

Minutes\*

**Academic Freedom and Tenure Committee**  
**Friday, April 10, 2009**  
**9:30 – 11:30**  
**300 Morrill Hall**

Present: Tom Clayton (chair), Arlene Carney, Barbara Elliott, Barbara Loken, Karen Miksch, Paula O'Loughlin, Gary Peter, Paul Porter, Terry Simon, Carol Wells

Absent: Yusuf Abul-Hajj, Joseph Gaugler, Linda McLoon

Guests: Professor Carol Chomsky

[In these minutes: (1) updates; (2) intellectual mobility and Section 12 of the tenure code; (3) student-rating-of-teaching policy and use of written comments]

**1. Updates**

Professor Clayton convened the meeting at 9:30 and provided updates on several matters.

-- The proposed amendments to the Board of Regents policy on Academic Freedom and Responsibility passed the Faculty Senate unanimously. He also noted an article published on the web the day of this meeting ("Court decisions could silence professors") tracing the evolution of federal court cases dealing with higher education and the First Amendment, the case outcomes the amendment seeks to address.

-- He read the draft of a message from the Committee to all faculty transmitting the Academic Freedom and Responsibility policy: "**Academic freedom** and responsibility are crucial not only to teaching and scholarship but to successful faculty engagement in other professional activities, and also to the identity and functioning of the University of Minnesota as a whole. The Senate Committee on Academic Freedom and Tenure accordingly recommends that all faculty members be sent annually a copy of the Regents Policy on Academic Freedom and Responsibility." It was agreed that the message should include a quotation from Professor Neil Hamilton that appeared in an article in The Chronicle of Higher Education: "A professional cannot defend what he or she does not understand. . . . The profession carries an ongoing burden . . . to justify academic freedom, peer review, and shared governance."

-- It has been suggested by "an authoritative person" that the revisions to the Preamble of the tenure code be tabled for now. It does not make sense, it was said, to insert a revised Preamble without revising the rest of the code. Professor Clayton said he was ambivalent about the suggestion: such a revision could be left to next year's committee, but he feels a commitment to the document. It is, however, too late in the academic year to begin such a task, especially given the amount of time it took simply to revise Section 7.11, although that WAS a case of substantive, not cosmetic, revision. He asked Committee members their views; there was no sentiment to begin a revision at this point. He suggested that the person who made the suggestion could be asked what parts of the code needed revising so the Committee could start with an informed opinion about where to begin.

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\* 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.

-- He drew the attention of Committee members to a quote from the AAUP General Secretary (in the same Chronicle article that quoted Professor Hamilton), about the need "for a new commitment to full-time, tenure-track" faculty positions, given the increasing number of adjunct and part-time appointments that are being made in higher education. He said the University of Minnesota does not rely as heavily on adjuncts and other kinds of non-tenure-track appointments as other institutions, but the Committee should nonetheless wish to protect and advance tenure.

On the last point, Professor Elliott inquired if academic freedom is extended to non-regular (non-tenured, non-tenure track) faculty. It is, Professor Clayton said. Professor Miksch pointed out that the language of the Academic Freedom and Responsibility policy does not distinguish between appointments; it covers everyone. What are the categories of such appointments, Professor Elliott asked. Vice Provost Carney said there are three: regular (tenured and tenure-track) faculty, contract faculty (non-tenure-track who hold annual appointments but hold faculty rank), and P&A faculty. Adjuncts are individuals who teach perhaps one or two courses per year; they often have careers outside the University or have a primary appointment in another academic department at the University. Professor Loken said that in her college, they see contract faculty as different from P&A staff; Dr. Carney said that they are different because the contract faculty hold faculty appointments. Professor Miksch said it is her understanding that even if someone comes in to teach only one course at the University, he or she is covered by the Academic Freedom and Responsibility policy. Dr. Carney affirmed that Professor Miksch is correct.

Professor Wells said she had a more cynical view and has thought a lot about what tenure means. At its base, it is a guaranteed salary. Individuals on annually-renewable appointments do not need to be given a reason for non-renewal; can they really exercise academic freedom when they know they might not be reappointed if they antagonize the authorities? This Committee cannot guarantee academic freedom to people in those circumstances. Dr. Carney responded that the University has grievance policies that cover instances of non-renewal in violation of the individual's academic freedom. Professor Wells observed that there are a lot of reasons someone can use for non-renewal of an appointment to escape a charge of violation of academic freedom.

## **2. Intellectual Mobility and Section 12 of the Tenure Code**

Professor Clayton now welcomed Professor Carol Chomsky to the meeting to discuss intellectual mobility and Section 12 of the tenure code. [Section 12 of the tenure code is appended to this section of these minutes.]

Professor Chomsky began by explaining that the issues were raised when she was chair of the Faculty Consultative Committee and the "Wave I" college mergers and changes were occurring ("Wave I" changes were these: General College was absorbed in the College of Education and Human Development, Natural Resources became part of the College of Food, Agricultural, and Natural Resource Sciences, Rhetoric was moved to CLA and reconstituted, and the departments of the College of Human Ecology were shifted to other colleges; there are no plans for a "Wave II"). She and Professor Lanyon, the vice chair of FCC, had conversations with some of the faculty in the units that were moved and reported concerns that were expressed about the change process. Some of the concerns were individual while others contained lessons for programmatic change. Section 12 of the tenure code ("Programmatic Change") speaks to these issues generally but, as is often the case, the devil is in the details.

For the Wave I faculty, the logistics made the changes easier for some faculty than for others, but it seems that more needed to be done because some faculty were caught in the middle. Some individuals moved with their unit to the new college but wanted to be in a different college or unit for reasons of intellectual fit. They were led to believe that another, better fitting, department wanted them, and announced that they wanted to change their department home, with the expectation that the new department would take them, but then the agreement broke down (mostly over questions about where the money to pay them would come from). The Provost said over and over that dollars should not be the issue—but dollars were the issue. She learned from a colleague who studied the change when faculty moved from the Waseca campus after it was closed that the bottom line there was also the money—where would the resources come from? This issue could be beyond the tenure code and the scope of this Committee, Professor Chomsky said, but faculty felt they had run into a brick wall: the unit wanted the change to happen but the money was not there, even though the individual was tenured at the University. It is not easy to identify what should be done, if in policy or in some other way, but faculty were caught in problematic places. Given the budgetary problems the University faces, it is possible that there could be more such programmatic change; the question is how to learn from the Wave I college experiences to improve the change process.

Dr. Carney commented that she had not been at the meeting of this Committee last year when the issues were first raised so had not had an opportunity to respond. She told the Committee that she met with every Wave I faculty member who expressed an interest in moving from the new unit to a different one; many ultimately did not pursue a change. (These were confidential conversations so there was no record kept.) But there were faculty who did change departments successfully. She noted that there is a policy the Provost provided that indicates the receiving unit must determine if it will take a faculty member; a number of units indicated they did not wish to do so (but also did not want to create a record of the point or seem to insult the faculty member). That is the "dark side" of intellectual mobility: the person wants to move but the department does not want to accept him or her—these instances had nothing to do with the dollars.

With respect to the notion that the money should follow the faculty member, Dr. Carney said there are no "faculty lines" and money is not moved between colleges. The college receiving a faculty member must have the expectation it will be able to pay the salary from the tuition generated by the courses taught by the new faculty member; when the individual moves, a salary BILL moves with him or her, not money from the original college. The situation is similar to the experience of most people with their mortgage: they don't have all the money at the start of the year, they have "revenues" during the year that they use to pay the mortgage. First the receiving unit must decide if it will accept the faculty member, then the dean must decide if the college can pay the salary from expected revenues. One controversial point arose when a dean said the department must mortgage its next open position if it were to accept the transferring faculty member—so this is about money to some extent. No one is expected to pay his or her own salary, and the tuition someone brings in will vary, but first the faculty of the receiving unit must vote to accept the person. The Provost's office never asked a college to take a faculty member without a vote of the unit. But there are no dollars that follow a faculty member; the individual will usually generate tuition income and in some cases grant funding, but the college must have an expectation it will be able to pay the salary—it would be irresponsible of a dean to take a dozen new faculty with salary and fringe benefit commitments in perpetuity without the ability to pay for them.

Professor Clayton asked if the Provost could not move the compensation commitment made to the faculty member with him or her. The college receives the tuition and indirect-cost money the faculty

member generates, Dr. Carney said, and that is a decision the dean must make. Professor Loken asked if the dean could not be given money for the transferring faculty member. Where would it come from, Dr. Carney asked? There are no chests of money in the Provost's office; the colleges receive all the tuition and indirect-cost funds, and the state money is largely committed to the colleges already.

Section 12.2 of the tenure code provides that "the University recognizes its obligation to continue the employment of regular faculty in accordance with the terms of their employment," Professor Miksch observed. Section 12.3 talks about reassignment and offers of training. Section 12 talks about the University's responsibility and the individual's responsibility; the responsibility is not the dean's. But the dean has the money, Dr. Carney pointed out. Section 12 provides that **the University** has the responsibility for reassignment, Professor Miksch responded. In the case of the Wave I colleges, Dr. Carney said, there was a lot going on but no faculty member lost his or her position because of the changes, and very few had major changes in what they teach. Professor Miksch noted that Section 12.3 provides that if agreement cannot be reached about reassignment, the University officer will assign new responsibilities. In the case of Wave I changes, Dr. Carney said, entire departments moved into other colleges. This was not like Waseca, where the campus closed and faculty needed to be reassigned. Here, intact units moved and none were dismantled, so no one had to be reassigned. When those movements were occurring, there were individuals who wanted different changes from those assigned.

Professor Chomsky agreed with Dr. Carney and said that the Wave I changes were probably not covered by Section 12. That is the point of the question: what Section 12 covers and what it does not. It is rare that a program closes, like Waseca; the question is what to do when departments or individuals shift their research or teaching so that a particular faculty member no longer fits with the department's emphasis. A faculty member may still be able to teach his or her courses, but the research may no longer fit and the individual may be unable to obtain appropriate graduate students. It may be that dealing with these kinds of change cannot be written in policy. It is true that some departments did not want to accept a faculty member but did not want to say so; in other cases, it appears they voted on the basis of the money. What may have been amiss in all of this were statements saying that money would not be the deciding factor. Perhaps it needs to be acknowledged that money IS a deciding factor, along with the substantive merits of the shift. The department must decide on an intellectual basis if it wants to accept the faculty member, but perhaps there should be a difference between hiring from the outside and hiring someone already at the University. In hiring from the outside, the unit must be sure the money is there; perhaps there can be something different for hiring someone already on the faculty. Or perhaps it would be better to be honest up front and say that money will affect the decision.

A number of faculty did move between departments because the deans agreed to take the risk, Dr. Carney said. They were not filling a slot, so some took the risk and the decision was not always based on dollars. It would be appropriate to tell faculty that there is a risk to starting the process of seeking to change departments—it is an interview process and their ego may get hurt because the department may not want them. It is easier in the case of an outside hire; a department can decide not to hire the individual. It is more difficult when a department must reject a colleague. She talks with faculty who want to move and cautions them that the receiving department may not want them.

Professor Clayton commented that the way Section 12 reads it sounds inclusive, but the personnel and financial issues are not covered. Was there the view that Section 12 provisions covered these changes, Professor Miksch inquired, when they really did not? Section 12 does not cover the case of a faculty member who believes he or she does not fit in a department and wants to change, Dr. Carney

observed. But the individual might feel he or she would receive training, etc., as called for in Section 12. Very few if any of the faculty in the Wave I changes thought that Section 12 applied, Professor Chomsky reported. The problem was with the messages that were sent and received about how the process would work and how it ultimately did work. She said she could not say it was the "truth" of what happened—she is reporting what faculty perceived—but there was a sense among some of the Wave I faculty that the rules changed as things went along. They heard something different from the Provost and from the deans and department chairs. Section 12 covers cases where the jobs go away because programs are ending; the Wave I changes were different and perhaps a less-frequent occurrence. Perhaps there should be a guide on how to handle these kinds of change. Dr. Carney promised to forward the policy that is in place.

Dr. Carney agreed with the observation that Section 12 was written before the current budget model was adopted. It was written at a time when central administration controlled a great deal of money; now it has no pot of money. She talked with every faculty member interested in moving, in some cases several times. The outcome in many cases was happy but in some it was not. But all were treated respectfully. Professor Chomsky noted that the budget model sends all the money to colleges, but pointed out that there are bridge funds available for some purposes, although those may be insufficient. Bridge funds are "soft" and non-recurring, Dr. Carney pointed out, but some deans are using them even without any expectation of a retirement in the department—they are "bridging on faith." Not everyone will always be happy, she concluded. The question is whether it is possible to make changes that make intellectual sense, given where the locus of an activity should be.

Professor Clayton asked if Section 12 needs revisiting. There are parts of it that do, Dr. Carney said, but it would be better to first do an analysis of what is not working. She said she could identify problems with promotion and tenure and with changes in the budget model. A few of the Interpretations of the tenure code are also probably outdated and she could identify changes that would make them more helpful. Changing the code will be an arduous process that should probably not begin at the end of the academic year, she said, and she could take some time to identify areas where there are debates about interpretation of the code to identify what problems need to be resolved.

If the thought is that the Committee will look at the code next year, Professor Chomsky said, there are two questions that could be addressed. One, to which the answer is probably evident, is whether Section 12.3 is an extension of Section 12.2 (that is, are the provisions on how change is to occur relevant only when programmatic change leads to discontinuation of a program?). That is not completely clear in the current language. The bigger question is "what is meant by programmatic change?" Section 12.1 talks in a broad sense; Section 12.2 speaks to cases when a program is terminated. "Changes in academic programs," in Section 12.1 is itself ambiguous, Professor Clayton commented, and there is a fine line between programmatic change and administrative reorganization.

The most attention people pay to the tenure code is Section 7, which seems to be working well, Dr. Carney said. But there is ambiguous language in other parts of the code that leads to angst and it would help to clarify it.

Professor Simon observed that the second sentence of Section 12.3 makes it sound as if the receiving department has been selected and only the arrangements need to be worked out. That is more like the Waseca situation, Dr. Carney agreed. This discussion has been about a situation that is more fluid. In the case of some Wave I faculty, they could say that they could go to any one of three or four departments, so she talked with them about the choices.

The last section of 12.3 suggests that there can be a discussion of the reasonableness of the reassignment, Professor Chomsky said; recourse is important. Perhaps it should be possible for a faculty member to go someplace to be heard if they are dissatisfied with the programmatic change. No one was reassigned, Dr. Carney commented. Not under Section 12, Professor Chomsky concurred. But some faculty felt reassigned because the chosen move for their units did not work for them. It may be worth thinking about whether that kind of programmatic change should be addressed also in the tenure code.

The Committee agreed it would take up next year the question of further revisions to the tenure code. Professor Clayton said the matter needs attention because it is likely that additional "programmatic change" will be on the University's agenda again in the future.

Professor Clayton thanked Professor Chomsky for joining the meeting.

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Section 12 of the Board of Regents policy: Faculty Tenure

### **Section 12. Programmatic Change.**

**12.1 Programmatic Change.** The University and faculty recognize that changes in academic programs are an essential part of the development and growth of the institution. These changes should be based on academic considerations and on long-term policy and planning, and may be undertaken only after consultation with the faculty, including the appropriate governance structure.

**12.2 Faculty Rights And Duties.** In the event that programmatic change leads to discontinuation of a program in which a member of the faculty is employed, the University recognizes its obligation to continue the employment of regular faculty in accordance with the terms of their employment, and to continue the employment of non-regular faculty for the term of appointment. In case of fiscal emergency, the provisions of Section 11 apply.

Regular faculty members who are so retained have the responsibility to accept teaching or other assignments for which they are qualified, and to accept training to qualify them for assignment in other fields. The University has the responsibility to assign such faculty members to responsibilities as closely related to their original field of tenure as is practicable, to allow them time in which to continue scholarship in their original field if they wish, and to recognize scholarly contributions in that field as valuable in assessing their contribution to the University for pay, promotion and other purposes.

In addition to the steps mentioned above, the University has the right to offer inducements to faculty members voluntarily to change fields of study, to seek employment elsewhere, or to accept early retirement.

**12.3 Reassignments.** In cases of programmatic change, an officer designated by the president will make the reassignment or offer of training. The officer will consult with the faculty member and the receiving unit and will seek a mutually satisfactory assignment. If agreement cannot be

reached, the University officer will assign new responsibilities after consultation with the individual.

The University may give the faculty member other assignments only if assignments to teaching in the faculty member's discipline are not feasible. For example, faculty might be assigned

- \* to teach in another field in which the individual is qualified
- \* to perform professional or administrative duties, including professional practice in a field in which the individual is qualified.
- \* to transfer effort, by assignment in a suitable professional capacity, at another educational institution or similar entity, while retaining University tenure, compensation, and benefits.

A faculty member must accept any reasonable reassignment or offer of retraining. Following the assignment, any dispute about the reasonableness of reassignment may be taken to the Judicial Committee, as provided in Section 15. The faculty member shall perform the reassignment pending resolution of the dispute, unless the president on the recommendation of the chair of the Judicial Committee determines that provisional measures are appropriate.

**12.4 Termination Of Appointment.** A faculty member who chooses not to accept a reasonable reassignment or retraining opportunity shall receive:

1. Assistance in locating other employment;
2. A minimum of one full academic year's notice or one year's salary as severance pay in lieu of notice, unless the appointment would otherwise expire earlier.
3. Continuation of the University's contribution to health benefits for one year after the date of the termination of the appointment.

In place of the severance payment provided by this section, a faculty member may select another severance program for which the faculty member is otherwise eligible at the time the appointment is terminated.

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### **3. Student-Rating-of-Teaching Policy Change: Written Comments From Students**

Professor Clayton called on Vice Provost Carney to raise a policy question.

Dr. Carney noted that all of the educational policies have been changed recently, including the one about the student rating of teaching. She is responsible for implementing that policy and sends out a message about it each semester (to colleges outside the Academic Health Center, which has its own separate system). No one discussed with her one of the changes in the student-rating policy, that dealing with the use of written comments by students on the rating form. The policy now provides that the faculty governance body of each college or campus is responsible for making the decision on how the written comments will be used in personnel decisions, if at all.

Dr. Carney said she understands that this is an issue people feel strongly about. The Morris campus wants to use the comments in personnel decisions. The Senate Committee on Educational Policy wanted the comments used; the Senate Committee on Faculty Affairs did not.

The compromise at the Faculty Senate was that each college and campus would make its own decision about the use of written comments. In the revised version of the policy, the faculty-governance body is explicitly charged to make the decision. In either case, she said, she needs to be sure each college and campus decides, because she is the academic officer responsible for the policy.

She is also the academic officer responsible for administration of the tenure code, and the language of the student-rating policy causes her concern when implementing the tenure code. One could have a faculty member who receives good scores on the student-rating forms but who also has some percentage of written comments that cause one to worry. How bad must they be and how many of them must there be? In the case of Morris, the comments can affect the promotion and tenure decision. In the Carlson School they do not, because the written comments go only to the faculty member. She worries about the equity in tenure decisions given these different practices.

Dr. Carney told the Committee she takes Faculty Senate policies seriously and must implement them. Her question now is about equity: she is uncomfortable with the possibility that someone could be denied tenure in one unit on the basis of written student comments but not in another. She said she would like the Committee to think about this issue. It is more likely that on the basis of teaching a probationary faculty member would be denied tenure at Morris and Crookston, which have only an undergraduate focus, but faculty are denied tenure on the basis of inadequate teaching on the Twin Cities campus as well.

It sounds as if the circumstances call for a uniform policy across the University, Professor Clayton said. Examples would help. Dr. Carney said she would bring some (redacted) files to the Committee. How many negative comments is a big deal? What if the faculty member teaches controversial subjects? It is true that students who are upset about a faculty member may say something to the department chair/head, but this is Minnesota and many students will not. Instead, they decide to make their point via written comments on the rating forms—but may not realize that the written comments in some units do not go to the department head but only to the faculty member. She sees the comments in the cases where the units use them in decisions but does not see them in cases where the unit does not use them. She also recalls Professor Gonzales's presentation to this Committee about how even a few negative comments can affect the perception of an individual.

She is working with two faculty committees at present, Dr. Carney related, one dealing with how to display student-rating data in personnel files. This is never an issue with someone who is a great teacher. The question comes up when the ratings go up and down, or are not strong, or when the written comments come into play. Some departments forward the raw comments; others type them up.

The question is who should receive the comments. What information should be formative and what should be summative (i.e., in the personnel file)? She said she believes faculty members should receive both kinds of information, and the formative information should be provided only to them (e.g., if a faculty member wants to try a new teaching technique, or a new course). They should also receive the summative information, used at a time of judgment.

There has been a lot of discussion about the written comments but it warrants further Committee attention.

Dr. Carney noted that the Institute of Technology includes all the written comments in the file. Professor Simon said he likes to see them all and looks for themes.

This is a tough question, Dr. Carney said, because it is all or nothing. There is another problem that arises in the case of online evaluations. A student emailed Dr. Bacig in her office to say that he may have evaluated the wrong professor in his online evaluation. When students are doing online evaluations, they may be doing four or five at once and can mix up their instructors, whereas they KNOW who the instructor is when they do them on paper in the classroom. If the University is going to move to more online evaluation, it may be necessary to have pictures included so students do not evaluate the wrong person.

If the Morris campus is to continue to use the written comments, the policy would have to be normalized so that use of comments would be the practice across the University, Professor Clayton observed. Dr. Carney said that IT uses all comments; CLA includes them in the supplemental materials. Perhaps the units could continue to be different but the policy could require that she (Dr. Carney) see all the comments, Professor Porter suggested. If the comments are part of the discussion, she sees them, Dr. Carney said. She does a discourse analysis to try to figure out what they mean; it is a lot of work, but if they are making a decision about someone's career, they must look at the comments in detail. But what are they to do if 80% of the comments are positive and 20% negative? What about the phenomenon that women faculty are more likely to be described as "condescending" than men? What about the case where a department reacts negatively to an average score of 5.4 when the department average is 5.8? In the last case, the difference is unimportant and both numbers are above average. A department might agree that no one should receive an average score below a 4.0; what about the case when someone receives scores in the upper 4s and 20% of the comments are negative?

Professor Clayton said that one knows nothing about the statistics without the comments; he maintained that all comments should be included in the file for review. It is a lot of work if every unit is to do so, Dr. Carney commented, but it is important.

Professor Clayton thanked Dr. Carney for raising the issue, said the Committee would take up the academic-freedom report at the next meeting, and adjourned this one at 11:15.

-- Gary Engstrand

University of Minnesota