

Minutes*

**Academic Freedom and Tenure Committee
Friday, February 16, 2007
9:30 – 11:00
300 Morrill Hall**

Present: Tom Clayton (chair), Yusuf Abul-Hajj, Tracey Anderson, Arlene Carney, William Doherty, James Farr, Joseph Gaugler, Karen Miksch, John Mowitt, Paul Porter, Terry Simon

Absent: Carol Carrier, Candace Kruttschnitt, Jianyi Zhang

Guests: Tracy Smith (Office of the General Counsel)

[In these minutes: (1) tenure code section 7.11: Faculty Senate and other suggestions; (2) "attention to questions of diversity" and academic freedom; (3) tenure code section 9.2; (4) tenure code section 5.5]

[NOTE: The "final" versions of sections 7.11 and 9.2 as approved by the Committee at this meeting are appended at the end of these minutes.]

1. Tenure Code Section 7.11: Faculty Senate and Other Suggestions

Professor Clayton convened the meeting at 9:35 and noted the large number of suggestions for changes to section 7.11 before the Committee, some from email messages when the draft language was distributed last week, some from discussion on the Faculty Senate floor. He turned first to one that contended that the University does not recognize, or encourage, institutional service from faculty in their professional roles.

The Committee decided to revise the definition of service very slightly to accommodate the suggestion (new language in CAPS):

"Service" may be professional or institutional. Professional service, based on one's academic expertise, is that provided to the profession, TO THE UNIVERSITY, or to the local, state, national, or international community. Institutional service may be administrative, committee, and related contributions to one's department or college, or the University. All faculty members are expected to engage in service activities, but only modest institutional service should be expected of probationary faculty.

2. "Attention to Questions of Diversity" and Academic Freedom

Vice Provost Carney and Ms. Smith joined the meeting. Dr. Carney recalled that last fall, when Provost Sullivan visited the Committee, the language of section 7.11 included "diversity." The Committee then discussed whether it should be removed. It is embedded in strategic positioning task force reports, Regents' policies, and many other places at the University, but is the language as proposed in the code liable to be seen as problematic because of issues of academic freedom and the First

* 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.

Amendment? This point, she emphasized, is not about whether diversity is valued at the University; it clearly is at all levels of the University.

(The language in question, in CAPS, is this: Demonstrated scholarly or other creative achievement and teaching effectiveness must be given primary emphasis; service alone cannot qualify the candidate for tenure. Interdisciplinary work, public engagement, international activities and initiatives, ATTENTION TO QUESTIONS OF DIVERSITY, technology transfer, and other special kinds of professional activity by the candidate should be considered when applicable.)

There could be a situation where a scholar does work on the negative side of affirmative action and the department (or college or someone else) could say that was inappropriate. On the other side, someone could say that a candidate has placed TOO much emphasis on aspects of diversity. The question is whether inclusion of the language in section 7.11 leaves the University open to challenges on the grounds of academic freedom and First Amendment rights.

Committee members made a number of points in the ensuing discussion.

-- Professor Clayton recalled the Committee did not originally have diversity in the language; the suggestion for adding it came from Vice President Barceló and the Committee agreed. It could be taken out; diversity is written into many other University documents.

-- Professor Mowitt maintained that Dr. Carney's example does not bear on diversity. If this is a disciplinary debate and results in a tenure denial, it may be academic freedom because the candidate paid attention to questions of diversity—but all of the items on the list (public engagement, international activities, etc.) could be treated the same way. Diversity is not unique. There should be a requirement that there be indices for qualitative evaluation of candidates, Professor Mowitt asserted; the current language offers departments no guidance on conducting a qualitative evaluation.

-- Dr. Carney said diversity addresses values; one can look at interdisciplinary work and say it spans disciplines, or that there is or is not technology transfer. Diversity gets at values and people can disagree about it. Would the language open the University to retaliatory lawsuits? In his field, interdisciplinary work is a value question, Professor Mowitt said. Professor Farr said that public engagement and international activities are also value-laden. Then the Committee needs to be careful about the verb "should," Dr. Carney said.

-- If the verb is "may," who decides, Professor Anderson asked? The candidate or the group evaluating the candidate? That is left open, which is why the passive voice with the agent deleted is used, Dr. Carney said. The Committee had taken out "may" and substituted "should" because "may" would mean such work could be ignored. If this language is directed to departments (there was agreement that it is), Professor Miksch said, then the department 7.12 statement may include items from the list and the candidate will know (or should be informed).

-- What if a department 7.12 statement were to say it did not believe in interdisciplinary work? That would be contrary to the University's goals, Professor Abul-Hajj said. Dr. Carney said that if she saw a 7.12 statement that said overtly that it placed no value on interdisciplinary research, that would be unusual. What if a faculty member does mostly interdisciplinary research, all over, and is not known in the tenure-base discipline and has no impact on it? When it comes time to get external evaluations, no

one has heard of the person. The tenure code allows for special promotion and tenure committees, Dr. Carney pointed out, when there are not enough professors in a department who know about the candidate's work.

-- Professor Anderson asked if an untenured faculty member has the freedom to change his or her job description and go off in a different direction from what he or she was hired to do. Professor Abul-Hajj commented that his department hires faculty to teach but does not tell them what research to do. They may hire someone to strengthen a part of the discipline, but faculty work does evolve over time.

-- Professor Doherty said he was at first nervous about including "attention to questions of diversity" in the list of activities that should be considered, but the fact that it is contained in a long list of activities, and that no one could be expected to do all of them, his concerns have diminished.

-- Ms. Smith said she's a new reader to the language and at first thought the reference to diversity meant personal characteristics, then thought it might mean engagement in promoting diversity (which is true for many jobs at the University), and then concluded it must refer to an area of research. It does appear to be an area of research, unlike the other items on the list in section 7.11, and one can understand how academic freedom questions might arise. If it is an area of research, that should be made clear. "Attention to questions of diversity" does not mean advocacy, Professor Clayton commented. It could also be teaching, Professor Doherty added. The list of activities is intended to encompass teaching, research, and service, Dr. Carney said, but it is troubling that the language is unclear to Ms. Smith, who comes to it new.

-- Does diversity research carry a higher value than other research, Ms. Smith asked. It does not, Professor Doherty said, and Committee members concurred. But some may specialize in diversity in teaching, for example. Professor Doherty agreed that "attention to questions of diversity" is not quite the same as the other items on the list (interdisciplinary work, public engagement, international activities and initiatives, technology transfer, and other special kinds of professional activity), but the University values diversity so highly that it seemed an anomaly if it were not included in the code.

-- The question is whether the language leaves open the possibility that a candidate up for tenure could be told that he or she did not have enough focus on diversity in his or her activities, Dr. Carney said. The candidate should have been told earlier, Professor Clayton said; Dr. Carney agreed but said it does not always happen. Professor Doherty said that section 7.11 provides cover for departments to emphasize certain activities in their 7.12 statements where applicable. They have diversity in their 7.12 statement. Someone in engineering could ask whether they would be turned down for tenure if they did not do diversity research, Dr. Carney said. Professor Anderson repeated the point that that kind of question arises across the campus but not just with respect to diversity. Professor Farr made the same point: Dr. Carney's example holds for all the items on the list, and if the Committee struck the "diversity" language, the problems she suggested would show up with the other items.

-- Professor Doherty said that candidates must attend to the 7.12 statement; section 7.11 serves as backdrop. The 7.12 may not contradict 7.11, Dr. Carney said. Professor Doherty emphasized that the language provides these activities "should be considered when applicable"; they are not a mandate. Professor Clayton agreed; section 7.11 is a statement to the department to consider these activities if applicable; the faculty in the department could decide an activity is not appropriate to the department.

-- Professor Clayton said he could let the language go or he could defend it. These are neutral words, "attention to questions of diversity," and speak to a mental activity, not political action. They say harmlessly that diversity is important to study in some disciplines. He said he was prepared to be overruled by the law.

-- Professor Miksch said she does not do technology transfer but is not worried about not doing it. What the list of items has in common is that they have not been valued in the past; the idea is that if the University values them, they are things departments could consider recognizing (rather than considering them an "extra" for faculty who do them).

-- Vice Provost Carney emphasized that her point has nothing to do with not valuing diversity, particularly as it pertains to faculty members' scholarship or creative activity, teaching, or service as part of a promotion and tenure review; it is about unintended outcomes. She said she wanted to be sure that no one's academic freedom could be limited by the language. Is the language setting up a situation where a candidate can be told "you are not doing the right kind of research or teaching"?

-- Professor Doherty said the Committee has heard the concern and believes it has handled the question. Professor Clayton inquired if Committee members agreed; they did.

The discussion turned to what the verb should be. Professor Farr opined that "may" could lead to other problems. Someone could be creative and world-renowned in a number of the areas on the list but a department does not recognize those activities. "May," he concluded, is way too weak. Professor Simon said "must" would be acceptable to him; it only says a department has to consider the activities if applicable. Committee members thought "must" was too strong and concluded that "should" will remain the verb. Professor Clayton concluded that the Committee believed it safe to leave in "should" because "it can't be abused without a violation of the language that the Committee cannot control."

1. Tenure Code Section 7.11, Continued

The Committee turned next to other points that had been raised.

-- There was a concern about campuses where research is not the primary emphasis; the language of 7.11 is fine for the Twin Cities campus but perhaps not all of the other campuses. The Committee concluded that the language of 7.11 covered the variations in mission of the different campuses.

-- Professor Clayton noted with appreciation the comments from one Faculty Senator commending the Committee for the new language dealing with professional and institutional service.

-- One member of the Faculty Senate asked if the best surgeon in the world, providing a valuable service to the community, but who does no research, would receive tenure. The answer on the floor of the Senate was "no." Professor Clayton said he could understand the answer, the individual would not receive tenure within the rules, but he wondered if such a person should not be granted tenure anyway. Dr. Carney recalled that a senator from the Medical School spoke against such an appointment, saying it would not be appropriate; being a practitioner alone is not sufficient to be a professor. If one is not contributing to the mission except through doing wonderful surgery, that does not make the person a professor. Professor Simon said the point was also made that service is not enough to receive tenure, as explicitly provided in the code language. Professor Clayton said that when the University gets the best in the world, it can

make an exception; there should be an escape clause for the uniquely well qualified. (And how would one know that someone is the best in the world?) A similar question was raised about an excellent teacher who did not do research; the answer was the same: the person would not receive tenure.

-- The Committee without dissent agreed to remove the phrase "and extraordinary abilities and contributions" from the list (the phrase was not included in the quotations earlier in these minutes): "Interdisciplinary work, public engagement, international activities and initiatives, attention to questions of diversity, technology transfer, and other special kinds of professional activity, ~~and extraordinary abilities and contributions by the candidate~~ should be considered when applicable.

-- There was a suggestion that greater emphasis should be placed on interdisciplinary work. The Committee did not agree.

-- Two people contended that part of one of the footnotes was faulty for not including the term knowledge: "Scholarly research" must include significant publications and, as appropriate, the development and dissemination by other means of new technology or scientific procedures resulting in innovative products, practices, and ideas of significance and value to society. The Committee agreed without dissent that the word "knowledge" should be inserted: ". . . as appropriate, the development and dissemination by other means of new KNOWLEDGE, technology, or scientific procedures . . ."

-- A faculty member in the Institute of Technology objected to the emphasis on publication to the possible disadvantage of musicians or artists and contended that "the language is biased to IT." There is no definition of "other creative work" in section 7.11 or the accompanying footnotes, Dr. Carney observed, and it was agreed she would draft a sentence to be added to (fn 5). The gist of the additional sentence would be that "'other creative work' includes but is not limited to artistic productions, performances, design, and creative work in all fields."

(" . . . The basis for awarding indefinite tenure to the candidates possessing these qualities is the determination that each candidate has established and is likely to continue to develop a distinguished record of academic achievement that is the foundation for a national or international reputation or both.(fn X) This determination is reached through a qualitative evaluation of the candidate's record of scholarly research or *other creative work*, teaching, and service.(fn 5)" and "(fn 5) . . . 'Scholarly research' must include significant publications and, as appropriate, the development and dissemination by other means of new knowledge, technology, or scientific procedures resulting in innovative products, practices, and ideas of significance and value to society.")

Professor Gaugler inquired about the possibility of removing the word "publication" and making the language more general. Professor Doherty explained that in earlier discussions the Committee decided to use "publication" to make it very clear that publication is necessary for scholarly research.

3. Tenure Code Section 9.2

-- The language about interdisciplinary work, etc., should be parallel in 7.11 and 9.2. The new 9.2 reads as follows (new language in caps, deleted language ~~struck out~~):

9.2 Criteria for Promotion to Professor.

The basis for promotion to the rank of professor is the determination that each candidate has (1) demonstrated the intellectual distinction and academic integrity expected of all faculty members, (2) added substantially to an already distinguished record of academic achievement, and (3) established the national or international reputation ordinarily resulting from such distinction and achievement.(fn x). This determination is reached through a qualitative evaluation of the candidate's record of scholarly research or other creative work, teaching, and service (fn 5). The relative importance of these criteria may vary in different academic units, but each of the criteria must be considered in every decision. INTERDISCIPLINARY WORK, PUBLIC ENGAGEMENT, INTERNATIONAL ACTIVITIES AND INITIATIVES, ATTENTION TO QUESTIONS OF DIVERSITY, TECHNOLOGY TRANSFER, AND OTHER SPECIAL KINDS OF PROFESSIONAL ACTIVITY BY THE CANDIDATE SHOULD BE CONSIDERED WHEN APPLICABLE ~~Interdisciplinary work, public engagement, international activities and initiatives, and technology transfer will be taken into consideration in evaluating the candidate's satisfaction of criteria; such contributions can involve scholarly research or other creative work, teaching, and discipline related service.~~ (fn y). But the primary emphasis must be on demonstrated scholarly or other creative achievement and on teaching effectiveness, and service alone cannot qualify the candidate for promotion.

-- One faculty senator asked that there be a timely review of associate professors for promotion to professor. Dr. Carney said the person who made the suggestion is very new to the University and must have observed something different from the institution he came from. The University of California, Berkeley, has a statement that associate professors are expected to be in that rank for six years (and there is no language about what happens if the individual is not promoted). She said she was not suggesting that the Committee incorporate a schedule in the code, only noting that some institutions have some kind of expectation. Professor Chomsky said at the Senate meeting that there will need to be a separate procedures-document for section 9.2, about how associate professors are to be reviewed, to be recommended by this Committee, and it may be that such an expectation would be included in those procedures.

What if an associate professor wants to be reviewed but the chair or senior faculty do not believe the person would be competitive, Dr. Carney asked? It is not appropriate to prevent an evaluation; one question is how clear the department standards are. If they are clear and the candidate has not met them, that is one thing; if the standards are fuzzy, there could be a problem. Must the department send out materials to external reviewers when they believe the result will be negative? What is needed is a statement on procedures; current practice varies across units. There are two questions, Professor Anderson said: when an associate professor should be reviewed and whether an associate professor has the right to request a review. These are questions for procedures, not the tenure code, Dr. Carney suggested.

4. Tenure Code Section 5.5

-- A question was raised about the term "family member" in the footnote to the section.

(5.5 Exception for New Parent or Caregiver, or for Personal Medical Reasons. The maximum period of probationary service will be extended by one year at a time at the request of a probationary faculty member:

1. on the occasion of the birth of that faculty member's child or adoptive/foster placement of a child with that faculty member; or

2. when the faculty member is a major caregiver for a family member (fn2) who has an extended serious illness, injury, or debilitating condition. A faculty member may use this provision no more than two times; or

...

(fn 2) The term "family member" is meant to include a relative, a marital partner, a domestic partner, or an adoptive/foster child.)

Vice Provost Carney observed that the language before the Committee changed it was "blood relative," so "relative" was intended to broaden the coverage of the section.

Under what circumstances such a request would be denied, Professor Anderson asked? It is very touchy, Dr. Carney said, and she is very careful about determining how to evaluate the requests. She would if the caregiving were tangential or minimal, because the language requires a substantial illness or condition. But people do not make frivolous requests and there are very few of them. It seems clear that the provision will not be abused.

Professor Clayton said he was satisfied with the term "relative" and ready to leave the decisions to the discretion of the administrator judging the application. The Committee also agreed to change "a marital partner, a domestic partner, or . . ." to "spouse or domestic partner, or . . ."

Professor Clayton announced that the Committee should plan on meeting weekly through the end of March (although not spring break) in order to complete the business at hand, and adjourned the meeting at 10:57.

-- Gary Engstrand

University of Minnesota

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Section 7.11 as approved by the Committee at this meeting:

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 is likely to continue to develop a distinguished record of academic achievement that is the foundation for a national or international reputation or both.(fn X) This determination is reached through a qualitative evaluation of the candidate's record of scholarly research or other creative work, teaching, and service.(fn 5) The relative importance of these criteria may vary in different academic units, but each of the criteria must be considered in every decision.(fn Y). Demonstrated scholarly or other creative achievement and teaching effectiveness must be given primary emphasis; service alone cannot qualify the candidate for tenure. Interdisciplinary work, public engagement, international activities and initiatives, attention to questions of diversity, technology transfer, and other special kinds of professional activity by the candidate should be considered when applicable. The awarding of indefinite tenure presupposes that the candidate's record shows strong promise of his or her achieving promotion to professor.

(fn X) "Academic achievement" includes teaching as well as scholarly research and other creative work. The definition and relative weight of the factors may vary with the mission of the individual campus.

(fn 5) The persons responsible and the process for making this determination are described in subsections 7.3 through 7.6.

"Scholarly research" must include significant publications and, as appropriate, the development and dissemination by other means of new knowledge, technology, or scientific procedures resulting in innovative products, practices, and ideas of significance and value to society. "Other creative work" [to be written].

"Teaching" is not limited to classroom instruction. It includes extension and outreach education, and other forms of communicating knowledge to both registered University students and persons in the extended community, as well as supervising, mentoring, and advising students.

"Service" may be professional or institutional. Professional service, based on one's academic expertise, is that provided to the profession, the University, or to the local, state, national, or international community. Institutional service may be administrative, committee, and related contributions to one's department or college, or the University. All faculty members are expected to engage in service activities, but only modest institutional service should be expected of probationary faculty.

(fn Y) Indefinite tenure may be granted at any time the candidate has satisfied the requirements. A probationary appointment must be terminated when the appointee fails to satisfy the criteria in the last year of probationary service and may be terminated earlier if the appointee is not making satisfactory progress within that period toward meeting the criteria.

Section 9.2 as approved by the Committee at this meeting:

Section 9.2

9.2 Criteria for Promotion to Professor. The basis for promotion to the rank of professor is the determination that each candidate has (1) demonstrated the intellectual distinction and academic integrity expected of all faculty members, (2) added substantially to an already distinguished record of academic achievement, and (3) established the national or international reputation ordinarily resulting from such distinction and achievement.(fn X) This determination is reached through a qualitative evaluation of the candidate's record of scholarly research or other creative work, teaching, and service.(fn 5) The relative importance of these criteria may vary in different academic units, but each of the criteria must be considered in every decision. Interdisciplinary work, public engagement, international activities and initiatives, attention to questions of diversity, technology transfer, and other special kinds of professional activity by the candidates should be considered when applicable (fn y). But the primary emphasis must be on demonstrated scholarly or other creative achievement and on teaching effectiveness, and service alone cannot qualify the candidate for promotion.

(fn X) "Academic achievement" includes teaching as well as research and other creative work. The definition and relative weight of the factors may vary with the mission of the individual campus.

(fn 5) The persons responsible and the process for making this determination are described in subsections [to be supplied as equivalent to 7.3 through 7.6 for 7.11].

See the definitions of "scholarly research," "teaching," and "service" in footnote _ , subsection 7.11. A greater contribution in the area of institutional service is expected of candidates for the rank of professor than was expected for the award of tenure.

(fn Y) Not being promoted to the rank of professor will not in itself result in special-post-tenure review of a tenured associate professor.