

Minutes*

Academic Freedom and Tenure Committee
Friday, May 17, 2013
10:00 – 12:00
238A Morrill Hall

Present: Carl Flink, Karen Miksch (co-chairs), Phil Buhlmann, William Craig, Brian Horgan, Teresa Kimberley, Jessica Larson, Carol Wells

Absent: William Bart, Arlene Carney, Barbara Elliott, Karen Ho, Gary Peter

Guests: Diana Harvey, Lindsey Heffern (University Relations); Ana Burger, Scott Petty, Nicole Scott (graduate student guests)

[In these minutes: (1) social media and academic freedom; (2) tenure policy section 12 procedures]

1. Social Media and Academic Freedom

Professor Flink convened the meeting at 10:00 and welcomed Msses. Harvey and Heffern to continue the discussion about social media and how it could affect academic freedom. This is a moving landscape, he observed, and the Committee does not want to get in the way of innovation, but it may want to monitor developments in social media and discuss whether the University should have a policy on social media. The Committee also wishes to educate the University community on how open and public social media postings are, Professor Miksch added; she noted that some institutions are considering social-media policies. Professor Flink further observed that those with legal training, such as he and Professor Miksch have, tend to be conservative about stepping in with policy and regulation in an area such as this.

Ms. Harvey reported that they have been having conversations about social media in University Relations and said the University has been involved with social media since 2006, has embraced it since 2007, and has been innovative and a leader among its peers. She told the Committee that Ms. Heffern keeps tabs on changes in social media and commented that it is amazing how social media affects University marketing.

She has made a presentation to the Board of Regents on the risks and benefits and innovation in social media. They (that is, social media) provide an infinite opportunity to interact with institutional stakeholders in a way that is quite effective. The outcome of the presentation was that the Board would consider the various issues associated with social media (e.g., for employees, for student conduct, for faculty use in instructional venues) and will return to the topic later.

Ms. Heffern explained that she is responsible for managing social media for the University, which is represented on all the major media: Facebook, Twitter, YouTube, LinkedIn, Google+, Instagram, Pinterest, and Foursquare. She provided Committee members with a tally of the status of institutional regulations/guidelines/policies at 9 of the other Big Ten institutions; the situation is mixed. Six of the

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institutions have no policy, one has a policy (Purdue), one is in the process of developing one (Ohio State), and two have sort-of policies. Almost all have guidelines; the focus in those cases is generally on marketing communications.

Professor Wells inquired what marketing communications means. Generally, it's faculty research and reputation management, Ms. Harvey said. Ms. Heffern distributed copies of a handout with 8 pages of guidance and advice on social networking (which can be found on the University Relations website (<https://www.ur.umn.edu/brand/requirements-and-guidelines/social-networking/index.php>)).

With respect to whether the University should have a policy, Ms. Heffern reported that she had spoken with Michele Gross, director of the policy office, and they concluded—based on a conversation with Tracy Smith from the General Counsel's office—that it was not necessary to have a policy. She pointed out that the guidelines include links to the Code of Conduct and, based on the talk with Tracy Smith and the stances of most of the other Big Ten schools, she does not believe a policy is necessary. Michele Gross observed, however, that the codes of conduct (for employees and for students) could be updated to include use of social media. This is an ongoing conversation.

What is the fundamental difference between a policy and guidelines, Professor Kimberley asked? Ms. Heffern said that the University can take action against an employee for violating a policy whereas guidelines are best practices. Professor Miksch pointed out that within the guidelines, however, there are links to University policies that are enforceable. It is helpful for people to know about those policies.

Dr. Craig said that it appears, from the Big Ten summary, that only the University of Iowa guidelines touch on ethical issues and a code of conduct. Is there anything to help the Committee think about that? Ms. Heffern said there is a code of ethics in the guidelines; they could compare it with language used by the University of Iowa. Dr. Craig said that as he understood the *Tatro* case, the student (in mortuary science, in that case) violated the professional code of ethics, but the rest of the issues were nebulous. He said he hoped that students would pay attention to the code of ethics in their field but wondered how many undergraduates know that there are such codes. [The Minnesota Supreme Court opinion in *Tatro v. University of Minnesota* can be found at http://scholar.google.com/scholar_case?case=10551366758260227916&q=tatro+v.+university+of+minnesota&hl=en&as_sdt=2,24&as_vis=1]

Ms. Harvey said it would be a worthwhile conversation about the Student Conduct Code, which was the basis of the *Tatro* case. Dr. Craig asked about adding a link to the Student Conduct Code from the social media website with University policies related to social networking.

Professor Buhlmann said that guidelines are useful, but in the end, are the social media postings fundamentally different from hallway conversation? One difference is that there is a record, Ms. Heffern said; people may know that is the case but forget it and they need to be reminded that that record does not go away. Professor Miksch agreed, pointing out that hallway conversations cannot be readily memorialized. It is also easier to end up on the hook legally for social media postings, Ms. Heffern said, and that can affect someone's future. The impact is not just on students, Professor Miksch said; there have been issues raised about staff and faculty who are tweeting during meetings and what they put on blogs.

Professor Flink said that to bring the matter to the purview of this Committee, its interest is how to discuss and inform faculty, staff, and students as they live in a world with social media. There are multiple levels of interface with social media and it could be difficult to maintain a firewall between University business and that which is not. The Committee has no sense of the implications of the information. As an attorney, he is concerned when data never die, but the working environment demands that the institution keep up with technological innovation. Students want deans on Twitter and Facebook; how can the Committee help with guidelines?

Professor Miksch said she is glad the University does not have a firm policy yet because it could start to impinge on academic freedom. The *Tatro* case was decided on the correct grounds—not that there was an entry on Facebook but that there was inappropriate conduct. The difference about social media postings is that they are all there and people can ask for such postings made by faculty and staff. The Committee does not want to chill academic freedom but people must understand what is purely personal, what is public, and when they can exercise their academic freedom. There is a blurry line between the personal and professional in social media, she pointed out; should she accept invitations from undergraduates on LinkedIn? She has to think about that but does not want the University telling her what she can do, especially as the technology landscape is changing so rapidly.

Professor Miksch inquired why Purdue adopted a policy. Ms. Harvey said that Purdue is much more centralized (in terms of marketing communications) than is the University of Minnesota. It is not surprising that Purdue has a policy and plays the traffic cop to a much greater extent than here. Ms. Heffern noted that the Purdue policy is focused on marketing communications, not other areas.

Professor Miksch suggested that the social media site should include a link to the Regents' policy on academic freedom and responsibility, which contains language about when one is speaking for the University and when not. She commented that the academic freedom policy is a cornerstone of the University, more important than a branding policy, for example.

Professor Flink said that one can think about a faculty member's relationship with a start-up company (or his own dance company, in his case, for example), where research is woven into what they do. He has Facebook and Twitter accounts that students and the public interact with, and he uses University laptops to use them, as part of his research. Does the University need to provide boilerplate language for Facebook pages? There could be drawbacks to doing so.

Ms. Harvey said they have talked with University Librarian Wendy Lougee about copyright and whether it is necessary to put the copyright protection line everywhere. Her view is that it is not needed and that the University is in the knowledge-creation business, so it should make everything accessible. Ms. Heffern suggested that the Committee might wish to hear from a University faculty member in the School of Journalism who is also an attorney who is an expert on social media and higher education.

Professor Kimberley said that there needs to be something that reminds people there is a Code of Conduct and that if one chooses to violate it on a social media platform, there will be a record that follows the person. They also need to be reminded that the guidelines provided by University Relations do not constitute a comprehensive list of codes of conduct; it does not, for example, include all the conduct codes for disciplines and schools).

Professor Miksch said that with respect to copyright, the Committee's white paper on academic freedom made the point that disclaimers are not needed on scholarly work; the tension is that they want to let people know that social media postings are not different from putting something in the newspaper—but they don't want to make people so nervous about the postings that they don't use social media. That is why guidelines are helpful.

Professor Flink said the action question is whether there is a difference between social media and traditional media, a question that will be asked for years. For students there is a distinct hierarchy, layers, but the lines are blurring. If something is written down anywhere, however, it is speech. Something written may not violate FERPA, Professor Miksch added, but if a staff member writes something on a private Facebook page that says something derogatory about student, he or she may get fired because the comments can become public. Professor Flink said that social media are a useful innovation in pedagogy but there can be problems if students "flame" each other, and social media makes instructors or the University potentially vulnerable.

Dr. Craig noticed that the links to copyright and intellectual property policies and codes of ethics are on pp. 6-7 of the social media guidelines. They are at the end, and "no one gets to page six." Ms. Heffern said she can change the website to bring them to the forefront

Professor Flink thanked Mses. Harvey and Heffern for helping the Committee focus on the issues surrounding social media. He concluded that the Committee concurred that no institutional policy is necessary at this time.

2. Regents Policy Faculty Tenure Section 12 Procedures

Professor Miksch turned to section 12 procedures and said that section 12.1 encompasses more than discontinuation of programs. Section 12.2 addresses that question.

12.1 Programmatic Change. The University and faculty recognize that changes in academic programs are an essential part of the development and growth of the institution. These changes should be based on academic considerations and on long-term policy and planning, and may be undertaken only after consultation with the faculty, including the appropriate governance structure.

12.2 Faculty Rights And Duties. In the event that programmatic change leads to discontinuation of a program in which a member of the faculty is employed, the University recognizes its obligation to continue the employment of regular faculty in accordance with the terms of their employment, and to continue the employment of non-regular faculty for the term of appointment. In case of fiscal emergency, the provisions of section 11 apply. Regular faculty members who are so retained have the responsibility to accept teaching or other assignments for which they are qualified, and to accept training to qualify them for assignment in other fields. The University has the responsibility to assign such faculty members to responsibilities as closely related to their original field of tenure as is practicable, to allow them time in which to continue scholarship in their original field if they wish, and to recognize scholarly contributions in that field as valuable in assessing their contribution to the University for pay, promotion and other purposes.

In addition to the steps mentioned above, the University has the right to offer inducements to faculty members voluntarily to change fields of study, to seek employment elsewhere, or to accept early retirement.

The Committee has talked about types of programmatic change, Professor Miksch said, and does not want to limit the applicability of section 12.1; there must be consultation. In section 12.2, what is meant by discontinuation? Tracy Smith from the General Counsel's office was very helpful; she saw merger as akin to discontinuation, parallel to what is envisioned in section 12.2. Professor Miksch said that she and Professor Flink will try to flesh out the definition of programmatic change over the summer, on the assumption that any section 12.1 programmatic change requires consultation with the faculty and the appropriate unit governance body.

Professor Miksch posed questions. What fits in discontinuation? Of all programmatic change, what would invoke section 12.2? Professor Buhlmann suggested that a list of examples could help. Professor Miksch agreed that examples could help faculty and administrators see what their responsibilities are.

Dr. Craig suggested the closure of a college. Ms. Scott suggested program growth that requires restructuring. Professor Miksch agreed that programmatic change need not always be downsizing.

Professor Flink noted the language "in which a member of the faculty is employed" in section 12.2 and asked about programs that have no faculty. What if it only has contract employees? Professor Miksch said she believed that would fall under section 12.1, which would require consultation with the appropriate faculty in the unit, and section 12.2 would never come into play. Professor Horgan pointed out that the rights provided in the tenure policy do not cover non-faculty employees. A department leader needs flexibility; the Committee does not want language that says a chair or head cannot change a program even if there are no faculty members tenured in it. But it does want to ensure that consultation takes place.

What about creating a new program, Dr. Craig asked? What about a significant change in enrollment, Professor Kimberley asked? What about a program that does not have students, Mr. Petty asked?

There are gradations of program change, Professor Flink observed, from minimal to program closure. In the case of not accepting new graduate students because of a faculty shortage, the dean should meet with the faculty and say that admissions will be suspended; meeting with the faculty constitutes the consultation required. Is halting graduate admissions for a period of time programmatic change that requires consultation, Professor Miksch asked?

Mr. Petty asked if a decision to stop offering the Ph.D. would be programmatic change requiring consultation. Ms. Scott suggested that under certain circumstances, temporary changes in a program are not that kind of programmatic change. Professor Flink said that a dean may decide not to permit new graduate student admissions until the faculty are replaced, but what about when the college decides not to replace faculty members who are retiring—is that programmatic change that requires consultation? Professor Horgan observed that colleges often change programs through attrition.

Professor Kimberley said that section 12.1 involves common sense. Cutting off graduate student admissions or doubling graduate student admissions, for examples, are both the kind of programmatic change that require consultation. If the steps are more draconian than that, they may amount to program discontinuation. Professor Miksch agreed but said there is even debate over discontinuation. Faculty and administrators must be part of the process but that does not mean the faculty get to say "yes" or "no."

Professor Kimberley said that section 12.2 is the thorny provision. But to make changes falling under section 12.1 without consulting the faculty would be a bad idea.

Committee members continued to discuss various situations that might constitute programmatic change requiring consultation. Professor Wells commented that it is not possible to draw a clear line on when programmatic change triggers the need for consultation.

Professor Miksch said one must think about the remedy when programmatic change rises to the level of section 12.2; faculty members are entitled to remedies under section 12.2, including reassignment. If the faculty member declines reassignment, section 12.4 offers choices.

12.4 Termination Of Appointment. A faculty member who chooses not to accept a reasonable reassignment or retraining opportunity shall receive:

- (a) Assistance in locating other employment;
- (b) A minimum of one full academic year's notice or one year's salary as severance pay in lieu of notice, unless the appointment would otherwise expire earlier.
- (c) Continuation of the University's contribution to health benefits for one year after the date of the termination of the appointment.

In place of the severance payment provided by this section, a faculty member may select another severance program for which the faculty member is otherwise eligible at the time the appointment is terminated.

None of these were offered in the change of General College to a department in the College of Education and Human Development; that was not seen as program discontinuation. Only the closure of the Waseca campus appears to have been seen as discontinuation by the administration. So what is discontinuation, Professor Miksch asked? When one is reassigned, or where a position is not available or there is a position one does not accept? If one can continue work in one's field, Professor Horgan said.

Ms. Scott repeated the point that it is necessary to define "discontinuation." Because of the amount of teaching now done by contract faculty and P&A staff, the language of the tenure policy is inadequate, Professor Flink said. Professor Miksch observed that the appropriate governance structure, under section 12.1, may include only regular faculty or, in other units, may include other groups of employees. Appropriate consultation may vary by college. Professor Flink suggested the Committee may wish to suggest that the Faculty Consultative Committee talk with the P&A Consultative Committee about where responsibility for consultation should rest.

Professor Kimberley summarized three points: The Committee should not develop a list of examples; per Professor Wells, that could make any procedures document even more confusing. Two, the procedures should not include P&A staff but the Faculty Consultative Committee should look at the college constitutions and the language about governing bodies. Three, the Committee should define

"discontinuation" in order to develop procedures that must then be approved by the provost and presented to the Board of Regents and Faculty Senate for information. As for "discontinuation" and section 12.2 procedures, Professor Miksch said, they need a legislative history when "discontinuation" was added to the policy in order to learn what was meant. Professor Flink said that he and Professor Miksch could develop the document over the summer and bring it to the Committee in the fall.

Dr. Craig commented that he is serving on the ad hoc subcommittee to recommend revisions to the policy on Academic Appointments with Teaching Function, the policy that requires colleges to submit personnel plans and to obtain approval of supplemental plans when the ratio of non-regular faculty/P&A/graduate students delivering instruction exceeds 25% of the number of regular faculty. The data indicate there are units that are dominated by P&A teaching staff, Dr. Craig said, and he worried that many units do not include P&As in their governance structure, so consultation would be with faculty only and exclude P&As who have much to offer to the discussion. Professor Flink interpreted Dr. Craig's comment to suggest that "program" in section 12.1 is not linked only to faculty. Professor Kimberley said that is not a tenure-policy issue, it is simply good practice.

Professors Flink and Miksch observed that the language of section 12.2 also needs to be aligned with the language of section 8. Whereupon Professor Flink adjourned the meeting at noon.

-- Gary Engstrand

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