



UNIVERSITY OF MINNESOTA
TWIN CITIES

All University
Senate Consultative Committee
220 Biological Sciences Center
1445 Gortner Avenue
St. Paul, Minnesota 55108
Telephone (612)373-3226

FACULTY CONSULTATIVE COMMITTEE

May 6, 1982

Executive Session - 10:00

An executive session of the Faculty Consultative Committee was convened by Chairman Douglas Pratt at 10:00 a.m. on May 6, 1982, in the Regents Room of Morrill Hall. The other FCC members present were Bob Brasted, Marcia Eaton, Virginia Fredricks, John Howe, Marvin Mattson, Rick Purple, Donald Spring, and Patricia Swan.

1. Family Practice Department challenge to Judicial Committee jurisdiction.

The FCC reviewed the facts presented in Dr. Edward Ciriacy's April 27 letter to Prof. Pratt regarding a jurisdictional dispute between the Judicial Committee and Family Practice, and heard from Professor Rick Purple in his role as faculty advisor to the faculty members who have brought the complaint and from Professor Kim Munholland, Chair of the Senate Judicial Committee.

The FCC could find no basis in precedent or in the Senate constitution for intervening in the dispute. FCC members indicated that the determination of whether tenure is an issue should be made by the Judicial Committee. The FCC believes that the failure of the complainants to file with the Judicial Committee within the required time limit was due to a misunderstanding of or the collapse of an alternative means to settle the dispute within the collegiate unit and should not be used to deny the faculty members their right to a hearing before the Judicial Committee.

The FCC concluded that it was appropriate for the Judicial Committee to proceed with hearings. Professor Pratt will so inform Dr. Ciriacy by letter, with copies to the persons copied on Dr. Ciriacy's letter.

2. Consent decree settlements.

President Magrath, Vice Presidents Keller and Hasselmo, and General Counsel Dunham joined the meeting at 10:30. They described to the FCC the manner of disposition they expect the University to make regarding several sorts of suits pending before the special masters. Central administration had solicited faculty consultation on the question via Vice President Keller's statement to the Finance Committee on April 22 that the University expected to make costly out-of-court settlements.

The cases can generally be divided into three groups: (a) those, few in number, where there was discrimination or a procedural error on the part of the University; these the University intends to settle promptly and justly; (b) those where central administration believes the University dealt justly with women

but, based upon the court's record to date, believes the court will find for the plaintiff; these the University is inclined to settle out of court rather than incur both the settlement and the very large cost of the litigation; and (c) those where the procedural record is so strongly and plainly in the University's favor that the University will persevere in the litigation.

In some instances stray comments by a faculty member, such as, "She's a pushy woman," have been entered into the record as evidence of discrimination. In other instances, a departmental faculty member has testified he or she believes discrimination occurred.

There are approximately 200 retroactive cases; settlement costs will be at least several million dollars. Current cases are coming in at the rate of one per week. Professor Swan voiced her concern that if the University has to rearrange the budget to pay the settlements, it will be very divisive within the University community.

There is conflict between preserving a principle and holding down the eventual total cost by pursuing cases the University believes it can win but at a tremendous monetary price. There are cases which appear frivolous on merit but which do not look frivolous after advance publicity. Vice President Keller said the University's fighting cases frequently does not establish the principle the University is trying to uphold, but rather establishes the counter principle, because of the selection of facts which are publicized.

There was considerable agreement indicated that the University faculty should be informed of the facts whenever the University wins a case, and the facts on cases lost as well. There is a public perception that the University, by making any settlement, tacitly admits to wrongdoing. Vice President Hasselmo's chronological account on the University's implementation of the consent decree, laying out an accurate record for the public over a year, ago, came under attack.

One question which must be resolved is who ought to pay salary increases awarded or agreed to. Where a college is culpable, should it be held financially responsible? When a department presses the University to fight a given case to the end even though central administration advises it does not look winnable, should the college be financially liable? If only a single individual erred (as in the one instance of a falsification of a Form 16), should a department be penalized? Until now central administration has paid all one-time costs. They have told the deans that the colleges must provide the extra salary where discrimination occurred. Determining salary liability for new positions is a more difficult question.

Professor Spring asked for thoughtful consideration of what public perception will be to steps the University takes. If the University retrenches to settle the claims, the public will believe the University was not forthcoming in the past year in stating its limit to retrenchment in the face of state revenue shortfalls.

The extent of the cost was largely unanticipated. No one knew in advance how the court would judge. The University has appealed to Judge Lord the special masters' lifting of the limit on attorney costs for successful plaintiffs.

While acknowledging the controversy that public discussion of the costs and their allocation will raise, Professors Eaton and Swan recommended continuing this university's open approach to discussion of budget problems. The faculty moreover needs to increase its understanding of consent decree issues through more background information. Professor Eaton said much good advice can come from faculty, such as from philosophers working in ethics, if they are invited to offer it.

Mr. Dunham said he thinks it would be extraordinarily difficult to describe the case situations to the faculty without appearing to be attacking the women who have brought the cases. Professor Howe asked the group to consider the effect of identifying the individuals involved.

The President suggested an abstract presentation to Senate Finance Committee and the Consultative Committee, perhaps in executive session, on the costs and on how central administration intends to apportion them, plus a report to the faculty on cases which have been decided. Professor Fredricks recommended informing faculty of reasons cases were lost, for educational value.

President Magrath said he would ask Vice President Keller and Attorney Dunham to consider what kind of discussion(s) to hold.

3. Health Science vice president search.

The President announced he had extended an invitation to Neal Vanselow.

Professor Swan asked whether in the future, when a report of a major search comes to the Consultative Committee, it could include data about the pool of applicants and the affirmative action efforts.

The executive session adjourned at 11:45 a.m.

Meredith Poppele,
SCC Secretary



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May 11, 1982

Professor Edward W. Ciriacy, M.D.
Head, Department of Family Practice and
Community Health
6-240 Phillips-Wangensteen Building
Box 318 Mayo

Dear Dr. Ciriacy:

Thank you for your letter of April 27 regarding the dispute between yourself and the Senate Judicial Committee concerning the appropriate hearing body for a grievance brought against you by some faculty members in the Department of Family Practice.

The Faculty Consultative Committee has reviewed the facts presented in your letter to me and in your April 27 letter to Professor Munholland. We have also heard comment from Professor Richard Purple, a member of our committee, and from Professor Munholland.

It is apparent that this is a complicated case of long standing. It ought to be resolved soon if at all possible. Nevertheless, the FCC feels that no constructive purpose would be served by our intervening at this time. We know of no precedent in which the Consultative Committee has intervened in a case of this sort, and can find no basis in the Senate constitution for doing so. Although it may be debatable whether tenure is an issue we feel that this determination should be made by the Judicial Committee. The FCC feels that the right of a faculty member to a fair hearing before the Judicial Committee should not be abridged by a technicality, and that the failure of the complaining parties to give timely notice to the Judicial Committee was probably due to a misunderstanding of the manner in which this dispute was to be adjudicated.

In view of these considerations we feel that it is appropriate for the Judicial Committee to proceed with hearings. We are confident that they will discharge their responsibilities fairly and equitably.

Sincerely yours,

Douglas C. Pratt, Chair,
Senate Consultative Committee

DCP:mbp
cc: Neal L. Gault
Lyle French
Carol Pazandak
Kim Munholland
Daniel Farber

John T. Kelly
Faculty Consultative Committee



UNIVERSITY OF MINNESOTA
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Office of the Department Head

Department of Family Practice and Community Health
Medical School
6-240 Phillips-Wangensteen Building
516 Delaware Street S.E., Box 381 Mayo
Minneapolis, Minnesota 55455
(612) 373-8539

April 27, 1982

Douglas Pratt, Ph.D.
Chairman, Senate Consultative Committee
University of Minnesota
220 Biological Sciences Center
1445 Gortner Avenue
St. Paul, Minnesota 55108

Dear Dr. Pratt:

I am writing to you in your capacity as Chairman of the Senate Consultative Committee.

It has been suggested to me that it would be appropriate for me to request that your committee review the jurisdictional dispute I am currently having which involves a difference of decision between the Judicial Committee and the University Grievance Officer, Dr. Carol Pazandak. The suggestion has been made that the Senate Consultative Committee may have some role to play in this dispute which, admittedly, is somewhat unique. As you note from the enclosed correspondence to Dr. Kim Munholland, Chairman, Senate Judicial Committee, I am protesting the action of the Judicial Committee relating to their willingness to assume jurisdiction of a grievance brought against me by some members of the faculty of the Department of Family Practice and Community Health. It has been my position that this grievance should be heard initially at the collegiate level. Dr. Carol Pazandak, University Grievance Officer, when requested by the previous Judicial Committee chairman to review the circumstances of this case, concluded that the initial hearing should be at the Medical School level. It is my understanding that such a decision by the University Grievance Officer, once requested by the Judicial Committee chairman, is final. Obviously, the Judicial Committee disagrees. Copies of my correspondence to Dr. Munholland and my appeal to President Magrath are enclosed and provide the fundamental details of the disagreement.

My purpose in writing to you is twofold. First of all, does the Senate Consultative Committee have some responsibility in this circumstance? If so, would the Senate Consultative Committee be willing to review the circumstances and provide some advice to all concerned relative to a jurisdictional decision?

Yours truly,

Edward W. Ciriacy, M.D.
Professor and Head

EWC:bh
encl.

cc: Neal L. Gault, Jr., M.D.
Lyle French, M.D.
Carol Pazandak, Ph.D.
J. Kim Munholland, Ph.D.

Daniel Farber, Ph.D.
John T. Kelly, M.D.

HEALTH SCIENCES



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Office of the Department Head

Department of Family Practice and Community Health
Medical School
6-240 Phillips-Wangensteen Building
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Minneapolis, Minnesota 55455
(612) 373-8539

April 27, 1982

J. Kim Munholland, Ph.D.
Chairman, Senate Judicial Committee
University of Minnesota
614 Social Sciences
267 19th Avenue South
Minneapolis, Minnesota 55455

Dear Dr. Munholland:

I am responding to your recent letter to me noting the appointment of a hearing panel to deal with the "Family Practice Complaint."

Please be advised that I am formally protesting this jurisdictional decision. You indicated in your April 13, 1982 letter to Dr. Pazandak the bases upon which the Judicial Committee reached its decision. They were:

1. "A majority argued that while employment issues might be present, the complaint did center upon issues of academic freedom and questions of promotion and tenure within the Department of Family Practice."
2. "A majority also agreed that this long festering dispute had generated a climate that was prejudicial to a fair hearing."

The formal complaint dated February 18, 1981, enclosed with correspondence to Dr. Edward Rippie, Chairman, Senate Judicial Committee at that time, includes numerous complaints, some of which may deal with tenure as noted in Section 14 of the Tenure Code. This certainly is debatable, and I would presume, would be addressed by whatever hearing panel is ultimately held responsible for hearing this grievance.

Section 14 also contains another statement under the provisions of which I would question the appropriateness of the Senate Judicial Committee assuming jurisdiction. Those regulations state, "Any person who holds a faculty position is entitled to a hearing before the Judicial Committee on any action which, without his written consent, affects his rights or status under these Regulations. To make this right effective, the individual concerned, or someone on his behalf, must, within thirty days after his receipt of written notice of the action or proposed action alleged to affect his rights or status, give written notice to the chairman of the Judicial Committee stating the manner in which he believes his rights are affected."

The original complaint is dated January 12, 1979, and, to the best of my knowledge, there has not been filed a timely, written notice to the chairman of the Judicial Committee as specified above to "make this right effective."

The second rationale for assumption of jurisdiction is that:

- There was "a climate prejudicial to a fair hearing."
- "The failure to bring a complaint to a hearing suggests an unwillingness to resolve the dispute."
- "The statement attributed to the Dean that the dispute would resolve itself through the process of attrition indicated deliberate delaying tactics in hope that the issue would go away."
- "Moreover, there appeared to be difficulties in gaining access to documents or even being informed of correspondence pertinent to the grievance."
- "The Judicial Committee felt that access to mediation efforts was not 'reasonably available.'"
- "An unprejudicial climate with respect to the particular complaint no longer existed in the Medical School."
- "The lengthy delay amounted to a denial of a fair hearing."

These are all observations based upon unsubstantiated statements by the complainants. The willingness of the committee to reach a judgment in such a serious matter, accusing the Medical School of, at best, inappropriate handling of its grievance process and, at worst, of grossly unfair and prejudicial procedures, is not a judgment to be reached without some objective review of the facts as opposed to the perceptions of the complaining group. The willingness of the committee to jump to conclusions without substantiating evidence to differentiate fact from perception is, in my judgment, irresponsible. The implications of such actions have the potential for far reaching affects in the establishment of precedence which, I would submit, are not in the best interests of this University.

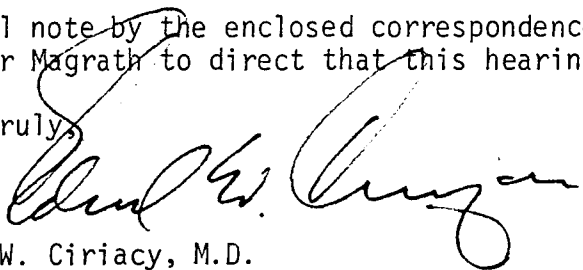
The protocol utilized for decision making at the Judicial Committee level should be of the highest level of objectivity with emphasis on fairness to all faculty members regardless of whether or not they hold administrative responsibilities.

I would respectfully request that the Judicial Committee reconsider its action.

As you know, the Medical School has appointed a grievance committee ready and willing to hear this grievance. That committee, appointed in Spring, 1981, is and has been immediately available to hear this grievance. The complaining group refused to meet with this committee when it attempted to proceed with a hearing on June 24, 1981 at 4:00 p.m. As you know, the University grievance officer, who is designated as having the ultimate authority once having been asked for a decision from the Judicial Committee chairman to make a jurisdictional decision, has supported the return of this grievance to the Medical School. Vice President for Health Sciences Lyle French supports the maintenance of this jurisdiction at the Medical School level. Dean Neal Gault supports the maintenance of the jurisdiction in the Medical School.

You will note by the enclosed correspondence that I have appealed directly to President C. Peter Magrath to direct that this hearing be held at the Medical School level.

Yours truly,



Edward W. Ciriacy, M.D.
Professor and Head

EWC:bh
encl.

cc: Neal L. Gault, Jr., M.D.
Lyle French, M.D.
Carol Pazandak, Ph.D.
Daniel Farber, Ph.D.

Douglas Pratt, Ph.D.
John T. Kelly, M.D.
Richard Purple, Ph.D.



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MINUTES

FACULTY CONSULTATIVE COMMITTEE

May 6, 1982

Regular Session - 11:45

Chairman Douglas Pratt convened a meeting of the Faculty Consultative Committee at 11:45 a.m. on May 6, 1982, in the Regents Room of Morrill Hall. An executive session had preceeded this meeting. The other FCC members present were Robert Brasted, Marcia Eaton, Virginia Fredricks, John Howe, Marvin Mattson, Patricia Swan, and Donald Spring.

1. Financial emergency draft document.

Marcia Eaton reported that the subcommittee had received many responses to the draft. The subcommittee met May 5 with attorneys Dunham and Sindelir. The subcommittee believes the document needs improvement, and they asked the FCC whether to take the present draft to the Senate on May 20. Professor Pratt suggested that the Tenure Committee might now be able to build on the framework the FCC subcommittee has developed and produce a satisfactory new Section 15 to the 1973 tenure code proposal.

There was discussion over whether to include the draft in the May 20 Senate docket and encourage discussion of the controversial aspects, which might prepare the Tenure Committee to take over the job of completing the document, or to hold back the draft until it has been improved. It was agreed a revised introduction to the draft can be entered in the docket which states the major concerns and objections received so far. In addition, representatives of key groups can be identified to present diverse points of view and comment on specific questions.

Virginia Fredricks moved to enter the draft into the Senate docket as an information item. The FCC approved the motion.

2. Filling committees with the desirable faculty expertise and interest.

Carol Pazandak conveyed to the FCC her concern that Committee on Committees may need additional staff assistance to be able to carry out their job thoroughly. She believes some committees are not as vital as they can be and ought to be, to the detriment of faculty governance. She reported that a University staff member in research administration had submitted the names of some 15 faculty members he thought had University-wide perspective and were well-qualified to serve on the Research Committee. He was dismayed that none of them were selected.

The Committee on Committees generally do not know the people they are considering for appointments. Dr. Pazandak asked whether the sources of nominations are adequate. She noted the need for balance and for diversity, for committees to include top-level people and to be a training ground for new people.

Professor Spring said that the committee's task is approximately halved now from what it was under the old constitution, since it need prepare only a single set of nominations. There are about 36 vacancies to fill in any one year. In addition, Committee on Committees reports a list to the President for committees he names. Professor Spring also remarked that the reluctant members, those who have to be persuaded to serve, turn out to do the best job. The Committee must be firm in rejecting volunteers.

Professor Fredricks, a past chair of Committees, said that the task of learning about prospective nominees takes a fair amount of time, but it occurs just once in the year and is not unmanageable. Each member can take responsibility for a couple of committees and can learn about the prospects through phone calls to department chairs and others.

Professor Brasted asserted that the Senate itself is not doing the best job of getting prospective senators into consideration by making recommendations to the Committee on Committees via the annual survey of senators. Lists appear to be coming primarily from department heads and deans.

The present excellent staff assistance from the Senate office includes providing lists of faculty available in any one year, of faculty in the Senate, and of faculty presently serving on committees.

There was general agreement that the new co-chairpersons of the Committee on Committees should be invited to meet with the FCC and Carol Pazandak during the fall quarter to consider how Committees can best do its job. The Facilitative Committee was suggested as an additional forum to discuss the problems and possible solutions.

The FCC would also like to have clarified how chairs are actually being chosen.

The meeting adjourned at 12:45 p.m.

Meredith Poppele,
SCC Secretary