

SENATE COMMITTEE ON SOCIAL CONCERNS
MINUTES OF MEETING
FEBRUARY 7, 2005

[In these minutes: Consultative Process Letter Sent to President Bruininks, Solomon Amendment, Resolution Concerning Freedom of Speech and Academic Freedom]

[These minutes reflect discussion and debate at a meeting of a committee of the University of Minnesota Senate or Twin Cities Assembly; none of the comments, conclusions or actions reported in these minutes represent the views of, nor are they binding on, the Senate or Assembly, the Administration or the Board of Regents.]

PRESENT: Ken Heller, chair, Jennifer Oliphant, Elizabeth Richardson, Susan Von Bank, Greg Schooler, Julie Sweitzer, Katherine Fennelly, David Fox, Julie Pelletier, Abby Bar-Lev, Frances Doherty, Kara Ferguson, Leonard Roy

REGRETS: Ruth Taylor, Peter Hiniker, Sandy Ulsaker Wiese, Gerald Rinehart, Susan Craddock, Mani Subramani, Lonnie Bradford,

ABSENT: Barbara Boysen, Elizabeth Fuerst

OTHER: Professor Carol Chomsky

I). Professor Heller called the meeting to order.

II). Professor Heller reported that the letter regarding the committees¹ perception of the consultative process relative to the University¹s decision to settle with Maranatha Christian Fellowship was recently sent to President Bruininks. The letter asked for a response, and, once that is received, it will be shared with the committee.

III). Professor Chomsky reported that Equity, Access and Diversity (EAD) plans to draft a resolution asking the administration to revisit the University¹s ROTC policy and to reconcile it with the University¹s non-discrimination policies. Because it is likely that the Social Concerns Committee will be asked to endorse this resolution, Professor Chomsky agreed to attend today¹s meeting to provide background information on the issue. She highlighted the following:

- There currently is a conflict between the University¹s non-discrimination policies and the presence of military recruiters on campus, because the military, by federal law, is mandated to discriminate against gays and lesbians.
- In 1990, the issue came to a head when the House of Representatives of the Association of American Law Schools (AALS) voted to amend their bylaws to include sexual orientation in its non-discrimination policy. As a result, member schools were required to bar from its facilities, particularly employment and career services facilities, employers that discriminate, which naturally included the military.

- In 1995, Congress enacted the first Solomon Amendment, which stated that if a school prohibited the military from recruiting on campus, federal funds from the Department of Defense could be withdrawn from that school. This did not pose a particular problem for a large number of law schools because most do not receive a lot of Department of Defense money. However, the following year, Congress expanded the law to include Department of Education, Labor, and Health and Human Services funds. This change had serious implications on the amount of federal financial aid money that law schools would be able to provide students for scholarships. Law schools were forced to choose between barring the military from their campuses and losing its federal funding, or allowing the military on their campuses in order to retain federal funding. In other words, schools had to choose between their students and their non-discrimination policies.
- The AALS amended its 1990 policy to excuse non-compliance, in terms of barring employers that discriminate, to the extent it imposes a punishment on schools. In light of this change, law schools were required to ameliorate the effects of military discrimination.
- In 1999, there was a repeal campaign in Congress that was successful in removing student financial aid from the Solomon Amendments. The AALS, the governing body of law schools, reinstated its requirement that schools not allow access to the military, and, as a result, schools began to deny access to the military once again.
- In 2000, the Department of Defense issued a new interpretation of the Solomon Amendment, which stated that law schools that deny access to the military do not only lose money for the law school, but for the entire institution.
- The AALS decided to allow the military back on campus as long as amelioration occurred. The University of Minnesota Law School, after receiving a demand letter from the Department of Defense, has permitted military recruiters on campus in conjunction with amelioration efforts.
- Approximately one year ago, the Society of American Law Teachers (SALT) agreed to be plaintiff in a lawsuit challenging the Solomon Amendment on First Amendment grounds. According to SALT, the Solomon Amendment violated law school faculties' rights to teach, speak and act according to their beliefs/principles. Another organization, Forum for Academic and Institutional Rights (FAIR), joined SALT in the suit. FAIR's mission is to promote academic freedom to support educational institutions in opposing discrimination. FAIR came in as a separate plaintiff because it is an organization that law schools and law faculties can join as opposed to individual law professors, thereby strengthening the case.
- The lawsuit proceeded with SALT, FAIR and other individual plaintiffs. The district court denied the plaintiffs request for a preliminary injunction barring enforcement of the Solomon Amendment, but on appeal to the 3rd Circuit Court of Appeals the court ruled 2 – 1 that the injunction should have been issued because the Solomon Amendment is unconstitutional and should not be enforced. The case, however, is not final yet. Despite the fact that the 3rd Circuit Court of Appeals has issued its ruling, it has not issued the mandate.

- In the meantime, the government has decided they will appeal this case to the Supreme Court. While it is ultimately up to the Supreme Court whether or not they will grant review of this case, it is generally thought they will.
- The Solomon Amendment has been amended one more time and it currently states that institutions cannot bar the military. It also stipulates that the military is entitled to equal access, the same as all other recruiters. This action is likely to have strengthened the case because it shows how firmly institutions are standing behind their non-discrimination principles.
- Yale University brought a separate suit challenging the Solomon Amendment, which it won. In response to this ruling and the 3rd Circuit Court of Appeals ruling, both Harvard Law School and Yale have barred military recruiters from their respective campuses.
- In 1995, Senior Vice President Infante articulated the University's position regarding military recruiters on campus and issued a report in which he stated: ³The administration has concluded University of Minnesota students should not be denied the opportunity to voluntarily participate in on-campus recruiting by U.S. Armed Forces recruiters. It would be inappropriate for those University of Minnesota students that wish to consider pursuing a career in the military to be denied access to on-campus recruiting opportunities made available to students at other universities². This policy, which was approved by the Board of Regents, is the basis for General Counsel Mark Rotenberg's directive prohibiting the University of Minnesota Law School to take action against barring military recruiters at this time.
- A group within the Law School plans to bring a motion before the entire Law School faculty to join FAIR in hopes of positioning the Law School to be able to take advantage of the final ruling in this case and to speak out on behalf of non-discrimination and fair treatment of GLBT students and colleagues.
- Even if the Solomon Amendment is ruled unconstitutional the issue remains whether to allow the military on campus or not.
- The U.S. House of Representatives last Wednesday passed a resolution urging President Bush to fight the 3rd Circuit Court of Appeals ruling. The focus of this issue has to be kept on the discrimination aspect, it is not about dislike of the military. This suit, however, is viewed by many as taking steps against the military and this is a very difficult time to be perceived of as anti-military; this is a difficult political issue.

Questions/comments from members:

- The 1995 position by the University gives law students that want access to the military greater rights than other students that cannot enter the armed forces due to their sexual orientation. The position is that all students should have access, but some do not have access because they are prohibited from participating due to the military's discrimination policy, Don't Ask/Don't Tell. GLBT students are excluded for employment by the military.
- In Minnesota, transgender individuals are considered a protected class, but in many states this is not true. Professor Chomsky admitted not knowing enough about the statutes in other states, but suspected transgender individuals along with

gays and lesbians are not considered a protected class in several states. Protection does not help individuals under the Solomon Amendment. This is not an issue that deals with state laws, but it is a lawsuit about First Amendment rights of faculty and academic institutions.

- Is it probable the Supreme Court will consent to hear this case, and, if so, what is the likely outcome? In Professor Chomsky's opinion, it is likely the Supreme Court will grant review, but it is difficult to predict the outcome.
- Who are the defendants in the case? Donald H. Rumsfeld, in his capacity as U.S. Secretary of Defense; Rod Paige, in his capacity as U. S. Secretary of Education; Elaine Chao, in her capacity as U.S. Secretary of Labor; Tommy Thompson, in his capacity as U.S. Secretary of Health and Human Services; Norman Y. Mineta, in his capacity as U.S. Secretary of Transportation; Tom Ridge, in his capacity as U.S. Secretary of Homeland Security.

Professor Chomsky reiterated that EAD plans to draft a resolution asking the administration to reconsider its policy allowing military recruiters on campus. It is likely that EAD will then bring this resolution to the Social Concerns Committee asking for their endorsement. Until the Solomon Amendment is actually struck down, the administration will not be asked to bar the military from campus. This would be a premature thing to do in the face of the possible consequences e.g. losing federal funding, etc. While this is not a sufficient argument for not standing up for principle, political realities need to be taken into consideration.

Professor Heller thanked Professor Chomsky for providing members with information on this issue.

IV). Proxy Voting – Professor Heller reminded members that the Social Concerns Committee has been charged by the Board of Regents to annually review all shareholder resolutions dealing with social issues for which the University holds stock and recommend votes for, against or to abstain for each respective resolution. Two handouts were distributed, a list of the resolutions and a sample resolution template that volunteers can use to lay out the issues when reporting back to the Committee on their proxy assignment.

Greg Schooler of Asset Management explained the proxy voting procedure and asked for volunteers to research the resolutions. The following members volunteered to research resolutions and provide the Committee with their recommendation:

- David Fox – Report on political donations and policy – Merck and OfficeMax
- Susan VonBank – Review AIDS pandemic's impact on company – Merck
- Julie Pelletier – Use non-animal test methods - Merck
- Jennifer Oliphant – Increase container recycling/recycled content – PepsiAmericas, Inc.

Professor Heller asked volunteers to complete their resolution recommendations

IV). Professor Heller reported that it is likely the Social Concerns Committee will have a joint meeting with the Senate Research Committee (SRC). He encouraged members to think about issues of mutual interest e.g. secrecy. Other issues that were mentioned included renewable energy and a suggestion to discuss establishing policy/protocol on how to deal with the social implications of issues e.g. Mount Graham.

Members were urged to send additional suggestions to Renee Dempsey, Senate staff, at demps005@umn.edu.

V). Other business: A member asked whether any Committee members were following the controversy involving Ward Churchill, a professor at the University of Colorado at Boulder who wrote an on-line essay that compared the 9/11 victims to Nazis. While he is known for inflammatory statements, this recent controversy has left his job in jeopardy. He, however, has garnered faculty support for his stance based on academic freedom and freedom on speech under the First Amendment. It was also noted that Dr. Lawrence H. Summers, the president of Harvard, has also found himself in a bit of trouble for his remarks on the biological differences between men and women accounting for the paucity of women at the top ranks of science and mathematics.

Professor Pelletier volunteered to draft a statement with input from Professor Heller on behalf of the Committee to the University of Colorado at Boulder and Harvard supporting academic freedom and freedom of speech under the First Amendment. After all, if institutions of higher education cannot be provocative who can? The statement will include a reaffirmation of academic rights and the duty of faculty to be provocative.

Professor Pelletier also volunteered to send out background information via email to help familiarize members with the issues.

A member voiced concern that from her perspective Dr. Summers¹ comments are different from Professor Churchill's comments due to Dr. Summer's position as president of Harvard. In her opinion, Dr. Summer's has an obligation to stand up for certain values and set a tone for broad research. He should be held to a different standard. Professor Pelletier stated this is a good point, and that she will take this into consideration when drafting the letter.

VI). Hearing no further business, Professor Heller adjourned the meeting.

Renee Dempsey
University Senate