

Minutes*

**Academic Freedom and Tenure Committee
Friday, November 19, 2010
9:30 – 11:30
300 Morrill Hall**

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

Absent: Arlene Carney, Joseph Gaugler

Guests: Carolyn Chalmers (Office for Conflict Resolution), Sophia Anema, Lynn Zentner (Office of Compliance)

[In these minutes: (1) grievances and academic freedom; (2) grievances and allegations of retaliation; (3) college personnel plans; (4) 9901 position postings]

1. Grievances and Academic Freedom

Professor Elliott convened the meeting at 9:30 and welcomed Mss. Anema, Chalmers, and Zentner to discuss questions the Committee had raised about grievances. She suggested the discussion begin with the question about grievances related to academic freedom.

Ms. Chalmers read the question that had been posed to her: "Are allegations of violations of academic freedom grievable?" She noted that her office deals with employment issues and covers non-bargaining-unit staff as well as student employees. In FY10 her office dealt with about 30 faculty matters. A faculty member can file a petition alleging a violation of a University policy, procedure, or practice; a panel is appointed to hear the claim and a recommendation is made to the Provost, who makes the final decision. But almost all the work is in the form of informal consultation and facilitation.

The jurisdiction of her office over complaints from regular (tenured and tenure-track) faculty is limited. For regular faculty, complaints are heard in accordance with the provisions of the tenure code. As the tenure code requires, her office defers to the Senate Judicial Committee on faculty complaints involving academic freedom. She consults with Professor O'Loughlin, chair of the Senate Judicial Committee, and did so with her predecessors, about which office is appropriate for complaints by individual faculty,

For contract, clinical, and adjunct faculty, and for P&A staff who do research and teach, most academic-freedom complaints would come to her office, Ms. Chalmers said. Such a complaint would need to allege a violation of a University policy, procedure, or practice. There is a Regents' policy on Academic Freedom and Responsibility that could be the basis for a petition (grievance) in her office. Another place academic freedom is mentioned is in the Board of Regents policy Code of Conduct, but that policy also provides that one cannot grieve its provisions.

* 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.

For non-teaching/research staff, P&A staff, and Civil Service staff, academic freedom is rarely an issue. If one is not in a classroom or doing research, one is likely not in a job that encounters academic-freedom questions. If one's job involves accounting or human resources, academic freedom is unlikely to come up as an issue.

Students are covered by her office only to the extent that they raise employment-related problems, Ms. Chalmers explained. Most of those who do so are graduate students, and they also work closely with the Student Conflict Resolution Center, because graduate-student issues are often linked to academic issues. There is a Student Academic Conflict Resolution policy, parallel to the employee conflict-resolution policy, that provides that student academic problems will be handled initially within the colleges, but may be appealed.

Dr. Craig said he was happy to live with the description of the situation for P&A staff who are engaged in teaching and research, but he pointed out that many P&A staff are not classified in research or teaching positions but nonetheless do a great deal of one or the other. Are they covered? Ms. Chalmers said she believed they are. The job title does not determine jurisdiction, it's the duties that determine jurisdiction.

Professor Elliott inquired why regular faculty go to the Senate Judicial Committee and others not. Because the tenure code says so, Ms. Chalmers responded. And that is the right place; the regular faculty know best how to think about academic-freedom claims. Professor Elliott asked Professor O'Loughlin if she has regular contacts about academic freedom. She does, Professor O'Loughlin said, and she also talks with Ms. Chalmers. There have been perhaps five or six cases in the last two years.

Ms. Chalmers noted that faculty issues do come to her office, and sometimes raise questions of academic freedom; examples include salary reductions, teaching standards/evaluations, grounds/criteria for sabbaticals or single-semester leaves, and interpretations of the policy on outside consulting. She helps people talk about the problem and think it through; if that does not work, the person may file a petition or (if a regular faculty member) go to the Senate Judicial Committee. Professor O'Loughlin said that she and Ms. Chalmers talk about what advice to give to a faculty member.

In response to a question about how the petition process through the Office for Conflict Resolution relates to the anonymous UReport system, Ms. Zentner next reported that since 2005 there have been about 600 complaints filed on UReport (www.ureport.umn.edu), 80% of which are anonymous. They fall into many categories. The EthicsPoint system, the external reporting system used for UReport, works well and allows those who make a report to track what is happening with it. It is rare that someone walks through the door to their office to file a complaint. Ms. Chalmers added that it is good to have different ways that employees can raise concerns, as some will be comfortable with one approach and others with a different approach.

Ms. Anema reported that once someone enters the UReport portal, they choose a campus and a category of alleged violation and then answer questions to provide more detail. There is a category for retaliation. She ensures that each report gets into the right category and that proper procedures are followed. Each report is handled individually.

Ms. Zentner told the Committee that she reports twice per year to the Board of Regents Audit Committee on what they are seeing from UReport.

Professor Abul-Hajj said that it is more difficult for students to identify themselves because they risk failure in a course or expulsion. How do they handle that? That is a problem, Ms. Chalmers said, and a problem also for non-regular faculty. She uses confidential informal processes to help them think about problem-solving. Often they can solve the problem with that approach.

2. Grievances and Allegations of Retaliation

The discussion moved to the topic of retaliation, which the Committee had also asked about. Is retaliation a concern, Professor Elliott asked? Yes, employees worry about generating hard feelings if they raise a complaint.

How many complaints are false charges, Professor McLoon asked? Their experience with frivolous charges has been minimal, Ms. Chalmers said. There are sometimes confused charges, but they do not see many people trying to manipulate the system. Ms. Zentner reported the same experience. Only a small percentage of complaints are substantiated, but most of them are submitted in good faith. People may be confused about the facts or about University policies or the law, but they don't see frivolous complaints. At one time they saw eleven complaints from the same unit, and concluded that the unit was dysfunctional, so worked with Human Resources to try to address the problems. But that was an unusual situation.

Ms. Chalmers related that retaliation is not a problem unique to universities; it happens in all organizations, big or small. When people make complaints, the complaints engender human reactions that can be emotional. It is important to help people react appropriately to a complaint, and understand that they can't act on anger, Ms. Chalmers said. It is also challenging to create a culture where people come forward to identify problems and are not afraid of retaliation.

But there is also considerable awareness of the danger of stifling complaints, because if negative things go on for a long time, there can be serious consequences.

To her knowledge, the University does not have a comprehensive no-retaliation Board of Regents' policy, Ms. Chalmers told the Committee. There are statements prohibiting retaliation in some of the administrative policies. The Conflict Resolution policy is under review, and has a provision about retaliation, but that has not been in the Regent's policy. Her Advisory Committee is proposing an amendment to the Board of Regents policy to provide that retaliation for using the conflict resolution process is prohibited. This is one way to help create a culture where employee concerns can be aired. She is working with Ms. Zentner on non-retaliation issues; it is an issue that the University Auditor, Gail Klatt and Vice President Mulcahy are looking at in connection with their risk tolerance review.

Professor McLoon suggested that if a prohibition on retaliation is already in the law, the University does not need a policy. She observed that she was trained as a scientist, not an accountant or a people manager, and it would help to have guidance on dealing with issues. The sessions offered by Human Resources are not geared to faculty, and also now charge for programs. But a lot of faculty members face questions about how to deal with people better. They have developed short checklists and tools about how to deal with difficult situations, Ms. Chalmers said. NIH ombudsman Howard Gadlin will be on campus this spring to talk with faculty about managing conflict on research teams. She agreed, however, that more professional development geared to faculty members would be helpful. She could also have a problem but no dollars to pay to fix it, Professor McLoon said. Ms. Chalmers noted that there are no charges associated with the use of her office, and they will come in to help.

Professor Elliott asked if those who have raised issues later complain about retaliation. That has happened, Ms. Chalmers said. She encourages people to stay in touch with her office and to be aware that resentment is a predictable part of conflict. She tells people she cannot prevent retaliation but that she can work on it. She also talks with people making decisions in order to try to help them avoid retaliation.

Professor Elliott asked if retaliation has been experienced in response to academic freedom complaints. Ms. Chalmers said she has seen much. The tenured faculty are very secure—they can suffer adverse consequences but in her experience they are not shy about bringing something up with their chair or dean.

Curricular revision could lead to dictating to faculty how to teach their subject matter, Professor Abul-Hajj said. Could that be an infringement of academic freedom? That is a matter for this Committee, Ms. Chalmers responded. Generally, department chairs/heads and deans can assign courses. That is not what he meant, Professor Abul-Hajj said; he was referring to dictates on HOW a faculty member will teach; some feel that kind of direction is contrary to academic freedom. Professor Wells related learning that in one case, a group of faculty was told that all of their lecture material would only be online. That sounds like an academic-freedom issue, Professor Elliott commented. If a faculty member believes that the best teaching for the subject matter occurs in small groups, and is told it must be taught another way, is that an infringement on academic freedom? Ms. Chalmers said she did not have the expertise to answer the question; this Committee would be the group to do so.

Ms. Zentner said that her office is exploring ways of strengthening the University's position on non-retaliation, including possibly developing an all-University no-retaliation policy or enhancing the current policy Reporting and Addressing Concerns of Misconduct. They are looking at other policies and federal laws, and also are defining what retaliation is NOT. She has talked with Vice President Carrier, General Counsel Rotenberg, and Ms. Chalmers, about where they intend to go. Her office works with 29 compliance partners around the University, and meets with them every two weeks; they will put this matter on the agenda.

Professor Elliott asked Ms. Chalmers when she expected the Board of Regents to act on the policy recommendation. Action should come in December, Ms. Chalmers said. The policy statement does not define retaliation. What are the consequences if the policy is violated, Professor Elliott inquired? One can file a petition, Ms. Chalmers said. A petition is already available, since there is a non-retaliation provision in the administrative policy; the revision moves it to the level of Board policy.

Professor Elliott thanked Mss. Anema, Chalmers, and Zentner for their report.

3. College Personnel Plans

Professor Elliott now welcomed Nan Wilhelmson from Human Resources to the meeting to provide an overview of college personnel plans and supplemental plans.

Ms. Wilhelmson said she hoped particularly to be able to help the Committee understand more about the supplemental plans attached to college plans as well as look at the supplemental plan provided by the College of Design. She brought the College of Design plan as an example and can provide others if the Committee wishes. She distributed to Committee members several handouts: History and highlights of the Administrative Policy: Academic Appointments with Teaching Function (including a

list and definitions of the five categories of academic appointments with teaching function); a table of data by college showing the number of regular, contract, and P&A faculty and the number of non-regular faculty as a percentage of the regular faculty; a summary of the rationales offered by colleges when they file a supplemental plan; a three-year summary of supplemental plan data; and the College of Design personnel plan.

Supplemental plans are required, Ms. Wilhelmson noted, whenever "the number of FTE contract faculty positions . . . plus number of FTE academic professional positions with primary responsibility for teaching . . . exceeds 25% of the FTE of tenured and tenure-track faculty" (internal section numbers deleted). 14 of the 19 colleges have supplemental plans, either for the college as a whole or for specific departments within the college. The College of Design and the College of Education and Human Development do not yet have approved supplemental plans because they have been working on personnel plans since the reorganization of colleges and departments under strategic positioning. Supplemental plans are added to college personnel plans when it will be possible or it happens that the FTEs of contract faculty and P&A instructors exceed 25% of the regular faculty. The typical reasons offered by colleges for exceeding the 25% threshold are (1) a large number of introductory or service courses (because regular faculty should focus on higher-level classes) or (2) the need for professional skills (they need people who may have professional jobs and can bring more clinical or practical experience to students). In the case of colleges that provide supplemental plans by department, they are seeing a trend toward more departments exceeding the 25% threshold and are becoming more aware of the trend.

Professor Marran noted the explanation offered by some departments: "if funding for additional regular faculty positions were made available, the number of contract faculty and teaching specialists would decline." She wondered if this were new. It is not, Ms. Wilhelmson said. She also pointed out that the School of Nursing and the Medical School have now added a teaching track (appointments will be contract faculty). The Medical School has had Clinical Scholars and a group of employees who work at affiliated hospitals and primarily do research.

Professor Anderson asked if the clinical scholars and other faculty appointments are different from P&A instructors. They are, Ms. Wilhelmson said, because there are criteria established for promotion, and even though contract faculty may be heavily focused on teaching, they are still expected to do some research and perform some outreach activities. P&A instructors can engage only in teaching; there is no policy that says they must also be engaged in research and outreach. There is also no promotion ladder similar to faculty, Dr. Craig added. [Teaching Specialists can be promoted to Senior Teaching Specialist; Lecturers to Senior Lecturers.] Professor McLoon observed that the Clinical Scholars also have a 7.12-like statement.

Professor McLoon commented that all of the college personnel plans appear to have been prepared as a result of the letter sent out in 2002 notifying colleges that the plans were required. There must be a statute of limitations, she said. There is, Ms. Wilhelmson said. For example, the Medical School prepared a revised plan—but it has not revised its supplemental plan. Colleges are supposed to review them every five years, but there have been no substantive changes in college personnel plans except for the Medical School addition of the teaching track. Most colleges, however, are thinking about a review of their plans, even if they have not yet conducted it.

Professor Marran commented that departments could say that they will only use contract faculty or P&A instructors to teach a specific course or courses. That would imply a way to control and limit the way contract faculty and P&A instructors are used, and would also imply the use of regular faculty in all

other courses. She expressed concern that graduate students are being used to teach courses that faculty should teach if the department is to retain a high quality of instruction. If departments tighten their plans, they could maintain the quality of instruction. Students want consistency and they want faculty with a history of teaching a subject—and it is better that they have taught the subject over time and better that regular faculty teach a course as opposed to contract faculty or P&A instructors.

Ms. Wilhelmson said that this would be a good time to take a look at the policy, which is ten years old, and at the collegiate personnel plans.

Professor McLoon said she viewed the use of non-regular faculty and P&A staff as an abuse of the system. Units go over the 25% threshold because of immediately exigency, but there should be a cap on the number of non-regular faculty and P&A staff who can teach in a department. Budget problems give administrators an excuse not to hire regular faculty. That, she repeated, is an abuse of the policy. Professor Simon agreed and said that is why the policy is needed. He also commented that to say that contract faculty and P&A staff are used to teach "when regular faculty cannot provide the needed instruction," language that appears in several rationales, is no reason at all. Professor Abul-Hajj agreed with Professor Simon and asked if anyone had said that that rationale was unacceptable.

Professor Elliott asked about the five-year reviews of the college plans and the supplemental plans. Ms. Wilhelmson said that the plans do not need to return to this Committee if there are no changes proposed in the plan. How does the system obligate the colleges to conduct the reviews, Professor Elliott inquired? Initially the plans were reviewed by Human Resources and by this Committee, Ms. Wilhelmson explained, and the Committee made recommendations. Then either Provost Bruininks or Provost Sullivan, depending on who was in that office when a plan came forward, approved it. The approval process is the same now. Questions can be posed about any college plan, and they are to be developed through consultation within the college, but they still must come to this Committee for review.

But if a college can just go along with 278% of the instructors P&A staff (one example from the data Ms. Wilhelmson provided), and there are no consequences, what is the meaning of the policy, Professor McLoon asked? It is hand-waving, Professor Wells observed. They are in the process of a comprehensive review of all administrative policies, Ms. Wilhelmson reported, and the policy on Academic Appointments with Teaching Function is one of the ones up for review. She has spoken with Vice Provost Carney and believes the review of the policy will get underway in January. If this Committee has recommendations, they will want to receive them. The policy does need changes, she commented. The way the policy is written, however, does mean that most units comply with it. About one-fourth of colleges or departments do not have a supplemental plan and are out of compliance (because they lack the supplemental plan) over a three-year period.

Professor Abul-Hajj said it appears from the data that there are more colleges over the 25% threshold than there are that are not. But they are not out of compliance with the policy if they have a supplemental plan, Ms. Wilhelmson observed. The colleges could have meaningless reasons, Professor Abul-Hajj pointed out, such as the language Professor Simon cited. That is an issue for the approval process, Ms. Wilhelmson suggested; the plans go through this Committee to the Provost.

What happens if a plan is not approved, Professor Porter asked? That is a good question, Ms. Wilhelmson said. One unit has not had its plan approved.

Dr. Craig said that he was horrified by some of the numbers. He noted that he is a P&A member of the Committee saying that instruction should overwhelmingly be delivered by the faculty. The P&A staff can support, supplement, and help, but when there are units that are as out of whack as some of these data suggest, that does not make sense. The faculty are the heart and soul of the University.

It was agreed that the Committee would schedule time to review the personnel plan submitted by the College of Design (which has not been approved). Ms. Wilhelmson noted that the departments of the College of Design had plans previously, but they were completely rewritten with the new college structure. She noted that the College of Design uses a number of practicing professionals or skilled educators with professional experience and suggested the Committee look at the specialty areas that are taught, especially in architecture and related fields.

Ms. Wilhelmson said that the Committee may wish to discuss the consultation that occurred in the development of college plans, the categories of appointment that the college plans on using, the job codes and titles it will use, and the extent to which it plans to use prefixes with professorial titles. It was also agreed that the Committee would review the college plans this year; Ms. Wilhelmson said that if it appeared likely there would be major discussion of a plan, the dean of the college should be invited to join the meeting.

4. 9901 Position Postings

Professor Wells inquired about a faculty position that had been posted with the number 9901. What is that number? Regular faculty appointments are 9401 (professor), 9402 (associate professor), etc. Ms. Wilhelmson explained that when the (current computer) employment system was adopted, people are expected to apply online and attach CVs, etc. It may be that a department decides it wishes to look at the qualifications of the applicants before it decides on the level of the appointment (professor, associate professor, etc.). So the position is open-ended and the 9901 number is used. The only other way to post an open-ended position would be to post two (or more) different positions. At the time someone is hired, the appointment is then converted to the usual number appropriate to the rank. No one is ever appointed with the 9901 code.

Can a department appoint outside a tenured or tenure-track line using such numbers, Professor Wells asked? It cannot, Ms. Wilhelmson said. Use of the 9901 code means that only tenure-track or tenured faculty may be appointed to the position. A department could not hire outside the tenure track unless it closed the search and began a new one, with a different position description and number.

Professor Elliott thanked Ms. Wilhelmson for her report and for helping Committee members understand college personnel plans. She adjourned the meeting at 11:35.

-- Gary Engstrand