

Academic Freedom and Tenure Committee (AF&T)
April 8, 2016
Minutes of the Meeting

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.

[**In these minutes:** Postdoctoral Representation on AF&T; AF&T May Meeting; Update on Conversation with EOAA; Data for Collegiate Personnel Plans; FCC Statement on Free Speech]

PRESENT: Phil Buhlmann (chair), Kevin Upton, Karen Miksch, Jerry Cohen, Anne Barnes, Naomi Scheman, George Trachte, Ole Gram

REGRETS: Teresa Kimberley, Holley Locher, Geoff Dubrow, Paula Rabinowitz

ABSENT: Jessica Larson, Nathan Shippee, Rebecca Ropers-Huilman

OTHERS: Ben Intoy, post-doctoral associate, School of Physics and Astronomy

Phil Buhlmann, chair, welcomed the committee and asked for introductions.

1. Postdoctoral Representation on AF&T: Phil Buhlmann, chair, welcomed Ben Intoy as a representative of the Postdoctoral Association. Buhlmann then clarified why he felt postdoc representation on the Committee made sense: the name of the committee includes academic freedom, and that includes students. Therefore, students at all levels should be represented. Additionally, he said, overly strict protocols on faculty can trickle down to postdocs and affect academic freedom. The Postdoctoral Association has a representative on both the SCFA and the Research Committees, added Buhlmann, and it would be appropriate to have representation on this committee as well.

Professor Jerry Cohen stated that one of the roles of a research university is to mentor postdocs, as the postdoctoral years are some of the most important in the careers of researchers. Part of that mentoring would include participation in governance. He supported their participation on the committee. He added that the University was once considered one of the premier postdoc mentoring institutions, and while that is no longer the case, efforts such as this should be made where they can be.

The Committee voted unanimously to include a postdoctoral representative on the committee.

2. AF&T May Meeting: Buhlmann asked if the committee would be available to move the next AF&T meeting from May 6 to May 13 to accommodate scheduling conflicts. The meeting was moved to the 13th, at its usual time.

3. Update on Conversation with EOAA Office: Buhlmann provided an update on the meeting between Kris Lockhart, associate vice president, Office for Equity and Diversity (OED); Kim Hewitt, director, Equal Opportunity and Affirmative Action (EOAA); Professor Karen Miksch;

and himself. The meeting was convened to discuss concerns of the Committee regarding the timeline of EOAA investigations, the stigma attached to those involved in an investigation, how individuals are informed of an investigation, and the current appeal process as it is described on the EOAA website. He said that both Hewitt and Lockhart were attentive to the concerns of the committee and that the meeting went well. He relayed that Lockhart would like to further the discussion. He will schedule another meeting with both Hewitt and Lockhart so the conversation can continue.

Miksch added that the EOAA office is adding more information to their FAQ section to address some of the Committee's concerns. And, she said, if an individual involved in an investigation requests it, the office is able to send a letter (with details redacted) that could go into one's tenure and promotion file stating that an accusation had been found to be unsubstantiated.

Kevin Upton said his concerns revolved around procedures and appeals. He stated that in conflict resolution matters, the director's position is neutral. Every decision is appealable to the provost's office, and an individual can get an independent ruling from the Office for Conflict Resolution. Additionally, he said, every time an individual receives a decision, they get a link to policies, as well as a timeline. When it is time to "adjudicate," a panel makes the decision and that decision is also appealable. Upton stated that in EOAA cases, an individual does not know the timeline, or how to appeal. Professor Marti Hope-Gonzalez confirmed that for Judicial Committee matters, they also have a fixed timeline that the individual is made aware of.

Buhlmann replied that the appeal procedure had been his primary concern as well. He said that Lockhart and Hewitt shared that they do address unofficial appeals all the time, and that conversations happen throughout the process. But he agreed that the timeline should be more formal in nature. He added that some of the cases the EOAA office deals with are complicated, and might involve the legal system. In those situations, they cannot disclose certain pieces of information. Miksch added that Lockhart and Hewitt recognized the need to work with the Committee. She suggested that perhaps some sample problematic scenarios related to academic freedom and tenure could be posed to them, which would help the EOAA staff understand better the Committee's concerns.

Cohen added that he believes the timeline is a significant concern and should be addressed because if the administration has the ability to control a timeline to their benefit, it creates an unequal balance of power. Delays that are fine for a University might be harmful for a faculty member, he said. Professor Naomi Scheman agreed

Miksch said that EOAA is now the responsible office for all sexual assault and Title IX cases at the University, which is new for them. She thought that perhaps the FCC or SCFA would want to weigh in on what some of the deep-seated issues might be, and to urge for more resources to be allocated to EOAA, since they are staffed at the same level as they were prior to assuming these responsibilities. Miksch concluded by adding that the Office deals with more student-to-student cases than those involving faculty.

4: Data for Collegiate Personnel Plans: Ole Gram, assistant vice provost, Office of the Vice Provost for Faculty and Academic Affairs, updated the committee on the work the office has

done compiling data reports that would be useful to colleges as they prepare their collegiate personnel plans. He said that previous reports could be confusing because they did not necessarily conform to the questions being addressed by the [Academic Appointments with Teaching Function] policy.

Gram provided a draft of a data display showing the ratio of tenure-system faculty to other individuals with teaching functions in a given department. In developing the data displays, Gram said, the office sought input from members of the committee. He added that the information was intended to show as clearly as possible the data that was pertinent to answering the questions called for in the policy. In response to the committee's requests, Gram also provided data that could be sliced in different ways. He added that the Vice Provost's office welcomed feedback about other types of data that the committee might find useful for future discussions, such as the kinds of courses taught by different appointment types. To that end, Gram showed an example of a "Who Teaches What" report that former Vice Provost Arlene Carney had presented for discussion with various senate committees. He stressed that this kind of report would require a great deal of contextualization to be useful, but that the office was happy to work on an updated version for a separate discussion with this and other senate committees.

Gram said that the purpose of the personnel plans is for colleges to formulate and articulate the appropriate types of duties carried out by tenured faculty and those carried out by academic professional staff with teaching functions and non-tenure instructional faculty. Who is appropriately trained to teach students in different courses? Additionally, he said, the plan works to assure that broad consultation takes place in development of new and revised academic personnel plans.

Cohen said the committee is not the body to investigate the credentials or appropriateness of any potential hire. But there is an expectation among students that they are being educated primarily by 'knowledge creators.' The process of transferring scholarship to students is an important role, he added. If faculty are focused primarily on pedagogy, they are valued, Cohen said, but that should not be the dominant model; that is why the University has the 25% rule.

Gram replied that the policy clearly states this. The policy also requires that colleges articulate the appropriate types of teaching by different appointment types. For example, he said, a college or department would articulate the kinds of courses that it allowed graduate students to teach.

Buhlmann added that Vice Provost Rebecca Ropers-Huilman and Gram are working on a cover letter to accompany the data to share with the units working on their plans. The letter will state that the reports will be shared every year. It will also include collegiate and departmental guidelines for various teaching categories, and principles guiding the appointment of non-tenure-system instructors. Gram said that Vice Provost Ropers-Huilman would share the letter with the committee for comment when it was finalized.

Upton observed that, if the reports were correct, over half of the 1000-level and 2000-level classes on the report were taught by non-tenure track faculty. This would seem to indicate that the role of non-tenure track faculty at the University is not complementary, he said. Gram demurred and notes that these particular data are samples only, not up-to-date, and not fully

accurate. He shared them with the committee for feedback on ways of presenting data that the committee may want to see in the future.

Miksch said the job for the committee was specifically the supplemental plan: why a unit's non-tenure-track faculty count surpasses 25%. She thought the data broken out was quite helpful, because often a researcher may be counted in the faculty line, but they are not in the classroom because they are doing research. She found knowing who teaches what to be very informative.

Scheman wondered about the narratives behind the data and who would write the explanation for the data. Will the real reasons for exceptions to the 25% rule be shared, she wondered, or would the individual creating the budget justify their choices?

Cohen said that what is missing is the requirement for faculty consultation in the collegiate plan, and how that is being documented and reviewed. Gram reiterated that this was the third part of the requirement of the policy, and indeed some colleges do a great job explaining what sort of consultation took place in their hiring, and others do not address that at all. Upton pointed out that when working on the draft of the supplemental plan template the committee was also concerned with onboarding instructors, they were not concerned solely with the numbers but also the quality of the instructors brought in. Buhlmann said that piece was not being forgotten, but the committee was not quite at that point. He thanked Gram for his work acquiring and parsing the data.

5: FCC Statement on Free Speech: Buhlmann reminded the committee that the draft of the FCC statement was discussed extensively by that committee, at which point they decided to hand it off to other committees for comment. They sent it to the Student Senate, the Office for Equity and Diversity, and also AF&T, he said. The public deadline for comment had passed, but Buhlmann thought the committee should still discuss it.

Fifty comments were shared with the FCC said Buhlmann, and the vast majority of comments were simply a variation of, "yes free speech is great." He added that Dale Carpenter, who authored the statement, had offered to attend an AF&T Committee meeting to discuss the document, but Buhlmann felt it was better for the committee to discuss it amongst themselves at this time.

He said that the concerns he and co-chair Teresa Kimberley shared were that, on one hand everyone agrees with freedom of speech, and it is fine to put a document out. They acknowledge that there is a difference between academic freedom and freedom of speech and they agreed with separating the two. However, they felt that "every right comes with a responsibility," particularly in the case of freedom of speech. If a document is going to be sent out to the campus, he said, the responsibilities should be equally presented in that document. He and Kimberley thought some of the language was harsh; certain hate speech is protected under the constitution.

Buhlmann said when he looked at the comments that were critical of the document, they addressed the first sentence of Principle 2: "Free speech includes protection for speech that some find offensive uncivil or even hateful," but in the second to last sentence of the document almost

the exact same language was used, positing a different position: “The University does not condone speech that is uncivil or hateful, and University official should make this clear.” If hateful is used, it should be spelled out more explicitly, said Buhlmann, and what would happen if a faculty member uses language that is considered hateful.

Scheman bought up the the anti-Garcetti statement, a finding by the Supreme Court which, in essence, stated that the government gave universities the right to punish people for speaking against University policy. She said that the University of Minnesota chose not to adopt this stance; they believed that academic freedom protected that right. She said the University is regarded nationally for the stance the administration took. She added that if the University is going to have a statement like [the FCC academic freedom statement] and it states that horrible speech is protected, that is fine, but horrible speech could also be actively countered with visible, strong administrative words and resources that are not content-neutral. The University can affirmatively put a heavy hand on one side of that scale that is not required to be content neutral, she thought. Buhlmann agreed, and added that there was an imbalance in the document between this point and the general idea of freedom of speech. He felt that the statement read a bit like a statement from a state attorney. It defends freedom of speech but was imbalanced.

Scheman added that the word uncivil is a deeply racist and problematic term, which has been pointed out by colleagues in the American Indian Studies department, and elsewhere. Aside from its problematic history, she said, it also makes it sound like the problem is a problem of manners (politeness).

Buhlmann added that the statement was written in a tone suggesting an “us” against the administration, and that freedom of speech is a much broader conversation. For example, what should the University do when there are two opposing student groups? Why is the document so focused on the administration? He believed the document would be helped with some context: what is the document for? Is it for the mailboxes of all the administration, all the offices? Or is it a document to generate conversation around the idea of freedom of speech?

Cohen added that the document was not created in a vacuum. The climate propelled it. He said the document tried to control something that is wonderful for its lack of control. People have a right to speak on the campus, he said, and people have a right to protest that speech. But both sides should be given opportunities to be heard. The critical factor is that discourse in important, and he did not think the document covered that.

Scheman said that, rather than figure out what statement should be made by the administration to address any specific incident – such as ‘take down those flyers’ in the case of the Hebdo event - ask those who found the flyers problematic to have the opportunity to be heard as well. In this example, she said, ask the Muslim students how the administration could help get their perspective heard.

Professor Anne Barnes asked what the motivation for the document was. She felt it read as a reactive document rather than a proactive one. She added that she did not see much about the importance of freedom of speech to the educational mission of the University; rather than the negative tone it takes, it should provide an affirming tone about why freedom of speech is

important. Miksch added that a lot of the document sounded like compliance, more of a regulatory approach, versus discussing the importance of freedom of speech, and the right for students to learn from it.

Cohen said freedom of speech is a complicated thing for administration, especially those funded by the state, answerable to the legislature. He agreed that the document had a tone of managing free speech. Scheman added that the document posed as protection and protecting people from being offended or hurt, but what students need in such a situation is empowerment. Cohen, added that yes, it was important to be exposed to ideas, and it is important to have platforms on which good people with other ideas also have a stage.

Miksch wondered about lines like “except if it was unprotected speech” or “unless it was discriminatory.” She felt these lines were problematic because individuals do not always know what that means, or what is discriminatory. She was not clear on the intent.

Barnes added that she thinks there is a framing in the document, particularly toward the end, that somehow the idea of freedom of speech and the work of creating a climate of mutual respect have to live contrarily, and that they do not. The document should express a belief in and support of free speech, and also support a climate of mutual respect.

Upton proposed that Buhlmann provide a draft on the criticisms and recommendations voiced by the committee. Buhlmann agreed pass along feedback to FCC.

Hearing no further business, the meeting was adjourned.

Patricia Straub
University Senate Office