

Minutes*

Academic Freedom and Tenure Committee
Friday, October 6, 2006
9:30 – 11:00
300 Morrill Hall

Present: Tom Clayton (chair), Tracey Anderson, William Doherty, Candace Kruttschnitt, Karen Miksch, Terry Simon, Jianyi Zhang

Absent: Arlene Carney, Carol Carrier, James Farr, Tina Huang, John Mowitt

Guests: Vice President Timothy Mulcahy; Provost E. Thomas Sullivan

[In these minutes: (1) recognition for faculty entrepreneurship in the tenure code; (2) an academic freedom issue; (3) section 7.11 of the tenure code]

1. Recognition for Faculty Entrepreneurship

Professor Clayton convened the meeting at 9:30 and welcomed Vice President Mulcahy to discuss recognition for faculty entrepreneurship. This item was scheduled as a result of discussion at the Committee on Finance and Planning about faculty work in technology transfer, at which meeting Dr. Mulcahy was recorded as suggesting that "it was important to recognize these contributions when faculty were up for tenure, promotion, or merit consideration and that this issue needed to be discussed."

Dr. Mulcahy said there had been considerable change since those minutes were written. They have significantly reworked the Patents and Technology Transfer organization and have implemented a process called "Seek, Nurture, Launch." There were reviews of the patent and technology transfer process at the University, which concluded that while the University is doing well compared to its peers, that success is largely contingent on a single "technology," the HIV drug Ziagen; otherwise the University would be in the middle of the pack, not outstanding. Royalties and patent income provides a lot of discretionary funds (about \$15 million to his office, one-third of the total, of which much goes to student support and the remainder to research infrastructure and scholarly activities). It is an important resource that he would like to maximize as much as possible.

There is recognition that many faculty may not be aware of the potential of their work or how to get it into the system. They have hired technology liaisons (one for the health sciences, one for agricultural fields, and one for the physical sciences and engineering) who have been on the job about six months. They go out to faculty, meet in labs, help faculty access the system and identify ideas that might be valuable (the Seek part of the effort). They also help faculty link with each other across departments and colleges.

Once a promising idea has been identified, the "Nurture" element of the effort involves University help in optimizing its development. It is expensive to go through the patent and licensing process, so the University must be selective in where it invests. Outside consultants have advised him

* 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.

that the University relies too much on internal expertise and does not have sufficient real world business expertise. As a result, they have an IP Commitment Committee (chaired by Vice President Muscoplat and including administrators in the licensing and venture capital area, a pool of faculty, and a pool of external experts who volunteer their services) to help the University. This committee reviews intellectual property disclosures to help determine if they are significant enough to invest time in patenting. Some intellectual property may not have a big market but may be important to society and the committee may say that something should be advanced for the public good. The committee might also identify something as not well-enough developed but promising and return it to the faculty member with advice on improving it—and it may offer an innovation grant, basic research funding to advance something to the point where a venture capital company will invest in it. The University has a venture center that provides an opportunity for faculty start-ups to get going and find investors. They also have a small pool of funds that can make a loan to a company to help it get going.

The "Launch" portion of the process is more active in letting the world know of technologies in the University's portfolio.

In terms of the work of this Committee, Vice President Mulcahy said, he has heard from faculty that none of the commercialization activities are ever considered when decisions about tenure, promotion, and merit are being made. He said he encourages this activity among faculty but it is difficult to make the case that they should spend time on it when the University does not acknowledge it. His point is that entrepreneurship and technology transfer should be considered an element of scholarly activity. It would be helpful to have language in Section 7.11 and in the department 7.12 statements: in addition to teaching, research, and service, technology transfer and commercialization of intellectual property should be considered eligible categories of research. He emphasized that he was not saying a department should just count patents and grant tenure or promotion if there are no publications in the candidate's record. The decisions need to be made at the local level; these kinds of activities may be more prevalent in IT than in CLA, but it would help faculty morale if the statement allows the activities to be given consideration. He is not suggesting what weight they should be given.

Dr. Mulcahy distributed copies of an article from The Chronicle of Higher Education about expanding the factors to be taken into account when evaluating a candidate for tenure at Texas A&M. Patents will now count, where applicable, as will quality of patient care, where applicable. Public and university service is also included. Dr. Mulcahy said a general statement in the tenure code would make it easier to talk with faculty about technology transfer; it is a form of scholarly activity that has not normally been included in University consideration of a candidate for promotion or tenure.

Professor Kruttschnitt said that the article about Texas A&M reflects a furthering of the commercialization of higher education. She said she understands the need for additional revenue; what do Berkeley and Stanford do, for example? And how does technology transfer fit with the goal of being in the top three? Dr. Mulcahy speculated that technology transfer is probably not in the tenure guidelines at the two universities—but their websites make the case that it is critical for advancing their mission. Technology transfer is also important for the top-three goal, not just because of the increased revenue but also because University recognition of the activity may be the only way to get discoveries into a form that benefit everyone. The University cannot do this. In this economy, people must feel they can make a profit from a discovery, but the University need not emphasize commercialization of research over research, teaching, and service. The revenue stream is small in the context of the University's total budget, so it does not distort the mission, but it is important because those are unrestricted funds that the

University can apply where there is need. If the University wants to enhance interdisciplinary work, provide access for students, or pay for infrastructure, this is a valuable pool of funds. Recognition of technology transfer efforts is in line with achieving the mission. Dr. Mulcahy emphasized the point that the University will not do anything to force or coerce people into participating in technology transfer efforts. Academic freedom requires that faculty study what they wish. If, however, they choose to work on technology transfer, which can benefit the University, the University should at least acknowledge the effort as credible work.

Professor Doherty said this made sense to him. Professor Anderson said that it seems to be in keeping with the land-grant mission. Are these activities more likely in the land-grant universities? Dr. Mulcahy said that the land-grant universities may be more defensive about technology transfer than the private institutions and those that are not land-grant. The land-grant universities were founded to promote the local economy (especially in agriculture) and educate the local citizens. Patents and licensing were not a major consideration at the time. There is an assumption, however, that if something comes from a land-grant institution, that something should be given away, not patented and licensed. A patent is an important concession to the natural friction between higher education and business: it is the University's business to publish—which he defends vigorously—while companies need proprietary and confidential information in order to protect their investment. The University gives companies a limited amount of time to secure that protection, "but we will publish." The University must conform to reality, and a patent is not a perfect union between business and higher education, but he believes the activity is an important part of fulfilling the obligations of the University's charter.

In terms of the top-three goal once again, Dr. Mulcahy said that a specific numeric endpoint will be difficult to capture. What that goal means, among other things, is that the University is a national leader. Others will look at including technology transfer as one of the criteria for professorial advancement if the University of Minnesota does so.

Professor Doherty said this is all part of modernizing the tenure code, as is recognition for work in public engagement.

Professor Clayton said the Committee would take up the suggestion from Vice President Mulcahy. Later in the meeting, the Committee concluded that the current version of the language of the footnote amplifying on the meaning of "scholarly research" should be sufficient: "Scholarly Research' must include significant publications. These may be supplemented by the development of new technology or scientific procedures, and other activities that lead to the public availability of innovative products, practices, and ideas that have significance and value to society."

2. Academic Freedom Matter: University Theater Play

Professor Clayton welcomed Provost Sullivan to the meeting. Provost Sullivan said that before the discussion turned to the tenure code, he wished to bring up an academic-freedom matter. The University's Department of Theater Arts and Dance is putting on a play ("The Pope and the Witch") that has caused controversy and generated opposition from the Catholic Church. The Archbishop has written a letter condemning universities that put on the play. The play has been out for about a year, and has received great critical acclaim, but it is controversial and there is pressure on the University to stop it. Does this Committee wish to issue any kind of statement, he asked? He said that Dean Rosenstone could no doubt provide information to the Committee if it wished.

The Committee agreed it would request information and communicate via email over the next few days and would issue a statement in the near future.

3. Tenure Code Section 7.11

The discussion moved to Section 7.11 of the tenure code; the Committee began with this version, which reflects several changes made as a result of various meetings earlier in the week involving, at different times, the Provost, Vice Provost Carney, FCC Chair Professor Carol Chomsky, and Professor Clayton:

7.11 General Criteria.

The basis for awarding indefinite tenure is the determination that the candidate has established and will continue to add to a distinguished record of academic or artistic achievement that is the foundation for a national or international reputation. This determination is reached through qualitative evaluation of the candidate's record (fn 4) of scholarly research (fn 5) or artistic work, teaching (fn 6), and discipline-based service (fn 7). The relative weight of individual criteria may vary in different academic units, but the primary emphasis must be on demonstrated scholarly or artistic accomplishment and on teaching effectiveness. Discipline-based contributions to interdisciplinary activities, to public engagement, and to international activities and initiatives are valued by the University and may be taken into consideration in evaluating the candidate's satisfaction of criteria. All faculty members, tenured or not, are expected to fulfill the citizenship obligations of the academic community, which includes service to the department, college, and university. Academic units should have only modest citizenship expectations for probationary faculty. The awarding of indefinite tenure presupposes that the candidate's record shows strong promise of achieving promotion in rank within the University.

(fn 4) The process for making this determination is described in Sections 7.3 through 7.6.

(fn 5) "Scholarly Research" in this context means publications. They may be supplemented by the development of new technology or scientific procedures, and other activities that lead to the public availability of innovative products, practices, and ideas that have significance and value to society.

(fn 6) "Teaching" is not limited to classroom instruction. It includes other forms of communicating knowledge (to both registered University students and persons in the extramural community) as well as supervising, mentoring, or advising graduate or undergraduate students whether individually or in groups.

(fn 7) "Discipline-based service" means outreach to or engagement with the local, state, national, or international community based on the candidate's academic expertise. It does not ordinarily include administrative service to one's department or college, or the University. Service standing alone without a distinguished record of research and teaching is an insufficient basis to award tenure.

Also on the table were two proposed modifications to the language:

(1) In the text, the language reads "primary emphasis must be on demonstrated scholarly or artistic accomplishment and on teaching effectiveness." One alternative that might be considered is this: "primary criteria to be used in that evaluation are effectiveness in teaching and professional distinction in research," which is the current language of the tenure code. Shortly into the meeting, the Committee agreed with Provost Sullivan that to use "professional distinction" might be seen as more applicable to professional schools and that some might not see it as equally appropriate for faculty in colleges such as CLA.

(2) Professor Clayton said he would like to see the following language incorporated somewhere in Section 7.11, modified as deemed appropriate by the Committee: "What the University of Minnesota seeks above all in its professors is intellectual distinction and academic integrity." Later in the meeting the Committee discussed Professor Clayton's suggestion. These two characteristics, Professor Clayton said, are antecedent to all of the other criteria proposed for the code; they are the sine qua non from which everything else follows. The Committee agreed. So did the Provost, before he had to leave the meeting, and suggested it be a one-sentence preamble. He surmised that the Board of Regents would also like it.

Provost Sullivan said he was satisfied with the draft as it lay on the table now. The Committee again deliberated specific parts of the text.

-- Professor Anderson said she was glad to see the language about campus citizenship included. The Provost had indicated before the meeting that he also thought it was a positive addition.

-- Professor Anderson reiterated her dislike of the language "that is the foundation for a national or international reputation." The earlier part of the sentence says enough, there should not be a geographic description of reputation, and the provision could do damage to consideration of faculty at the Morris campus, whose primary mission is outstanding undergraduate education (in addition to research). Provost Sullivan said that appropriate accommodation for the mission of the Morris campus can be made. Professor Simon said that a department chair expressed a preference that the "national and international reputation" be removed. Provost Sullivan explained that he believed the phrase to be an important anchor that helps evaluate candidates' records and that it aligns with the University's strategic-positioning goals. Letters to external reviewers, for example, request assessment of the candidate's national or international reputation; this is not a major culture-shift and it is largely understood to be part of the standard used to assess candidates for tenure and promotion, even if it has not been written down. Professor Doherty said that a lot of the 7.12 statements refer to this language, and while it is vague, he cannot think of anything better—and it should not be left out. Provost Sullivan said that "foundation for" is a good addition, because sometimes in the humanities, for example, someone may have written a great book, but it is too new to have actually created a national or international reputation. Professor Clayton added that an achievement that is a foundation for something does not require that that something be accomplished (as *is* or *will* be required for promotion to Full Professor).

-- Professor Doherty objected to the phrase, in (fn 5), "'Scholarly Research' in this context means publications." "Means" is strong, it is an equal sign. "Means" says that publication is research and that everything else in that footnote is not. Provost Sullivan said the previous language was changed because as it read, intellectual-property patents (for example) would be sufficient for granting tenure even if there were no publications. That should not be, he said; the core element is publication, and other intellectual property can be considered but it alone is not sufficient to grant tenure. Professor Doherty agreed that no

one should be awarded tenure without a significant body of published work and suggested that the sentence read "Scholarly Research must include significant publications. . . ." Publication is then not the entire definition. After brief discussion, the Committee accepted Professor Doherty's suggested language.

-- Professor Miksch recalled that in the original strategic-positioning documents, diversity was given a high value, but it has not been included here. Is it subsumed under public engagement? Provost Sullivan said he was concerned from a legal standpoint that if diversity were included among the criteria for tenure, those who are not passionate about it or those who may oppose it would be put at a disadvantage—which becomes a First Amendment issue. Diversity has been identified in strategic-positioning documents as important, he is deeply committed to it, and it will continue to be underscored.

-- Professor Doherty asked if colleges are asked to develop statements parallel to the departmental 7.12 statements. They are not, Provost Sullivan said; the tenure code speaks to departments, not colleges, because the expertise resides in the departments. Deans review the 7.12 statements. Professor Doherty said his college is developing a values statement intended to guide the 7.12 statements; the Provost said that colleges were free to do that if they wished. He suggested that they review the 2/1/05 statement on values that is part of the strategic-positioning effort (which can be found at http://www1.umn.edu/systemwide/strategic_positioning/pdf/Strategic_Positioning_Report.pdf).

-- When will these new provisions apply to the faculty, Professor Anderson asked? Provost Sullivan said that his office, the General Counsel, and the Board of Regents agree that no one will be caught in the middle; there must be sufficient notice so that faculty members can make a choice. They will be given a two- or three-year window in which to choose whether they wish to rely on the old or the new language.

-- What is the timeline for going from Associate to Full Professor, Professor Anderson asked? That is negotiated in the department, the Provost said; it is the candidate who triggers the process. A conversation must occur so that everyone involved is clear about which tenure-code language will be used to judge the candidate. This is true, he said, for both the tenure decision and the promotion from Associate to Full.

Professor Clayton thanked the Provost for joining the meeting.

-- Professor Zhang observed that the point of the tenure code is to protect academic freedom in teaching and research; does the language in the proposed 7.11 ("Discipline-based contributions to interdisciplinary activities, to public engagement, and to international activities and initiatives are valued by the University and may be taken into consideration in evaluating the candidate's satisfaction of criteria) not go beyond what is needed for the protection of academic freedom? He noted that the Committee had been provided a description of changes in tenure criteria at Texas A&M that now include, "where applicable," patient care, and patents and commercialization of intellectual property. Professor Clayton agreed that the draft 7.11 language establishes more specifications; the question is whether they are excessive or legitimate. He concluded that this section of the code sets the qualifications for tenure and does not deal with issues of academic freedom (which are dealt with elsewhere in the code). Professor Doherty agreed with Professor Clayton and said while there is more specificity, that is because new considerations have emerged in the last 20 years that were not present when this code language was drafted; there are now things the University says it values—interdisciplinary activities, public engagement, international activities—that it had not identified before. These qualifications also help to

prevent the abuse of academic freedom, Professor Clayton added, such as academic integrity, which is what makes academic freedom possible. The document recognizes what faculty do, Professor Anderson said.

Where does the list end, Professor Kruttschnitt asked? And what if it changes in ten years? "Then the code could be amended," it was pointed out. Professor Doherty said he has had faculty ask him why they should give any time to technology transfer or the other items mentioned in the draft language when there is nothing written down in the code about them. Saying that they are important and to be recognized is important for the faculty. It is important to focus on what is important across the University, not what should be in 7.12 statements, Professor Kruttschnitt said. The Committee concluded it would leave the language as is—that it represented the appropriate level of specificity.

The language approved by the Committee (with minor post-meeting editing by Professor Clayton to make it read more smoothly) was this:

7.11 General Criteria.

What the University of Minnesota seeks above all in its faculty members is intellectual distinction and academic integrity. The basis for awarding indefinite tenure to the candidates possessing these qualities is the determination that each candidate has established and will continue to add to a distinguished record of academic or artistic achievement that is the foundation for a national or international reputation (fn X). This determination is reached through a qualitative evaluation of the candidate's record (fn 4) of scholarly research (fn 5) or artistic work, teaching (fn 6), and discipline-based service (fn 7). The relative weight of individual criteria may vary in different academic units, but the primary emphasis must be on demonstrated scholarly or artistic accomplishment and on teaching effectiveness. Discipline-based contributions to interdisciplinary activities, to public engagement, and to international activities and initiatives are valued by the University and may be taken into consideration in evaluating the candidate's satisfaction of criteria. All faculty members, tenured or not, are expected to fulfill the citizenship obligations of the academic community, which includes service to the department, the college, and the University; but academic units should have only modest citizenship expectations for probationary faculty. The awarding of indefinite tenure presupposes that the candidate's record shows strong promise of achieving promotion in rank within the University.

(fn X) Academic achievement includes both research and teaching. The definition and relative weight of the factors may vary with the mission of the campus.

(fn 4) The persons responsible and the process for making this determination are described in Sections 7.3 through 7.6.

(fn 5) "Scholarly Research" must include significant publications. These may be supplemented by the development of new technology or scientific procedures, and other activities that lead to the public availability of innovative products, practices, and ideas that have significance and value to society.

(fn 6) "Teaching" is not limited to classroom instruction. It includes other forms of communicating knowledge (to both registered University students and persons in the extramural

community) as well as supervising, mentoring, or advising graduate or undergraduate students whether individually or in groups.

(fn 7) "Discipline-based service" refers to outreach to or engagement with the local, state, national, or international community based on the candidate's academic expertise. It does not ordinarily include administrative service to one's department or college, or the University. Service standing alone without a distinguished record of research and teaching is an insufficient basis to award tenure.

Professor Clayton said that the Committee would take up the proposed new Section 9.2 of the tenure code at its next meeting, dealing with promotion from Associate to Full Professor. He adjourned the meeting at 11:00.

-- Gary Engstrand

University of Minnesota