

Minutes*

**Faculty Consultative Committee
Thursday, December 16, 2010
1:00 – 3:00
238A Morrill Hall**

Present: Kate VandenBosch (chair), Peter Bitterman, Elizabeth Boyle, Thomas Brothen, Nancy Carpenter, Shawn Curley, Nancy Ehlke, Barbara Elliott, Janet Fitzakerley, Marti Hope Gonzales, Michael Hancher, Caroline Hayes, Jeff Kahn, Russell Luepker, Jan McCulloch, Michael Oakes, George Sheets

Absent: Melissa Anderson, Colin Campbell, Carol Chomsky, Chris Cramer

Guests: Provost E. Thomas Sullivan, Vice Provost Arlene Carney; President Robert Bruininks

Other: none

[In these minutes: (1) changes to the tenure code; (2) committee business (transition, lawsuit against the Center for Holocaust and Genocide Studies, salary-equity study); (3) discussion with President Bruininks]

1. Changes to the Tenure Code

Professor VandenBosch convened the meeting at 1:00 and welcomed Provost Sullivan and Vice Provost Carney to follow up an earlier Committee discussion about possible changes to the tenure code.

Provost Sullivan related that he had spoken with a number of people about what the Committee would like to accomplish and what the timeline looks like. In terms of any potential changes to the tenure code, they would go to the Faculty, Staff & Student Affairs Committee of the Board of Regents, which next meets in February (there is no January Board meeting). They could go for information in March and action in May (following the usual Board practice of information/action at two different meetings).

There was discussion at the Committee earlier that any needed changes could be characterized as Interpretations or amendments to the procedural documents. Even Interpretations, however, must be approved by the Board of Regents if they are to be binding. Interpretations must be reported to the Faculty Senate, and any proposed amendments to the tenure code must be voted on by the Faculty Senate. No changes have gone to the Senate, so there will be a timing problem in getting them to the Regents in early spring semester. The earliest any changes could go to the Board would be March, given that there is no Senate meeting until February.

Provost Sullivan said he understood the Committee's concerns about opening the code for amendment at a time of leadership transitions. He noted that section 19 of the code, however, requires that any change to the code (regardless of the source of the change) must go through the Faculty Senate, so there are safeguards in place. As for the proposals that have been made thus far, as he understands them, they are intended to clean up and make more consistent the language of the code. He said he has no

* 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.

objections to them and said he would be glad to work with the Committee on the process to get to where everyone agrees the code should go. He noted that the Faculty Senate has already approved one change to the code, to align the language on academic freedom and responsibility with the current Board policy language, but he said it would be better to wait to bring all the changes to the code to the Board at once, as one package. Even with three or four new Board members, the Board understands the value of the document and there is a good working relationship on these issues, he said.

Vice Provost Carney noted that Professor Chomsky, who has served as chief author of proposed changes, has acknowledged that there are only so many things that can be accomplished with Interpretations. There will still remain problems in the code. She said she would like to clean up all the language that causes problems every year with tenure files. She said she'd like to see the code opened once, all the needed changes made, and thus reduce problems. She said that there should be internal references inserted in the code so that those reading it know there are Interpretations at the end. Provost Sullivan said he has heard nothing controversial being proposed, only language intended to make the code more coherent, consistent, and predictable.

Professor VandenBosch said that her recollection of this Committee's discussion was that it had no problem with the proposed changes, only that it was worried about opening up the code for amendment in an uncertain time. Provost Sullivan, she said, seems to be suggesting that these changes, to clean up the code, will provide an opportunity to acquaint new Board members with the nature and intent of the tenure code. Provost Sullivan agreed and added that they can explain the tenure value at the University, along with its history of being a model for many other colleges and universities.

Professor Elliott reported that the most recent meeting of the Academic Freedom and Tenure Committee, which she co-chairs, reviewed proposed Interpretations and proposed amendments to the procedures document. She said that Academic Freedom and Tenure would be glad to take up code amendments if this Committee encourages it to do so; they have the assistance of Professors Chomsky and (Regents Professor Tom) Clayton, along with Vice Provost Carney. Provost Sullivan said that he and Dr. Carney can propose additional clean-up language that would address the problems they see.

One question that was raised was whether it was necessary to bring forward any changes at this time. Professor Oakes said he would be less concerned if the changes are being brought forward to the Board by experienced administrators (i.e., Provost Sullivan and Vice Provost Carney). He said he was confident about proposing changes if the two of them would be shepherding the changes through the process. Provost Sullivan said he was confident that any changes could be accomplished during spring semester.

Professor Hancher said that the previous Committee discussion (about not opening the code for amendment) may not have been thought through, and one can see that no harm would be done by making the kinds of changes that have been discussed, but the Committee does need to take into account possible faculty perceptions about any change to the code. He also inquired about one proposed change: The current practice allows disparate votes on tenure and on promotion; but under the new proposals that practice would not be permitted. He said he has been aware of the anomalous current practice over the years, but no one has ever explained why departments have the option of tenure without promotion. Why is it currently allowed? And why should it be prohibited now? Both rationales need to be explained.

On Professor Hancher's second point, Dr. Carney said the code requires that promotion to associate or full professor must be with tenure. In a later section, the code says "ordinarily" that is the case. There are more cases each year in which is a difference between votes on tenure and on promotion. There could be a vote of 10-5 in favor of granting tenure and vote of 5-10 on promoting the person from assistant to associate professor. When such a file reaches the Provost, there is a problem because he must make a decision on promotion and tenure, and in cases where he makes a decision different from that of the department, he must give a written justification. The split vote makes it hard to respond. Do other universities face this same anomaly or is it local and obsolete, Professor Hancher asked? Provost Sullivan said he believed the code language was written the way it was because some units recruit only at the associate professor level, hire them on a probationary appointment, and later decide on tenure and promotion. In those cases, the votes on tenure and promotion can be decoupled. Vice Provost Carney explained that in those cases, sometimes there will be a tenure-only vote (from probationary associate professor to tenured associate professor), and a promotion vote later. The individual might be promoted later, once he or she has met the higher standard for full professor, Provost Sullivan observed. Most institutions only have a single vote for promotion of a probationary assistant professor to associate professor with tenure, Dr. Carney told Professor Hancher. They have language that Academic Freedom and Tenure can review.

Professor Luepker said that it is not unusual to hire at the associate or full professor level and grant tenure later. Dr. Carney agreed and said the practice is not problematic. She said that she would suggest language requiring a single vote for promotion and tenure for assistant professors and separate language to deal with hiring at the associate or full level and tenuring later.

Professor Kahn said his recollection of the earlier Committee discussion was that the code should not be opened up year after year. This suggestion does not call for doing that, but what are the changes that ought to be considered? Dr. Carney said the key changes are in the sections dealing with voting and on extension of the probationary period (for caregiver, medical, or parenting reasons). In the case of the latter, the language in the code is odd and it leads to a lot of questions from departments.

Provost Sullivan suggested that he, Academic Freedom and Tenure, Professors Chomsky and Clayton, Vice Provost Carney, and this Committee work together to get the changes completed this spring, to deal with inconsistencies and lack of clarity. Dr. Carney said she has a list of the top issues that come up every year and can bring them to Academic Freedom and Tenure.

The Committee voted unanimously that it would work with Academic Freedom and Tenure and the Provost to achieve changes necessary for consistency, clarity, and predictability in the process, and that it encouraged Academic Freedom and Tenure to present a document for consideration.

Professor VandenBosch thanked Provost Sullivan and Vice Provost Carney for joining the meeting.

2. Committee Business

Professor Oakes, a member of the transition committee, reported that it is working on a broad plan for the president-elect, who is taking a listen-and-learn approach until July 1. What is clear is that President Bruininks remains the president. Many individuals and groups are asking for time with the

president-elect, and one priority of his is to meet with this Committee, but it must be clear that at this point he is listening and learning.

Professor VandenBosch next asked Committee members to vote on a statement concerning a lawsuit against the Center for Holocaust and Genocide Studies that was adopted by the Academic Freedom and Tenure Committee last week. She inquired of Professor Elliott what the intent was: That it go to the Senate for information? Professor Elliott said that was correct, but she noted that this Committee could affirm the statement and ask the Faculty Senate to act.

The Committee voted unanimously to endorse the statement (between the * * *) and to put it on the Senate docket for information. Any member of the Senate could move that the body endorse the statement.

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Statement on the Lawsuit Against the University
About the Website of the Center for Holocaust and Genocide Studies

The University of Minnesota was sued on November 30, 2010 in federal court because of allegations that the University's Center for Holocaust and Genocide Studies website defamed the Turkish Coalition of America (TCA). (Jaschik, Dec. 1, 2010.) At the heart of the dispute is the Center for Holocaust and Genocide Studies' academic critique, posted on its website, of organizations whose scholarship the Center considers suspect because it calls into question whether the Armenian genocide occurred. Up until November of this year, the website listed the TCA website as an "unreliable source."

The Faculty Senate Committee on Academic Freedom and Tenure is gravely concerned that this defamation lawsuit, and others like it, can have a chilling effect on academic freedom. We firmly believe that researchers, including the Center's faculty, who rely on their professional expertise to critique other scholarship, are not legally liable for defamation. Rather, they are exercising their academic freedom. As University General Counsel Mark Rotenberg was quoted in *The St. Paul Pioneer Press* as saying, the Center's website "simply reflected faculty members' views that the listed sites [including TCA's] were unreliable. The department gets to have that opinion." (Belden, Nov. 19, 2010.)

In this case, very much as usual, University researchers were exercising their academic freedom according to the dictates of conscience and their professional expertise to go where their discoveries drove them in pursuit of understanding for the good of humankind. The Committee on Academic Freedom and Tenure reaffirms the right of faculty and staff to exercise academic freedom. The University administration, faculty, staff, and students must defend the freedom to pursue knowledge for the public good.

Adopted unanimously December 3, 2010

References

Belden, D. (2010, Nov. 19). U drops warnings about 'unreliable' websites. *The Pioneer Press*, available online at: http://www.twincities.com/ci_16662783?IADID=Search-www.twincities.com-www.twincities.com&nclick_check=1

Center for Holocaust and Genocide Studies website: <http://chgs.umn.edu/educational/curriculum.html>

Jaschik, S. (2010, Dec. 1). Suit over "unreliable" websites. *Inside Higher Ed*, available online at: <http://www.insidehighered.com/news/2010/12/01/minnesota>

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Professor Hayes reported on the salary-equity study that was started in 1997 and completed last spring (and which has been reported to the Committee on Faculty Affairs, Equity Access and Diversity, and Social Concerns). She described briefly how the study was conducted, that they looked at Strieber's earlier study of UMN 1986 data, and that while they applied multiple accepted and documented approaches for analysis of salary data, no matter how they analyzed the data, there were substantial differences in the salaries paid to male and female faculty members. They have held an open forum for the University Community in October 2010 about the study results and have also begun presenting them to Senate committees. Provost Sullivan reviewed the report over summer 2010 and has asked for an external consultant to provide further assessment; Professor Hayes said she has been among those who have met with the consultant candidates and they are excellent.

The question is what comes next, Professor Hayes said, especially given the transition in leadership. What process should the faculty go through to act on the study? Presumably the faculty should play a role in generating a solution to the problem. One essential change required is that there be updates on salary data; right now the University is almost exactly where it was in 1986 in terms of percent differences between male and female salaries. How did it get there again? It has not kept its eye on the balance; it needs new studies more frequently, and with computer databases, it may be possible to do one every year. One important point, Professor Hayes observed, is that the University wants to be competitive, and equitable salaries for women and men can give it an edge in recruiting.

The lack of change in the salary disparities over the last two decades suggests that people do not understand the causes of the problem, Professor VandenBosch commented. Professor Gonzales said that social psychologists have documented that when women are asked whether women in general are discriminated against, most women will say that they probably are; however, when women are asked whether they, themselves, have been discriminated against, most will report that they have not suffered from discrimination. This is likely because neither women nor men are aware of how others fare in terms of workload, negotiations, requests, salaries, and so on.

There is a perception that men (more often than women) go for outside offers in order to obtain a higher salary, Professor Hayes said, and while there has been no study here, the National Research Council did do such a study, which it published in 2010, finding that almost the same number of men and women received outside offers. The study also found that the two groups did not differ in merit criteria that correlate to salary. Professor Gonzales pointed out that receipt of outside offers does not necessarily translate into using those offers to boost one's salary, and there may be differences in the extent to which men versus women use those offers to secure raises at their home institutions.

Professor Sheets reported that when the Committee on Faculty Affairs discussed the study, he asked if there are salary statistics from 1990, after the salary adjustments for women were made following the Rajender consent decree. The situation would be even more alarming if there were parity in 1990 and

the institution has now fallen back. He said he believed the consultant should review such data. Professor Hayes agreed but said the consultant will have a very short timeline so will be limited in what he or she can accomplish. There should be consideration of what the next round of investigations might be, but there are a large number of issues that need investigation and they all cost money. Professor Brothen recalled that there were salary adjustments, so it may be that the situation improved and then got worse; they do not know the direction of the line on the graph. If colleges received money to make adjustments, there should be records. Professor Hayes related that they dug through the archives, and except for one note that indicates salary equity was achieved, they did not find a record of any follow-up study on which this conclusion was based. The raw data probably exist somewhere.

Professor Luepker recalled that he was at the University when the salary adjustments were made, and from 1991 on, during the time he was department chair, he had to show that raises on average were the same for men and women. Nor could they conduct a search unless women and people of color were included. These elements of administration have largely disappeared.

Professor Oakes said he does not dispute the findings but would like to see more transparency in the methodology. This is the kind of study he does, he said; he suggested letting a small group of faculty have access to the regressions. There are other ways to conduct analyses—the problem could even be worse than what they have discovered. [While some of the data are private, it was suggested that the administration can determine who may have access to it for the purposes of conducting the University's administrative work.] There are world-class experts on this kind of study on this campus, Professor Oakes concluded, and they should be consulted. Professor VandenBosch suggested that Professor Oakes be asked to work with the consultant. Professor Hayes indicated that faculty experts were involved in the analysis, and the details can be found in the full report of the study on the Women's Faculty Cabinet website. Vice President Carrier is using faculty experts in the search for a consultant. Professor Hayes said she did not know whether Dr. Carrier plans to have faculty work with the expert once hired.

Professor Bitterman agreed that the Committee should indicate that there are faculty content experts with academic expertise who should be invited to oversee or supervise or participate in the review. This is one of many areas where the University has tremendous faculty expertise that it is not using. This is a scientific exercise; if the faculty can say "this is true," then the University can decide what to do. Professor Curley agreed and maintained that the Committee should pursue the idea of a group of faculty who would be given access to the data. Professor VandenBosch said she would bring the comment to the Provost and asked that the Committee on Faculty Affairs keep an eye on the matter and provide advice on what topic most appropriately goes to which committee.

After the discussion with the President, the Professors VandenBosch, Ehlke, and Hayes reported on their visit to the Rochester campus, where they met with Chancellor Lehmkuhle, Vice Chancellor Neuhauser, and the tenure-track faculty. Professor Ehlke said she was impressed with what she saw; they have great classrooms and have both a regular faculty member and a P&A faculty member in every class. It seems that the faculty have some concerns about the promotion-and-tenure process, especially since they have no discipline-based departments.

Professor Hayes said it is a very vibrant place, with people from many disciplines all working together—very different from the model on this campus. People need to be aware that there is something new here and that it should be embraced.

They also need to welcome the Rochester faculty into governance, Professor VandenBosch said; right now they are all assistant professors, so in the future it will be a vibrant addition to the system.

3. Discussion with President Bruininks

Professor VandenBosch welcomed the President to the meeting and accepted a motion to close the meeting in order to permit discussion of sensitive issues. The motion passed unanimously.

During the hour-long discussion, the President and the Committee touched on leadership transitions, the Enterprise Financial System, budget principles, use of the money from the Vikings' game to be held in the University's football stadium, fringe benefits, and Northrop Auditorium. The President commented that the 2011-12 budget is likely to be the most difficult budget the University has faced during his tenure as president; the budget will need to be set in May and June, so he will be responsible for it. He also said that he intended to do all that he can to make the transition smooth and to give his successor as much flexibility as possible.

Professor VandenBosch thanked the President for the discussion. Following brief additional discussion—noted above—she adjourned the meeting at 3:20.

-- Gary Engstrand

University of Minnesota