

## Minutes

**Academic Freedom and Tenure Committee**  
**Friday, January 27, 2006**  
**9:30 – 11 a.m.**  
**510 Morrill Hall**

Present: William Durfee (chair), Arlene Carney, Tracey Anderson, Tom Clayton, Nancy Ehlke, James Farr, John Mowitt, G. Edward Schuh, Jennifer Westendorf, Jianyi Zhang

Absent: Ronald Siegel

Guests: General Counsel Mark Rotenberg, Senior Vice President Robert Jones

[In these minutes: (1) Academic Freedom Policies, (2) Post-tenure review processes]

Professor Durfee convened the meeting at 9:30 a.m. He reviewed the action items from the last meeting, which included an e-mail to all faculty. He asked the committee if they still wanted to do this, the committee responded yes. Professor Durfee said he would draft a statement and asked for suggestions for the statement. Professor Clayton suggested attaching the Academic Bill of Rights to the statement as he felt it was important for people see it. Professor Durfee said it would be a broadcast e-mail and asked how it should be titled. Professor Westendorf suggested keeping it short and making people aware that the committee exists and its purpose. Professor Durfee said he would try to send it before the next meeting.

### **1. Academic Freedom Policies**

Professor Durfee welcomed Mark Rotenberg from the Office of General Counsel. Mr. Rotenberg began by saying that academic freedom is an important topic at institutions around the country, and noted that the committee had added "Academic Freedom" to its title to state its role at the University. Professor Durfee added that it is important to have a place to discuss issues of academic freedom and that the committee had had vigorous discussion about what academic freedom means. He noted that academic freedom issues could relate to legal issues, particularly in the event the legislature passes laws regarding academic freedom. Professor Durfee asked Mr. Rotenberg about the legal implications of the academic freedom statement.

Mr. Rotenberg stated that questions about the tenure code and legal status of the term "academic freedom" have often arisen, especially as of late. He said that his office had a long-term perspective on the issue, and he offered several observations. He cited the history of education and academic freedom, and said that academic freedom was essential to higher education. It did not exist in its current vigorous form before the 20<sup>th</sup> century, and through the 20<sup>th</sup> century, the expansion of public higher education dramatically expanded the rights of people to express themselves. Thus, the principles of academic freedom became more robust. Mr. Rotenberg highlighted two essential components of academic freedom: the rights of students and faculty as individuals, and the independence of the institution from political pressure. He went on to describe the evolution of academic freedom principles, and said that the University of Minnesota has a well-developed concept of autonomy and independence from legislation compared to other institutions.

Professor Durfee asked where the University stood compared to other institutions, in terms of the Regents' statement. Mr. Rotenberg replied that the University of Minnesota is well positioned to defend itself from legislative or gubernatorial attacks. He added that public attacks of the institution will continue, as well as attacks from other quarters, and it is necessary to maintain a robust atmosphere of inquiry. Professor Schuh asked how often the University has had to use the autonomy provision, and Mr. Rotenberg

responded twice over the past ten years. He pointed out that more often, the university defers to faculty. He cited examples that, in many cases, when tenure is denied or revoked, the plaintiff cites discrimination. The University uses the autonomy clause which indicates that the courts should not second-guess the decision of the institution. Mr. Rotenberg said the University usually wins such cases, with the courts saying that it is up to faculty to decide who should be on its faculty and that is where the principles of autonomy usually come to bear.

Professor Zhang asked about tenure cases in which individuals sued the institution. Mr. Rotenberg said that such cases are usually litigated outside the university and when such cases are contested inside the university, it is likely to be litigated outside the University. Professor Zhang asked what the committee's role and function was in those cases. Professor Durfee clarified that the committee deals with policy and changes in the tenure policy, and that the Senate judicial committee hears the cases. Professor Farr asked about instances in which a faculty member is legally attacked, defamation or harassed and if the defendant would apply for help through the General Counsel's office. Mr. Rotenberg said that his office would investigate the case and if warranted, defend the faculty. Professor Westendorf asked about incidences occurring outside the University, to which Mr. Rotenberg replied that if it is outside the scope of the person's employment, the request for representation through the general counsel's office would be denied. However, Mr. Rotenberg noted that a majority of requests are granted, and the University has other resources and means to support faculty beyond the scope of his office. He also added that the University sought to give a full-bodied expression of academic freedom and ensure that the principles are publicly supported. Mr. Rotenberg reiterated that their mandate was to support the prerogatives of the institution. He noted that most of their work was defensive, and that the University does not represent person in private interests when it is not congruent with the University's mission, nor do they deal with disputations with faculty.

Professor Mowitt cited the academic bill of rights and asked to what extent it is vulnerable to interpretative challenge. He asked questions regarding how it affects students vs. faculty and at what point the autonomy provision kicked in. Mr. Rotenberg cited legal precedents and said that if there are ambiguities to the clause, the tactic is to argue the ambiguities. In terms of the issue of students vs. faculty, he noted that it primarily comes from a students' rights perspective and that the students' rights movement had grown considerably in the past twenty to twenty-five years and needed to be seen in that context. The policy comes from a more student-centered notion, and the need to respect and appreciate that students are embodied accordingly. Professor Mowitt asked if the University was protected by the doctrine and if the autonomy doctrine is becoming more vulnerable. Mr. Rotenberg noted that this was an emerging issue, and that the autonomy doctrine may not protect the University from student claims and noted to Professor Durfee's concern that the documents don't speak as clearly to student interests as much as they would like. He predicted that there will be more pressure for formal documents to give more voice to student issues.

Professor Mowitt asked where in the Regents' policy it spoke to protecting students' rights. Mr. Rotenberg said the policy does so indirectly with oblique references to students' rights. Professor Farr asked about a student grievance policy and Mr. Rotenberg clarified that that was for students being accused of rule infractions.

Professor Durfee thanked Mr. Rotenberg for the information he presented to the committee.

## **2. Post-tenure Review Policies**

Professor Durfee updated the committee on post-tenure review issues and welcomed Vice President Jones to the meeting. Professor Durfee noted that post-tenure review had been instituted in 2000-01, and that it was appropriate for the committee to review and update the policy accordingly. Dr. Jones distributed an update which gave background on the formation of post tenure review, and highlighted summary data in the document. He noted the goals of post-tenure review and implementation, and said that

the post-tenure review process was introduced as a part of the 1997 revision of the Regents' Policy on Faculty Tenure. It is a peer-driven process conducted at the departmental or other academic unit level, with primary oversight by the unit heads and deans. Dr. Jones cited other institutions that have implemented post-tenure review processes, and said that the University had followed standards, policies and practices as established by the American Association of University Professors. Dr. Jones stressed it was a misperception that the process was a means of getting rid of undesirable faculty; rather, it is a mechanism to maintain academic vitality, foster continuous improvement and recognize peer contributions. He noted that it is also part of an accountability process to encourage faculty to continue to do their job to the best of their ability.

Dr. Jones continued by reviewing the structure of the process, stressing that everyone had to go through post-tenure review, and that some units could review 1/3 of its faculty on a rotating basis. The professional development plan was created as a remedy for unsatisfactory performance. The dean then could make subsequent recommendations, such as a reassignment of duties or reduction of salary. If that is insufficient, then the dismissal process is effected.

Dr. Jones also noted that the tracking process had been underway since 1999, and that 92 to 93 faculty are reviewed a year. Ninety-eight percent of these were found to be performing at a satisfactory level. He noted that the Regents wondered if the process was effective with such a high percentage. Dr. Jones highlighted some factors in considering that concern. The numbers do not reflect the six to eight faculty who retire rather than go through the post-tenure review process. Also, the process is not executed exactly the same way across colleges. In addition, the University has a rigorous promotion process in the first place. Dr. Jones added that the post-tenure review process does provide a degree of accountability for the University, and it provides the opportunity to put into place a professional development plan for the faculty member. He added that at other institutions there is a gap between how valuable administrators and faculty feel the process is.

Vice Provost Carney added that she was struck by how many units had appended their review processes as indicated in 7.12 statements. She said variances should be expected but that each unit's plan should have clarity. Some units have stated clear objectives as to what constitutes appropriate scholarship for faculty while others are more general. Vice Provost Carney noted that if the language is ambiguous in each plan, it allows for wiggle room, but they do need to state what the minimum amount of scholarship is acceptable. In addition, there needs to be consensus among faculty about this, as some language is too ambiguous. Most 7.12 statements have more specific language about promotion among professorships, and she stressed that the appropriate values and criteria need to be established in the statements. Dr. Jones agreed, and said that post-tenure review does allow for a remedy for situations, and he stressed that it is not an easy process for dismissal. He added that a critical issue is how to deal with research being a part of everyone's job duties. Vice Provost Carney said that one unit identified a minimal research component to ensure that people were engaged on some level of scholarship.

Professor Mowitt said that the language in 7.12 statements will always have the taint of ending someone's job, so it will always be phrased ambiguously. He noted that there should be a positive aspect noted in the statement, stressing the positive aspect of the process. Vice Provost Carney cited an example in her career which was an egregious abuse of the tenure which then tainted the view of faculty as a whole and said it might be reasonable to ask for statements to respond to requirements. Vice Provost Carney acknowledged the dilemma of the language being too vague vs. being too specific, and cited the variance in clarity. Professor Mowitt asked if 7.12s are intended to flesh out provisions in the tenure code and Vice Provost Carney said yes, and that this committee would be valuable in discussing further issues of the 7.12. She said that many task forces had brought up 7.12 issues in their reports and noted that many would like to see them be a much more robust document in addressing the issues.

Professor Durfee asked if the post-tenure review statements were drafted by college and Dr. Jones said that they were approved by deans, then submitted to provosts to review and approve. Professor Durfee thanked Dr. Jones and Vice Provost Carney for the information they presented.

Professor Durfee adjourned the meeting at 11 a.m.

-- Mary Jo Pehl

University of Minnesota