

Minutes*

**Academic Freedom and Tenure Committee
Friday, October 8, 2010
9:30 – 11:30
300 Morrill Hall**

Present: Barbara Elliott, Karen Miksch (co-chairs), Yusuf Abul-Hajj, Arlene Carney, William Craig, Joseph Gaugler, Barbara Loken, Linda McLoon, Christine Marran, Paula O'Loughlin, Gary Peter, Paul Porter, Terry Simon, Carol Wells

Absent: Tracey Anderson

Guests: none

[In these minutes: (1) women in higher education; (2) "The Risk to Academic Freedom That Lurks in Corporate Consulting Contracts"; (3) report on faculty promotion and tenure and P&A continuous appointments]

1. Women in Higher Education

Professor Elliott convened the meeting at 9:30 and drew the attention of Committee members to the conference on women in higher education on the 30th anniversary of the Rajender consent decree. She acknowledged that there continue to be differentials at the professorial level, and it will be interesting to see the data from the recently completed study of salaries at the University. One factor that may influence the outcome is that women faculty are less likely to seek outside offers.

Professor Wells commented that she had recently changed her research focus completely—and that someone had commented, upon learning of the change, that she had exercised her academic freedom. She recounted visiting her alma mater, the University of Wisconsin at Madison, to give a speech, and talked some about academic freedom. She said she noted the plaque on Bascom Hall, Wisconsin's main administrative building, which quotes language from an 1894 Wisconsin Board of Regents report: "Whatever may be the limitations which trammel inquiry elsewhere, we believe that the great State University of Wisconsin should ever encourage that continual and fearless sifting and winnowing by which alone the truth can be found." Professor Elliott agreed that it is the gift of academic freedom that makes possible the work that faculty members do.

2. "The Risk to Academic Freedom That Lurks in Corporate Consulting Contracts"

Professor Elliott now called on Professor Gaugler to lead a discussion of an article from *The Chronicle of Higher Education* titled "The Risk to Academic Freedom That Lurks in Corporate Consulting Contracts" [6/27/10].

Professor Gaugler said that the discussion need not be a long one but that faculty should be aware of the risks in signing consulting contracts outside the aegis of the University: There are risks to their

* 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.

own academic freedom and risks to the institution. He said he thought the Committee should inquire about what the University has in place to protect academic freedom when such contracts are signed. The policies in place deal more with time and effort and a concern about the effect of contracts on objectivity, but there is no policy language about signing away one's academic freedom. But a considerable amount of bad press seems to revolve around these contracts, especially in medical schools.

Professor Elliott said that at the University, most are well aware that if one has a sponsored project that limits publication and discussion, the project will not be approved without extraordinary review. There is also the recently-adopted conflict-of-interest policy, but there has been little attention paid to academic freedom in consulting contracts. She inquired if Committee members had any experiences to guide the discussion.

Professor Abul-Hajj said he and his colleagues in Pharmacy have many consulting contracts but that he has never experienced, or heard from others, that there have been restrictions from industry on expressing views. The agreement mentioned in *The Chronicle* article is very restrictive, and if one signed it, it could impinge on academic freedom. Some people might decide that it is acceptable for them but there is a question about whether the institution has something to say. These are individual agreements, however, that are not provided to the university or college administration.

Vice Provost Carney said that people must be very careful about what they sign. They often sign contracts without looking at the language. Consultation is work for hire, not like work done at the University, and a company may say the person cannot talk about the work because the information is proprietary. Professor Simon said it is not unusual for a company to tell a faculty member what is proprietary and not to be passed on, but companies do not tell someone what to think. He said he has never felt any restrictions; the company may ask to see any papers prepared as a result of the work, but out of concern that it may give away information on production of a product, and the language in a paper can usually be massaged so it does not reveal proprietary information. They do usually ask for the right of first review—and tell the faculty member that. In the worst case, they will ask someone to withhold publication for three months, but usually it is two weeks, and the issues are usually sorted out when the contract is written. Is there particular contract language that is used, Professor Elliott inquired? The University has language, the company has language, and usually it is a compromise. That is fine for sponsored projects, Professor Gaugler said, but there is no University language that one can compromise on when signing individual contracts. One can obtain help from the Office of the General Counsel if there are questions about whether a contract violates the conflict-of-interest policy, Dr. Carney observed.

It could be helpful if the University were to provide template language, Professor Gaugler said. He said understands these are private arrangements between a faculty member and a company, but if the issue of publication arises, the publication is identified with a University of Minnesota faculty members, and there are ramifications for the University.

In terms of the film "Troubled Waters," Professor Elliott said, it is not clear why it was to be delayed, but outside funding could have been part of the issue. Professor McLoon said she had seen the movie and thought it well done. It started with a strong bias but provided solutions; she also said she did not know why it was stopped. The movie was clear about who supported it. Professor Porter said he also had seen it and came in with his own biases. He said he has seen conflicts among faculty such that if one does not toe the line, one does not receive grant funding. The movie dealt with a number of issues related to agricultural research but only one person from the College of Food, Agricultural, and Natural Resource

Sciences was involved. There were a lot of soil-science issues but no soil science people from the University were involved. He said he could see where edits would have been appropriate. He said he felt bad that his college (CFANS) looked bad.

Professor Abul-Hajj inquired about the percent of funding to CFANS from the agricultural sector. It is large, Professor Porter said; some faculty members receive 100% of their funding from the agriculture industry, which can dictate what research will be done. If the industry does not like the results, one is not likely to receive funding again. They use RFPs and the research is through Sponsored Projects Administration (SPA).

Was this film a sponsored project, Professor Elliott asked? The LCCMR provided funding and the film was made under the direction of a P&A staff member in the Bell Museum, Professor Porter said. [From the LCCMR website: "LEGISLATIVE-CITIZEN COMMISSION ON MINNESOTA RESOURCES (LCCMR) The LCCMR is made up of 17 members: 5 Senators, 5 Representatives, 5 citizens appointed by the governor, 1 citizen appointed by the Senate, and 1 citizen appointed by the House. The function of the LCCMR (formerly LCMR) is to make funding recommendations to the legislature for special environment and natural resource projects, primarily from the Environment and Natural Resources Trust Fund."]

Professor Elliott said that knowing SPA has controls and language to protect the University and the scholar when working with a sponsored project, she was wondering if the film was actually handled differently—perhaps through consulting agreements where there is none of that careful review? Professor Abul-Hajj said he did not believe the University gets involved in contracts except for stipulating that indirect-cost funds have to be included. The situation varies with the department; young faculty are under a lot of pressure to accept external funding to do their research in order to get promoted while senior faculty are more objective and can demand more from industry.

If one has a contract with DARPA or the Department of Defense, there can be real limits on publication and who can know about the research, Professor Elliott said, and those contracts require super-review. [From the DARPA website: "DARPA is the research and development office for the U.S. Department of Defense."] Professor Gaugler reported that the Minnesota Department of Human Services had grant language that the University would not accept; SPA pays attention to sponsored-research language. The *Chronicle* article is about consulting, he said, and it may be that there is nothing the Committee can do except tell faculty members to read their contracts—or perhaps it could ask the University to provide guidance and template language.

Professor Marran said it would be desirable for the University to provide guidance. Another issue is the bond of trust between the University and the public: The Committee should emphasize transparency and the credibility of the institution as a land-grant university as well. Any template language provided should affirm the goal of the University to be transparent in research and its concern about institutional integrity.

Where would such language go, Professor Abul-Hajj asked? And how would it be enforced? It would not be enforced, Professor Gaugler responded; there is nothing to enforce. It would be guidance about language to be included in a contract. Professor Simon asked if the film is a special case. Typically a sponsor gives money to a PI through SPA to do work. Here, money went to the Bell Museum and the film is advertised as a Bell Museum product. That had a more public profile than most, Professor Gaugler

said. An individual faculty member signs a contract and then publishes something as a University of Minnesota faculty member; if there is criticism, the University's name is brought into the debate.

Are there any University resources for faculty members considering signing a contract, Professor Elliott asked? Professor Abul-Hajj said he did not believe there are. The contracts are so individualized—a company approaches a faculty member because of his or her expertise, or vice-versa.

If the research is a sponsored project, it goes through SPA, Dr. Carney said. It is interesting to think about whether the University should have help available from the Office of Compliance or the Vice President for Research for contracts. It is not clear what office the assistance would come from—and it could be hers because it is a faculty-development issue as well. The issue hasn't been raised before and she said she could try it out at workshops to see if there is any interest in it. There are many experienced faculty so she could draw on different sectors of the University for help. She said she could float this in the spring and will ask her assistant to work with University offices and to poll the Senate Research Committee about it as well. Professor Gaugler volunteered to assist in this effort.

Professor Wells said she had the impression that a faculty member is rarely NOT identified as a faculty member from the University. One cannot use University letterhead and so on, Professor Loken said; they do use University resources, Professor Wells responded. The Report of Outside Consulting (ROC) indicates if University resources are being used, Professor Gaugler commented, but he said he believed a number of faculty members do not file a ROC, sign a contract, and then report it on their REPA. Vice Provost Carney suggested it would be appropriate for Ms. Zentner, Director of Compliance, to talk with the faculty about when it is appropriate to file a REPA.

3. Report on Faculty Promotion and Tenure and P&A Continuous Appointments

Vice Provost Carney now reported to the Committee on the promotion-and-tenure (P&T) data for the University for 2009-10. She distributed copies of slides used with the presentation to the Board of Regents last May. She began by reviewing briefly the basic principles of tenure and promotion and pointed out that faculty on the tenure track are considered for both rank and tenure OR may be considered for tenure only. Non-tenured faculty are considered for rank only.

Dr. Carney reviewed the promotion-and-tenure process for non-AHC colleges and campuses (unit review/vote, college P&T committee review/vote, dean's review/recommendation, Vice Provost for Faculty and Academic Affairs—her office—plus a second vice provost review, final recommendation to the Regents from the Senior Vice President for Academic Affairs and Provost). For the AHC colleges, up to last year the file has gone from the college P&T committee to the Senior Vice President for the Health Sciences and then to the Provost, but that will be different starting this year, because all P&T files will go through her office starting January 1, 2011. (She has always read the AHC files but has not been responsible for monitoring their processing.) For those colleges that are a single unit (Law, Carlson, Humphrey), there is a college vote, the dean's review/recommendation, and then review by an all-University P&T committee before the file comes to her office and to the Provost. The all-University P&T committee is composed of representatives from the colleges it serves plus one representative from the social sciences in CLA—the all-University committee provides the second-level review required by the tenure code. Starting this year there are two AHC colleges that will use the all-University P&T committee and they will also be give representation on it. The required second-level review takes place

within the larger colleges and at the coordinate campuses. The Provost's office constitutes the third-level review.

For 2009-10 there were 184 candidates for promotion and tenure systemwide: 154 tenured/tenure-track candidates and 34 non-tenure-track candidates. Dr. Carney noted that the Committee has had a number of discussions about the number of non-tenure-track faculty, but for last year, at least, the large majority of the appointments were tenured/tenure-track faculty.

Of those 184 candidates:

- 90 assistant to associate professor with tenure
- 1 assistant professor non-reappointment
- 4 tenure only (Law hires at the associate professor level without tenure, as do other colleges on occasion; these four cases were all from outside the Law School)
- 86 promotion only (includes both contract and tenured/tenure-track faculty, and 56 were tenure associate professors promoted to professor)
- 1 continuation in rank (associate professor not promoted)
- 1 associate to professor with tenure (an untenured associate professor both promoted and granted tenure, a first in Dr. Carney's tenure as vice provost)
- 1 pending (the decision has not yet been made)

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Professor Gaugler inquired if there are any tenured assistant professors. There are a few left from the past, Dr. Carney said, but it is not now permissible to grant tenure to an assistant professor.

Professor O'Loughlin inquired if there are cases where a probationary faculty member is not renewed before the probationary period has ended. There have been, Dr. Carney said, and some choose to resign before the P&T process begins (although there were no such cases last year).

Of those 184 candidates:

- 90 assistant to associate with tenure: 58 men, 32 women
- 1 non-reappointment: 1 woman
- 4 tenure only: 4 women
- 86 promotion only: 51 men, 35 women
- 1 continuation in rank: 1 man
- 1 associate to professor with tenure: 1 man
- 1 pending: 1 woman

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Dr. Carney noted that last year, there were more women than men promoted from assistant to associate with tenure.

In terms of the composition of the tenured and tenure-track faculty, University-wide it is 68% men and 32% women. For 2009-10, the tenured and tenure-track cohort was 62% men and 38% women.

Of those 184 candidates:

White, non-Hispanic: 77 men, 63 women
African-American: 3 men, 2 women
Asian/Pacific Islander: 26 men, 6 women
American Indian: 1 man, 2 women
Hispanic: 3 men, 0 women
Unknown: 2 men

Total: 111 men, 73 women

Of tenured and tenure-track faculty systemwide, 83% are white/non-Hispanic and 17% are faculty of color. The 2009-10 cohort was 76% white/non-Hispanic and 24% faculty of color.

Vice Provost Carney turned next to the "Rate of Tenure Success." Last year only 1 of 91 faculty members who were evaluated for promotion from assistant professor to associate professor with tenure was denied tenure. It looks like everyone is granted tenure. That assumption is incorrect, however, and the University has a rigorous, annual review process. They also have an agreement for the first time among the CIC schools that they will all use the same metric as the University (which uses a metric developed at the University of Michigan).

The Rate of Tenure Success is calculated by following an entering cohort of assistant professors in any given year (e.g., 2000-2001) over a full probationary cycle of 7 years (6 probationary years plus 1 terminal year if not granted tenure) and take a snapshot later (e.g., spring 2010). There are four possible outcomes for everyone in a cohort:

- received tenure and are still at the University
- received tenure and left the University
- left the University without tenure
- are still at the University on the tenure clock.

There are a number of reasons why someone might still be on the tenure clock; two schools have longer probationary periods (8 years in the Carlson School and 9 years for clinical faculty in the Medical School) or one might have invoked section 5.5 to lengthen the probationary period because of parenthood. The Rate of Tenure Success includes the percent of tenure-track faculty who received tenure and stayed at the University plus the percent who received tenure but then left. From year to year, about 3% of faculty who received tenure leave, but they were still successful in achieving tenure at the University. They look at the tenure success rate over a three-year period and at three-year rolling averages.

For the entering cohorts 2000-2002, the overall tenure success rate was 55.3%, 62.7% for men and 45% for women; it was 55.9% for white faculty and 54.2% for faculty of color (there has never been a statistically significant difference between the latter two groups). For 1999-2001, the overall tenure success rate was 57.2% (63% for men, 47.8% for women, no significant difference for whites and faculty

of color). For 1998-2000, the overall tenure success rate was 59.3% (60.3% for men and 57.9% for women). Overall, Dr. Carney observed, the tenure success rate is going down.

Vice Provost Carney focused for a moment on the data for women faculty. It appears that the tenure success rate for women is going down, but it isn't. The category of "still employed after 7 years and non-tenured" is larger for women and increasing. Over the period 1998-2002 many more women opted to extend the probationary period for childbirth, adoption, and caregiving, and there are also more women in the Carlson School and Medical School, where the tenure clock is longer. So while the tenure success rate for women appears to be decreasing, the percent still on the tenure clock at 7 years has increased over the same period from 14.8% to 19.6% to 21%.

Vice Provost Carney briefly reviewed the data for Academic Professionals on continuous appointments. Less than 4% of the group has continuous appointment; over half are in the libraries and the remainder are in various appointments. There were three candidates for continuous appointment last year (two men, one woman; two whites and one person of color). For Academic Professionals as a class, 51% are women and 49% are men; 84% are white and 16% are persons of color.

The University of Michigan Rate of Tenure Success rolling three-year average varies between 51% and 57%, so the University of Minnesota is comparable.

Professor Loken commented that a 57% success rate is not that high. The denominator (all in the cohort) could include probationary faculty who left after the third year. There is no perfect way to infer the number who leave because of inadequate performance, Dr. Carney said, and there are also people who are successful who leave before achieving tenure (for example, some may not like the weather and some may be half of dual-career couples and the other one gets a job elsewhere). Last year, about 23-24% left during the probationary period. What is important to understand is that not everyone who starts is given tenure and that there is a rigorous system of annual reviews.

Very few faculty members are not reappointed in the middle of the cycle, Dr. Carney said, and they can appeal to the Senate Judicial Committee if they are, although very few do so. The number of non-reappointments varies from year to year, Professor O'Loughlin observed.

Dr. Carney said she has been asked if they have a target number of non-reappointments. She said she doesn't understand the question. Moreover, Professor Loken pointed out, if a department hires right, it will have a lower number of probationary non-reappointments. And if they do a good job at mentoring, Professor Abul-Hajj added, they may not have non-reappointments. Mentoring still needs to improve, but she talks about it at the New Faculty Orientation and at workshops.

Dr. Carney reported that she had presented on post-tenure review to the Board of Regents the previous day. That is one of the most misunderstood processes on campus, she said, and she tells department chairs they should call her before they start the process, because it is very complex.

4. Committee Business

Professor Miksch reported that the Committee on Faculty Affairs had heard recommendations from the President's Emerging Leaders about work-life balance, and one recommendation was that all letters of offer to faculty members include reference to section 5.5 of the tenure code, which allows

lengthening the probationary period for childbirth, adoption, or caregiving. There was a realization that there is no template for hiring letters and that perhaps such a template would be useful. The Committee on Faculty Affairs suggested that 1-2 members from each committee could draft a template letter.

Professor Wells asked if it is the Committee's job to point out the tenure code. The practice varies dramatically across units, Professor Miksch said, and not all mention the tenure code or the 7.12 statement. Professor Gaugler suggested that all letters simply have one sentence with a link to the tenure code and the department 7.12 statement. Professor Simon agreed that candidates should be directed to the entire document rather than be provided extracts from them. Professor Miksch agreed to work with Professor Hanna from SCFA to ensure that the tenure code and departmental 7.12 statements are mentioned in the template, along with appropriate links to full text of the documents.

Dr. Carney said that the Provost's office already has language about hiring someone with tenure. The person must resign from any other job so there is no risk of someone having tenure at two institutions. If someone indicates he or she is not ready to do so, the University will not grant tenure. What if someone is asked to resign the other appointment and then the Board of Regents does not approve tenure here, Professor Abul-Hajj asked? That has never happened, Dr. Carney said. If someone is that risk-averse, they would have to come to Minnesota without tenure.

Professor Elliott reported that Dean Lloyd will join the Committee to discuss the supplemental personnel plan for the School of Dentistry.

Professor Elliott adjourned the meeting at 11:30.

-- Gary Engstrand

University of Minnesota