential records and effects, and in all communications by mail, telephone, and other electronic means, subject only to the general law and University regulations.

In invoking the exception clause ("subject only to...University regulations"), the following principles apply:

- A. Authorization - Only authorized and identifiable officers of the University (e.g., computer security officer) acting under provisions of the University policy or regulation . . . may invoke the exception clause.
- B. Necessary Action - Exceptions to the privacy policy may be authorized only when reasonably necessary to protect the security of the University, its communications system, and the academic process, and when there is good reason to believe that the individual faculty, staff or student has violated law or University regulations. For example, if the computer security officer has reason to believe that a specific user of the University system is endangering the technical integrity of the system, he/she may authorize entry into the user's files for an investigation reasonably necessary to protect the security of the computer network for all users. However, blanket searches of faculty offices or random monitoring of written or electronic communications, for example, shall not be acceptable.
- C. Accountability - The responsible University officer shall notify the affected individual beforehand, unless conditions necessitate immediate access, for which such an exception must be authorized. Records of any exception should be kept and made accessible to the affected individual.]

The bottom line, Mr. Cawley told the Committee, is that state and federal laws govern the privacy of information and the principles for protecting it. He drew the attention of Committee members to the final paragraph of the report to the Regents:

With the limited exception of student directory information, the University does not have the discretion to determine categorically what information is public or private--the law determines the public/private character of the information held by this public institution. Thus, an umbrella Regental policy on privacy does not appear to be warranted. Administrative policies, however, are important to ensuring compliance with the law, and, as technologies develop and more and more information is maintained electronically, operational policies are needed to ensure the security and appropriate use of private information.

Mr. Cawley outlined briefly the existing administrative policies about access to information at the University.

What determines if the University will give information to a newspaper or an individual requesting it, Professor Goldstein asked? As Tracy Smith said in April, if the information is public, the University must provide it, Mr. Cawley replied. Does the University charge if it must spend employee time and incur duplicating expense, Professor Goldstein then asked? The current Commissioner of Administration makes the rule on this question, Mr. Cawley said; in one case, where old emails (on a system no longer in use) about light rail transit were requested, the Commissioner ruled that the \$50,000 expense of retrieving them had to be incurred by the agency and the information provided.

Does that mean one looks at all the old emails to see if they dealt with the subject, Professor Goldstein asked? Again Mr. Cawley referred to Tracy Smith's statements from April: ". . . email is covered by the public records law and must be made available on request. There is no inherent privacy in communication, . . . in the law the medium is irrelevant." Susan McKinney in the Office of Records and Information Management (a part of the Office of the General Counsel) determines if information is private, and protected, or if public, in which case it must be provided upon request. Has anyone requested old emails, Professor Goldstein asked? There have been instances where they have been sought, Mr. Cawley said. If the emails are not protected, they must be provided.

Professor Wells related that one faculty member she knew of was unhappy with salary decisions and requested all the salary data for the unit. The faculty member could not get the information, got a runaround, and concluded the data were not available. Could the faculty member ask for the salaries? Mr. Cawley said the Office of Records and Information Management routinely fields these kinds of requests. This subject came up with one of the newspapers printed the names and salaries of all those making two or three times what the Governor made. If information is relatively inaccessible, Professor Wells observed, it is not public.

Professor Goldstein said he was surprised that email messages were so easily perused by others. Mr. Cawley pointed out that his office does not monitor emails. If there is an external request under the Minnesota Data Practices Act, the office of the General Counsel determines if they are public or private.

Does the individual who sent or received the emails know they are being reviewed, Professor Goldstein asked? In all cases of which he is aware, they have been notified, Mr. Cawley said. Emails are retained on the server until the user deletes it or downloads it to their personal computer, Professor

Goldstein observed; after a time, they will exist only on the user's computer, not the University server. Once off the server they are gone, Mr. Cawley said. In the case of a serious investigation, such as by the FBI, data may be recoverable through sophisticated data recovery tools and techniques.

If the information is public, why is it relevant where it is located, Professor Walsh asked? It may not be relevant, Mr. Cawley agreed, and an individual could be asked to provide it from a machine.

What if one writes the information on disk at home, Professor Walsh? Is there some "pollution" of the home computer if one puts University information there, making it public even though on a computer owned privately? If one connects one's own machine to the University server, does it become public? Mr. Cawley said these questions would have to be addressed to the General Counsel's office.

Professor Goldstein said the point is to emphasize that there are concerns among the faculty about these issues. Mr. Cawley said he recognized that concern; in general, he said, if an email is determined to be public, it does not matter what University machine the email is on.

Dr. Jones reported that at a recent meeting with CIC representatives, it was clear that there are different interpretations among the schools about whether something is accessible. Some take the position that if an email has been put in the "trash," that is the same as having shredded a paper document and it is no longer (to use the legal term:) "discoverable." Other institutions take a different position. These are questions the General Counsel's office needs to answer.

Mr. Cawley agreed. He said he had no recommendation on retention of email. Some people or units keep them for 2-3 years; some only keep them for 2-3 weeks. Email messages are kept on the central server for 2-4 weeks for disaster recovery purposes; they are not kept for anything like six months. But email messages could be recovered, Professor Goldstein asked? Mr. Cawley said his office would not do so; they would not go to the extraordinary effort required by "cybersleuth" tools that may exist to recover messages. They do not own such software.

Federal or state authorities presumably have such tools, Professor Goldstein commented; have they ever used them on University computers? Not to his knowledge, Mr. Cawley said.

This discussion raises the question about whether the FBI has ever installed a "carnivore" tool on University computers; "carnivore" soaks up any messages with key words in them. Mr. Cawley said he could assure the Committee that no such thing has been done with the University's knowledge. The question is whether it could be done without the University's knowledge, Professor Walsh mused. That is a frightening thought, Mr. Cawley commented.

Professor Walsh said he believed the FBI, for example, can scan headers in messages without a court order; would they need to inform the individual?

What does he think about the Penn State policy, Professor Goldstein asked Mr. Cawley? There is nothing in it that he finds troubling from a technical point of view, Mr. Cawley said. If it were adopted, would it have an impact on the Office of Information Technology? It would not, Mr. Cawley said; it might on the administration or the General Counsel's office; these are issues on which his office takes no position.

Professor Walsh reported that he has worked on some modifications to the Penn State policy and suggested that someone from the General Counsel's office might look at it. After that it might be taken up for consideration by the Committee. Professor Altholz noted that the Penn State policy also includes students, who may need different provisions (e.g., covering living in a dorm, downloading music, etc.)

With respect to the last point, Mr. Cawley pointed out that there is a policy, approved by the Senate Committee on Information Technologies, which authorizes his office to limit use when an entertainment application is taking too much of the University's bandwidth resources. His office has the right to limit use if an application is taking more than 10% of network capacity. They do not look at content, but if one student is taking 20% of capacity, they impose a limit--but do not look for such things as copyright violations. If, however, a copyright holder made a claim, then the General Counsel would get involved.

Professor Goldstein thanked Mr. Cawley for joining the meeting.

3. Faculty with Extension Appointments (at least in part)

Professor Goldstein now welcomed Professor James Perry to the meeting to discuss faculty appointments where part of the appointment is for extension work.

Professor Perry related that he is a newly-appointed department head who recently joined a lunch sponsored by the Faculty Consultative Committee to discuss issues of concern. At that lunch he brought up the momentum there seems to be in converting 11-month faculty appointments to 9-month appointments. It used to be, he said, that agriculture and natural resources faculty were on 11-month appointments, but as new faculty are hired they are being placed on 9-month appointments. He said he would like the perspective of the Committee. He distributed a handout with the following information:

History

- We have a tradition of hiring applied people (e.g., agriculture or natural resources faculty) on 11 month appointments
- These appointments all are <50% teaching; the remainder of the appointment is research and/or outreach
- The logic has been that the research and outreach functions require work in the summer, necessitating year-round activity

Current trend

- Nearly all new appointments now are 9-month
- We often tell people we will offer 2 months' summer salary for the first 3 years and within that time, they are expected to develop a momentum that provides outside funding for summer salary

The problem?

- We are telling people that we must fulfill the originally perceived mission (i.e., research with summer field data collection, outreach with year-long activity) while also telling them they must find their own funding. We are telling them that success require performance beyond their base salary, rather than telling them success is possible within their 9-month position but additional options are possible

The bigger problem?

- This is especially dramatic with outreach people. For example:

- Faculty member A is on the Crookston campus, has a 50% appointment in Crookston and 50% in St. Paul; that person is supposed to teach 'full time' and perform outreach for 50% of their salary and generate 2 months' summer salary
- Faculty member B has an appointment that is 35% outreach and 65% teaching-research; that person is expected to generate 2 month's summer salary
- Faculty member C has an appointment that is 65% outreach and 35% teaching-research; that person is expected to generate 2 month's summer salary

Surrounding this is an additional momentum: entrepreneurship:

A model is being proposed in which an 11-month faculty member could choose a 9- month appt for 10/11 of their current salary. If they did, they would forgo a raise that year and the dollars available for that person's raise would go to the Department. The assumption is that these new 9-month people would then generate outside funds for the rest of their salary. The College would get increased ICR, the faculty would get increased net income, department would show increased productivity and raise additional money. I asked the relevant department head about that momentum. That person's response was:

A committee has been appointed and has met for the first time. The Committee plans to obtain faculty input to develop a set of questions we want to answer in evaluating the issue of 11 to 9 conversion. The committee also is obtaining documents outlining the terms of conversions from other Land Grant Universities that have gone through this over the past decade or so. Then we plan to visit two or more of these Universities and talk with faculty and administrators to help answer our questions. We hope to pull this together and hold an open forum with the faculty in early November. A final report and perhaps a recommendation is to be submitted in late November or early December. I just put together some numbers to illustrate how the opportunity for voluntary conversion could be a win for the faculty member, the department and the College. The conversion rates are yet to be decided.

[Professor Perry reported that the deans of Natural Resources and Agricultural, Food, and Environmental Sciences have expressed an interest in the work of the group but have taken no position on the idea.]

Who cares?

- From my perspective, the discussion point is 'Are we using assumed (forced) entrepreneurship to increase the numbers of faculty lines and increase financial return (primarily to the college) at the risk of threatening successful faculty performance and successfully fulfilling our mission?

How has the change been effected, Professor Goldstein asked? At the level of the dean, Professor Perry replied. A department head will ask for an appointment of 11 months; the dean will not approve it. In the last 5-6 years there have been no 11-month appointments approved. Is that because the dean can then hire more people, Professor Goldstein asked? In part, Professor Perry said, and hiring on 9-month appointments will also increase the likelihood that people will generate outside income and, consequently, ICR funds.

The difficulty, Professor Perry summarized, is that new faculty are being told what they need to do but that there are few opportunities to raise outside money to support faculty during the summer. The

9-month appointments are being used to hire 4/3 more people, and makes them hungrier, so they generate more outside income--which makes it difficult for them to meet their professional obligations.

About one-half the faculty at the University are on 9-month appointments, Professor Goldstein pointed out; he said he has never understood the logic of half the faculty on 9-month appointments and half on 11-month appointments, although that has been the tradition for decades.

One concern, Dr. Jones said, is whether faculty hired on a 9-month appointment are evaluated; MUST they raise money for summer employment? It is never MUST, Professor Perry said, but it is an implicit expectation for promotion and tenure. It is generally expected they will raise money (no number is identified) and publish in their field (again, no number of publications is identified), but raising money is never a part of the contract. Senior faculty, however, will look at the record of obtaining funds after six years and see if the probationary faculty member has met expectations. Can the faculty member be successful if he or she has not raised money but otherwise met or exceeded tenure expectations, Dr. Jones asked? They can, Professor Perry affirmed.

In some fields, Professor Walsh observed, a faculty member who does not generate summer salary is probably not getting adequate research support and would likely not be tenured. Where there are significant outside research funds available people are encouraged to seek them, Professor Goldstein concurred, but that is not widely true in the arts and humanities. About 25% of those who seek internal or external research funding obtain it in those fields, Professor Bales said. Often people write without support, Professor Altholz observed; no one looks to see if one has obtained outside support, Professor Savage added.

Where there ARE funds available, a review may look at the number of dollars obtained, Professor Goldstein said. That does not happen in CLA departments, Professor Savage said; it does in IT and, Professor Wells confirmed, in the Medical School. It is, Professor Wells added, THE "sticky wicket" for getting tenure.

Professor Goldstein said it was not clear how the colleges could insist on 9-month appointments if faculty are expected to be working in the summer. If it is normal faculty work, with students, research, etc., like all the rest of the faculty, that is one thing; if extension work is expected in the summer, that is different.

For those on an appointment with extension responsibilities, where does one find the funding, Professor Walsh asked? That is the question, Professor Perry said. People do not have the opportunity to raise money. The Extension Service says it has reconfigured itself to make it easier for faculty to raise money, but he has not seen that happen. It may be possible.

This could be seen as a prolonged shifting of expectations, Professor Bales said. At present the assumption is that expectations will remain the same; if they cannot, will the University and deans be neutral or want to reduce expectations? Professor Perry said he did not know but that expectations must be reduced if faculty are hired on 9-month appointments. Professor Bales recalled that the President has spoken with the Regents about reducing the amount of service activities if the University is to remain a major player as a research university. Dean Casey has said that all activities must pay for themselves and that Extension services cannot be given away any longer, Professor Perry noted.

What about funds provided to the University for extension work, Professor Hendel asked? Federal funds have been severely reduced, Professor Perry said. Vice President Muscoplat was hired as a business person to see how the Extension Service could be made self-sustaining. There are significant financial issues to resolve, in part because of the decline in state and federal funds.

Professor Goldstein said he recalled one former president who recommended converting all faculty appointments to 9 months and using the extra dollars to do wonderful things. Perhaps this is a new version of that plan.

What is the issue that is before the Committee, Professor Savage asked? The issue was mentioned at a lunch FCC hosted for department chairs, Professor Goldstein said; FCC asked this Committee to look into it and to relay its views to FCC and any recommendation for specific action, especially with respect to extension faculty.

The way one thinks about this in CLA is that a 9-month appointment is fine, if the salary is adequate, and people do not want additional duties because it is the time when they do research. It is only chairs who are on 11-month appointments. Faculty in CLA do not WANT 11-month appointments. This is not an issue for the faculty with whom he deals, Professor Savage said. If there is an injustice somewhere, it is not evident to him.

The injustice is that some have 11-month appointments and some do not, Professor Goldstein said. Professor Perry agreed, and in addition the expectations put on people who have an extension function to raise money. Does this amount to telling people they must find extra money but knowing they cannot, Professor Walsh asked? Implicitly, yes, Professor Perry replied. How does the University compete with other institutions in this regard, Professor Goldstein asked? Not well, Professor Perry said.

Does this change appear in any of the college compact documents, Professor Hendel asked? Not to his knowledge, Professor Perry said.

Is there anything he expects the Committee to do, Professor Goldstein asked? Only to hear the issue, Professor Perry said.

It seems bad policy to require people to generate money for the institution, Professor Savage said; the institution should pay for their services; he said he would be upset if he was supposed to generate funds for the institution in addition to his duties in teaching, research, and service. This seems an inappropriate model for a University--maybe for a business, but not here, he concluded. To be realistic, however, Professor Goldstein said, there has been a push for faculty to obtain external funding; one carrot is the summer salary they receive.

Professor Walsh said he knows of colleagues who have spoken to people in the business community who are astonished that faculty bring in this money but only get to use 40% of it. But faculty still do so and it is what they want, Professor Goldstein responded. Faculty should not have to make any money for the institution, Professor Savage maintained.

The issue is the demand on some faculty to make money from research when they have not done so before through their service activities, Professor Bales said. Before there was a fit between their 9-month service and the teaching and research they did; now there are not funds from the outside for the

kind of research they want to do. Professor Perry agreed and pointed out that some are in a position where their activities do not traditionally generate funding.

In the Academic Health Center they have heard about faculty who are good at research but who do not bring in outside funding, Professor Bales recalled, nor was it required. The problem was that they were not making money so they did not receive a raise. The University has not looked at this because it takes a laissez faire approach. CLA does not provide the best perspective because it is a tuition-rich part of the University, while the 30 faculty in the College of Natural Resources cannot generate enough income just from teaching.

Nine-month faculty are more or less obligated to work the two summer months, Professor Walsh said; there are implicit expectations that the work takes 11-12 months. This is not explicit in one's contract, however. Professor Savage agreed but said that faculty working over the summer are not expected to make money for the University. If people are expected to do something during those two additional months, they should be paid.

Professor Goldstein told Professor Perry that if he (Professor Perry) wished the Committee to take action, he should draft something for the Committee to take up and also help it obtain data on the funding available. He thanked Professor Perry for joining the meeting.

4. Committee Business

-- Professor Goldstein reported that there had been a discussion at the Faculty Consultative Committee about hiring and retention of minority faculty. Dr. Jones said he read with considerable interest that FCC discussion about what the University is doing in this area. Much of what was said is not supported by the data. It was said the University has not done a good enough job of getting data to faculty governance; he said he would like to present data for the past ten years. He said he was glad to see governance interest in the promotion of diversity at the University; it should get information so it understands what has been done and the challenges the University faces.

The discussion in this Committee has been about what is available for spousal hiring, Professor Goldstein said, which is related to gender and minority faculty hires. FCC was interested in other issues as well; he suggested that Dr. Jones speak with FCC on these issues. Dr. Jones said he would be glad to do so and would also provide information at the next meeting of this Committee on the programs that are available.

-- The Committee next discussed a request from FCC that the Committee look at hiring of term or non-tenured faculty and their role in departmental and collegiate governance. It was agreed that this issue, along with reports on academic hiring, should be referred to the Tenure Subcommittee.

-- The Committee then considered a request for nominees to the Hearing Officer Panel and the University Grievance Board, both groups of individuals on whom the University Grievance Office calls for assistance in dealing with grievances. Professor Bales said it was his recollection that this task of identifying candidates had, several years ago, been delegated to the Committee on Committees.

- Another charge for the subcommittee on faculty salaries is the decision, in at least one department, of not adding this year's salary increases to the base salaries (except in the case of promotion and tenure increments) but instead calling them a University increment, the continuation of which is dependent on University resources. It is possible faculty would never receive another addition to their base salaries; if this is the practice from the time faculty are appointed, tenure will not matter.

Can the increment be withdrawn, Professor Goldstein asked? It can. So the base could stay the same for 20 years, observed Professor Walsh. This is like the plan offered by the consulting company that led the re-engineering effort in the health sciences, he said. Except that it offers NO increment to the base salary.

This is a legitimate concern of the salary subcommittee, Professor Goldstein agreed. Committee members described this as a very dangerous practice, one that declares financial exigency without declaring it. The subcommittee should obtain information on how salary increases were delivered and see if this practice shows up in the reports. This should also be brought to the attention of the faculty governing committees in the area, Professor Altholz said.

Professor Goldstein adjourned the meeting at 4:45.

-- Gary Engstrand