

# UNIVERSITY OF MINNESOTA

## THE FACULTY SENATE

### MINUTES

January 25, 1973

The sixth meeting of the Faculty Senate for the year 1972-73 was convened in Nicholson Auditorium on Thursday, January 25, 1973. Checking or signing the roll as present were 82 voting members of the faculty, 3 members of the Administrative Committee, and 9 nonmembers. Vice Chairman Frank J. Sorauf presided.

The following items were considered and action was taken as indicated.

A motion to permit representatives from the Crookston Campus to vote by proxy while the Faculty Senate is meeting as a committee of the whole to consider the proposed Tenure Regulations was *approved*.

Mr. Krislov, speaking for the Consultative Committee, moved that the Faculty Senate should continue to sit as a committee of the whole for the next two scheduled meetings and thereafter return to standard procedures. The motion *carried*.

Mr. Sorauf then requested the chairman of the Tenure Committee to present Section 17 of the proposed Regulations Concerning Faculty Tenure. In the course of the presentation, Mr. Auerbach announced that the Tenure Committee had deleted item "f" of Section 17.1 on page 88 of the Third Supplemental Report.

Following presentation, a motion was offered to delete items "a," "b," and "c" and substitute a new item "a" to read "substantiated incapacity, refusal, or failure to perform reasonably assigned duties adequately." The motion *carried*.

A motion was then made to delete items "d" and "e" of Section 17.1 (page 88). In the course of the discussion, an amendment to the original motion, "repeated unreasonable conduct destructive of the academic freedom of colleagues" was declared *out of order*.

A motion to close debate was approved, after which the motion to delete items "d" and "e" was *defeated*.

A motion was then introduced to replace items "d" and "e" with the following: "repeated unreasonable conduct destructive of the academic freedom of other members of the academic community." The amendment was *approved*.

The following suggestion was referred to the Tenure Committee: "On the first occurrence of disciplinary action against a member of the faculty, a sanction exceeding suspension of one quarter ordinarily would not be appropriate."

The debate on Section 17 was terminated at this point.

The Faculty Senate adjourned.

W. DONALD BEATTY  
Clerk of the Faculty Senate

## Appendix

### ABSTRACT OF DISCUSSION

The meeting of the Faculty Senate was called to order at 3:30 p.m. Frank Sorauf, professor of political science and vice chairman of the body sitting as a committee of the whole to consider the tenure document, presided. A proposal to permit Crookston Senators to vote by proxy during the deliberations on the tenure document while the body was sitting as a committee of the whole was approved.

Samuel Krislov, professor of political science and chairman of the Consultative Committee, presented his committee's recommendation that the Faculty Senate continue to sit as a committee of the whole for the next two scheduled meetings, but that it go into spring quarter with regular voting and other procedures, thus taking up Section 17 at the present meeting and allocating the next two meetings for the remaining sections of the tenure regulations. He said that the body would continue to become less representative of the faculty if further extended discussions took place, and that the major issues would have been faced by the close of the current meeting. His motion was approved.

A second proposal from the Consultative Committee concerned the action at the last meeting of the full Senate in adding four student members to the Tenure Committee. The tenure code specified that that committee was to be representative of the faculty only, Mr. Krislov said, so his committee at the February 8 meeting of the Faculty Senate would move to request the University Senate to present to the Regents a proposal to indicate that the Tenure Committee should also be representative of both students and faculty. If that proposal is defeated, he added, there would be a move in the University Senate to rescind the action taken at its last meeting.

Carl Auerbach, acting dean of the Law School and chairman of the Tenure Committee, commenced the discussion of Section 17 on termination or suspension for causes related to the fitness of the faculty member. He said there were fears that the proposed provisions would enlarge the categories for dismissal but that these fears were unfounded. He reminded the Senate that the existing regulations covering such causes provided that a faculty member, tenured or not, could be dismissed and that the language was so broad and vague as to raise questions of constitutionality. With this in mind, he said, the committee changed the language to be more specific in the area of working relations by indicating that conduct would have to be destructive of those relations with colleagues. The committee also deleted Section 17.1f as unnecessary. Burnham Terrell, professor of philosophy, proposed substitution of "incapacity" for "incompetence" and "disability," and "refusal" for "unwillingness" to perform adequately reasonably assigned duties. In place of Section 17.1a, b, c, he moved to substitute a new 17.1a "sustained incapacity, refusal or failure to perform reasonably assigned duties adequately." He pointed out that under the committee's proposal, if a member performed but did so unwillingly, he could still be terminated. Fred Morrison, professor of law, said the committee would work with Mr. Terrell to change the wording, but he indicated that incapacity as a cause might call for a procedure different from that in the outline. John Dahler, professor of chemical engineering and materials science, asked how frequently the kinds of causes listed had been used in terminating services, to which Charles McLaughlin, professor of political science, responded that there had been four in the last 10 years, and that such cases were a continuing problem. Samuel Krislov, professor of political science, added that there had

been a number of instances of complaint of failure to perform and that voluntary methods could not have been relied on in settling them. Leonard Shapiro, assistant professor of mathematics, was concerned that some procedure be established to cover campus moratoria, where heretofore the faculty could absent itself from classes provided it took steps to ensure make-up or substitute instruction. Mr. Auerbach's reply was that the reference to the University's Statement on Academic Freedom and Responsibility dealt with that situation.

Donald Gillmor, professor of journalism and mass communications, cited a case based on charges of professional incompetence where the Judicial Committee could find no precedence, and he indicated that the proposed policy would cover such cases. Leonid Hurwicz, Regents' professor of economics, cautioned that care be exercised in wording because the existing vague policy had been interpreted in a narrow way. He felt that (d) and (e) on conduct did not offer sufficient protection, and he suggested that the section include suspension or other alternatives less severe than termination.

Thomas Bacig, assistant professor of English, UMD, and member of the Tenure Committee, said the committee had endeavored to avoid prolonged debate and court costs resulting from a vaguely worded policy by restricting the range of considerations being brought to bear, but that he and some other members of the committee were uncertain about whether the new version gave better protection. Peter Lock, professor of French and Italian, contended that the case for "sustained failure" would have to be argued in individual cases, and he asked Mr. Gillmor whether the old language had been adequate. Mr. Gillmor replied that it had been but that there had been difficulty on procedural questions. Mr. Krislov suggested inserting "unreasonable" as descriptive of conduct destructive of working relations, and Paul Rosenblatt, associate professor of family social science, proposed to change "reasonably" to "reasonable" in the Terrell amendment, and to add "teaching" as descriptive of duties. The discussion turned to specific questions of termination involving research activities, and Mr. Auerbach indicated that the statement on the effect on achievement of the academic unit's mission would be an important consideration. Mr. Terrell retained "reasonably" in his motion, indicating that, unlike "reasonable," "reasonably" covered both the substance of the decision and the procedures by which it was reached and assigned. The Terrell substitute motion was then approved, and the Krislov proposal was accepted as a friendly amendment.

Michael Perlman, associate professor of statistics, said that if (f), referring to repeated violation of academic responsibilities, were dropped, the committee should be directed to add to the comments a statement that failure to perform during a campus moratorium was covered by the Statement on Academic Freedom. He then moved to retain the Terrell proposal and delete (d) and (e) of Section 17.1, the causes referring to unreasonable conduct destructive of working relations and repeated conduct destructive of academic freedom or constitutional rights of other members of the academic community, as being dangerous. He said the University should not be ruling on constitutional rights; that issue should be handled in the courts. Mr. Morrison countered with the argument that the University could not always rely on the courts to deal with the issue of constitutional rights in all instances and that in any case it would take a long time. He said that the two causes had been inserted to deal with the aberrant case and that the burden of proof would be on the unit making the charges. Mr. McLaughlin said the Perlman suggestion would leave the University with no protection from "destructive conduct" types of cases which in the past had presented a real problem. Concern was expressed that the regulations

should not try to cover every kind of case. Mr. Auerbach answered that each of the causes on the list had been used in dismissal cases at some time by other institutions. Mr. Gillmor favored inclusion of "repeated unreasonable conduct destructive of the academic freedom of the other members of the academic community," with deletion of the reference to constitutional rights and the academic unit's mission. At this point the motion to delete the two clauses (d) and (e) was defeated, 30 for, 50 against.

Mr. Gillmor then moved to substitute for Section 17.1d, e, a new section 17.1b "repeated unreasonable conduct destructive of the academic freedom of other members of the academic community." Mr. Hurwicz proposed suspension rather than termination on the first occurrence of action against a faculty member. Mr. Auerbach responded that suggested procedures gave the Judicial Committee discretion to recommend suspension or sanctions for first violation cases. Mr. Perlman was concerned that proposed procedures in Section 17.1d and e would not give the faculty member all the rights afforded in courts, such as subpoena powers. Mr. Auerbach maintained that the University should make the violation-of-rights decision, but that if a court case developed the University would be bound by that decision. He said if there were no court proceedings, then the University would have an obligation to make a decision. The Gillmor substitute proposal was then approved, 54 to 21.

Mr. Auerbach turned to the section on procedure. He explained that it would authorize the academic vice president, or the dean or provost or director after consultation with the academic vice president, to initiate proceedings. The committee, he said, wanted to ensure review by a person far removed from the faculty member in question. Mr. Hurwicz proposed that, on first occurrence of disciplinary action against a faculty member under the Gillmor amendment, sanctions exceeding a 1-quarter suspension would not ordinarily be appropriate. The Tenure Committee agreed to work out the wording with Mr. Hurwicz and, with that action, work on Section 17 was completed.

The meeting adjourned at 5:30 p.m.

WILBERT AHERN  
Abstractor

Mr. Lock protested that the University Senate would under the proposed regulations have a diminished role in the decision-making process, and he added that decisions should not be made in the summer if the Senate was not available to participate in the review process. Mr. Auerbach said that the consultative procedure had been outlined in accordance with the structure provided for in the Constitution of the Senate and that the Constitution should be amended if the procedure were to be changed. He said it would be hard for a large body to enter into meaningful review, but that the President's recommendations, together with those of the Consultative and Administrative Committees, would have to be reported back to the University Senate before they were submitted to the Regents. He advised that it wasn't possible to bind the Regents to accept recommendations from any group, but he pointed out that the proposal called for the Regents to outline in writing any "compelling reasons" for taking action contrary to the recommendations of the Consultative Committee regarding the educational policies and priorities to be pursued in effecting retrenchment. Kent Bales, associate professor of English, asked whether there could be a court test of any given "compelling" reason and what the grounds for a decision might be. Mr. Auerbach doubted that it would be an issue for litigation, and he said the word had been selected as being the most appropriate. He reminded the Senate that the Consultative Committee would have a chance to respond to such reasons outlined by the Regents. Mr. Hurwicz suggested that the Regents should convey their justification for contrary actions to the Senate as well as to the Consultative Committee.

Mr. Bales then moved to amend the relevant parts of Section 15 to indicate that the Consultative Committee should obtain the concurrence of the Senate in its tentative findings and recommendations, and that the Regents should outline reasons for any contrary actions to the Senate as well as to the Consultative Committee. Mr. Krislov held that the Bales amendments violated the Senate Constitution and that the committee should report to the Senate, which could express its views. Mr. Bales maintained that where educational policy was involved the Consultative Committee should come back to the Senate. Mr. Krislov offered a substitute amendment providing for independent recommendations from both the Consultative Committee and the University Senate requiring the Regents to outline compelling reasons for contrary action to both bodies. His proposal was defeated 32 to 24 and the Bales amendment approved 34 to 11.

The meeting was adjourned at 5:30 p.m.

WILBERT H. AHERN  
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