

Minutes*

Academic Freedom and Tenure Committee
Friday, February 8, 2008
9:30 – 11:00
300 Morrill Hall

Present: Tom Clayton (chair), Tracey Anderson, Arlene Carney, Carl Flink, Joseph Gaugler, Linda McLoon, Karen Miksch, Paul Porter, Terry Simon

Absent: Yusuf Abul-Hajj, Thomas Scott, Carol Wells

Guests: none

[In these minutes: (1) chair announcements; (2) post-tenure review; (3) promotion and tenure decisions at different levels of the University; (4) more post-tenure review; (5) Code of Conduct]

1. Chair Announcements

Professor Clayton convened the meeting at 9:30 and made two brief announcements.

-- The Provost has agreed to appoint a committee on copyright to serve as a sounding board for faculty with problems; Professor Wells agreed to serve as this Committee's representative.

-- An ad hoc committee has been appointed to develop a proposal for a pilot program for a faculty ombuds person. He agreed to serve on it.

2. Post-Tenure Review

Professor Clayton turned to Vice Provost Carney for a report on post-tenure review. Dr. Carney said she could talk about the provisions in the tenure-code-required Section 7.12 departmental statements (they have not all been approved, and she will report in general on those statements later). What is common in newly-revised 7.12 statements is that post-tenure review will be based on the standards defined in them. She then asks departments if that is what they really mean, what the standards are, and what processes will be used. If a department elects to rely simply on the standards used for tenure and promotion, is it saying that the standards to **retain** tenure are the same as those to **achieve** tenure?

Dr. Carney recalled the language of Section 7a of the tenure code, which speaks to the fact that faculty can focus on different activities at different times in their career. To use the standards for granting tenure as the basis for post-tenure review seems to contradict that language. A faculty member might have developed a problem with research or teaching; the department may tolerate it for awhile and then something precipitates post-tenure review. If a department has said it will use its 7.12 standards, she tells them that means the Provost's office will hold the department to using the tenuring standards.

* 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.

Some departments have approached the post-tenure review question very thoughtfully, Dr. Carney reported. They have set goals in scholarship and teaching, with examples, for post-tenure review standards. That is helpful; such standards facilitate dealing with non-productive faculty members, and they also help prevent going after a faculty member for inappropriate reasons. Dr. Carney said she sees such standards as protecting faculty members; deliberating and implementing post-tenure review standards gets faculty to have an honest discussion about what it means to do different things in different stages of the faculty career. Department chairs can then make arrangements that are suitable for the department and allow the faculty member to remain a contributing member of the department. It is a rare case when someone cannot be reassigned to an increased load in teaching, research or service.

Do departments perform annual reviews or is that rare, Professor McLoon asked? They do, Dr. Carney said; in some cases the review is conducted by the chair, in others by a merit committee. Are expectations different, Professor McLoon asked? If the department has set them out, they can be, Dr. Carney said, but the situation is ambiguous if a department says that merit standards are the same as post-tenure-review standards. Documenting the need for post-tenure review would be difficult if there were no clearly defined post-tenure-review standards. Some units want a unanimous vote of the committee to agree with the chair that a faculty member is performing substantially below standards (required before a faculty member can be subject to special post-tenure review). She said she does not quibble with the process a department may establish, only with its clarity and the clarity of the standards.

If a unit says it uses some standard for post-tenure review, is it obligated to provide an equivalent level of mentoring and feedback, Professor Anderson asked? Some departments have no statement about mentoring, Dr. Carney said. The tenure regulations and procedures require a lot of work, with considerable detail and feedback, Professor Anderson observed. Dr. Carney agreed, and said she asks departments if they realize what they are saying when they declare the 7.12 standards to be also the post-tenure-review standards. The process of post-tenure review is inherently developmental, not punitive, Dr. Carney observed—it is intended to help someone get back on track. She said she wants to see that the standards for post-tenure review are clear and fair.

Professor Flink said that the general perception is that post-tenure review is punishment—because it only arises when there is a problem. If it is to be made an effective tool, can it be something that all faculty members experience at some point? They do, Dr. Carney said. There is confusion about this: regular/routine post-tenure review is positive, an annual review. When the Provost presents information to the Board of Regents and reports that only 9 faculty members out of about 3,000 are below standards; Board members from the corporate world say that number seems low. She tells the Board members that post-tenure review is developmental and that people would not have obtained tenure unless they were high-performing. Professor Flink said he understood the point but that when he hears about post-tenure review, it comes about because there has been an event in a department. If it is done every year, it can be done in a way that is not more burdensome but that highlights what is occurring so that when there is a difficult case it is not a crisis.

Very few people are designated as falling below minimum standards, Dr. Carney pointed out, and for someone to be so designated, both the department chair and an elected faculty committee must agree. Sometimes she sees cases where the chair says someone is performing below standards but the faculty committee does not agree, and then a situation can go on and on. But there is a record. If a department is honest about it, once someone hits a threshold, a performance-improvement plan needs to be developed,

and the faculty member has a year or more to improve. If at the end of that time there is still no improvement, only THEN is there a special review. This is not a punitive process, Dr. Carney emphasized. If faculty understood more about the process and read the Senate policy and Section 7a of the tenure code, they would understand there are very clear safeguards. There are 6-9 faculty members who fall below standards each year and who have a performance-improvement plan developed. Only 1-3 per year go on to a special review.

What happens then, Professor McLoon asked? There could be another performance improvement plan, Dr. Carney said; if there is a long history of substandard performance that is well-documented, the individual's salary could be cut or he or she could be terminated. Neither of those things has ever happened, she emphasized. The fear factor about the post-tenure review process is excessive.

Professor Flink wondered if departments are using annual-review tools to help keep people on track. The process may exist structurally but he is not sure it is being used. When a faculty member is in a questionable situation, documentation may not have been well-prepared so it is difficult to start the process to leading to a behavior change and greater productivity. If this Committee could lend its support to improving assessment, that would help. Dr. Carney agreed that annual review is key. Faculty do not want to say something negative about someone in the office next door, and some may fear that they may face the process as well at some point. But they should understand that it does not happen often. And imagine the situation the chairperson finds him- or herself in if a faculty member cancels classes, does not meet with advisees, receives dreadful teaching reviews, produces no scholarship. Such a situation must be dealt with, but she tells the Regents that she does not expect many such cases to arise because most faculty work very hard and are devoted to what they do. But a difficult case is a drain on a department: the person can't be asked to do more service or more teaching (that punishes students), and if the person is also not doing research—that undermines morale, especially among probationary faculty. (She reminded the Committee of the results of the COACHE survey of probationary faculty: some statements from probationary faculty expressed resentment that the people who will vote on their tenure do not do as much work as they do and hold them to higher standards than those who are voting can meet. The situation can have a significant effect on probationary faculty retention and morale.)

Are annual reviews not mandatory, Professor McLoon asked? The tenure code requires them, Dr. Carney said. The responsibility is with the deans; she is involved only when questions come to her about difficult cases. Each year she asks the colleges about post-tenure review because the Provost must report on it to the Regents each year, but the Provost is not involved very much in such cases—that is a department and college function. Her goal is clarity in their post-tenure-review standards in order that everyone is protected.

Professor Anderson asked if there are data about faculty who self-select out of the performance-improvement process. There are unofficial data, Dr. Carney said. When someone who is close to retirement faces a performance-improvement plan, he or she may choose phased retirement. She emphasizes to the Board of Regents, however, that not everyone who chooses phased retirement is doing so to avoid a performance-improvement plan! There are a very few who use it as a face-saving exit, but the vast majority of phased retirements are people who are performing well.

Tenure provides security that the process is trying to examine, which is a challenge, Professor Flink said. Tenured faculty who are not doing work at appropriate levels cause morale problems in a department; dragging the situation out for 2-4 years also causes morale problems and creates acrimony.

There is almost a disincentive for a chair to pursue post-tenure review because there is a fight and it drags on so long and is seen as punishment. Annual reviews are mandated by policy, Professor McLoon said, and responded that tenure is about academic freedom, not about job security. There is a huge difference between the two, she said, and the definition of tenure is not that "you can put your feet up." What tenure protects is discrimination against faculty whose research may be seen as politically incorrect. Dr. Carney agreed: because faculty members have a secure position, they are responsible for doing the work. It is never a positive story if someone fails, but a situation must be approached in a rational, dispassionate way. Letting someone get away with doing nothing wastes the University's resources.

What is the Committee's role in this, Professor McLoon asked? A policy or a statement, Professor Clayton asked? Dr. Carney commented that the tenure code and Senate policy are clear; the issue is more about getting departments to take the process seriously. Section 7a of the tenure code exists because of the tenure debate a dozen years ago; it is more explicit than other parts of the code and there are more procedural elements in order to protect individuals. There is not very much in the Procedures, Professor Miksch observed, so perhaps departments should be referred to the code. And to the Senate policy, Dr. Carney added. The language contains a lot of protections; Dr. Carney said she would not like to see a rational policy turned into something irrational. Her plan is to put all approved 7.12 statements on the Provost's website and to highlight elements that departments may wish to look at; the departments may wish to tweak their own statements in a year or so as a result of looking at provisions in other 7.12 statements. Some of them, she said, are very innovative.

The Committee made no decision about what it should do or say on post-tenure review.

3. Promotion and Tenure Decisions at Different Levels of the University

Dr. Carney next distributed copies of a two-page handout containing information and data on promotion and tenure decisions at different levels of the University. She explained that there are five possible decisions:

- promotion only (typically associate professor to professor for tenured faculty, or assistant professor to associate & associate to professor on a clinical-scholar track)
- tenure only (typically untenured associate professor to tenured associate professor; Law, for example, hires at the associate-professor level without tenure and tenures later)
- tenure & promotion (untenured assistant professor to tenured associate professor)
- continue in rank (typically tenured associate professor remains at rank of associate professor; either assistant or associate professor remains in rank as a clinical scholar)
- non-renewal (untenured professor receives a terminal contract, typically a seventh year after the sixth—decision—year).

There are also different levels of decision. (AHC = Academic Health Center; SVPAAP = Senior Vice President for Academic Affairs and Provost)

-- For most non-AHC colleges, the decision is department > college P&T committee > dean > SVPAAP

-- For colleges without departments, the decision is college > dean > all-University P&T committee > SVPAAP

-- For the AHC colleges, the decision is department > college P&T committee > dean > Senior Vice President for the Health Sciences > SVPAAP

-- For the coordinate campuses (except Duluth), the decision is division or department > campus P&T committee > chancellor/vice chancellor > SVPAAP

Dr. Carney then drew the attention of Committee members to a table of data presenting the number of decisions (in all five categories) for each year starting with 1997-98. She reported (1) the number of department/unit recommendations not upheld by the dean, (2) the number of department/unit not upheld by the SVPAAP, and (3) the number of decanal recommendations not upheld by the chancellor/SVPAAP. She noted that the ten years of data include three different SVPAAPs: Robert Bruininks, Christine Maziar, and E. Thomas Sullivan.

The short summary of the data is that only a small proportion of department/unit decisions are overturned by deans/chancellors or by the SVPAAP. (The highest percentage was 7.6% (11 cases) in 1999-2000; for the last three years, the numbers have been -0-, .08%, and 2.3%, or 0, 2, and 4 cases). These data represent only the changes in decision (yes or no) and do not show the relative strength of the majorities or the pattern of abstentions, Dr. Carney explained. She noted that this Committee discussed at length, while drafting the revised Procedures, the point that the Provost can look at the strength of the majority in a departmental vote for a candidate; these data present the decisions as categorical. It could be that in some cases the Provost did not support a decision because the department vote was very close. The Provost looks at the entire pattern of decisions; this Committee also discussed abstentions and noted that they can be taken to indicate a lack of support for a candidate. If a department voted 8-7 in favor of a candidate, but there were also five abstentions, it is difficult to argue that the Provost is acting precipitously if he or she does not support the recommendation.

Dr. Carney also noted that the decision to overturn a department recommendation could be a decision to grant tenure even if the department voted against it. Professor McLoon observed that in cases where a department votes "no" but the dean or SVPAAP says tenure should be granted, that puts the candidate into a department that voted against him or her. Dr. Carney agreed; the candidate at that point can have a job and be in a department where the majority of colleagues did not want him or her, or the candidate must decide whether to look for another job. For her and for the Provost, the 7.12 standards of a department are the gold standard; they don't know anything about the politics of a department or the parties for and against someone. They look at the 7.12 statement: if a unit avoids its own standards and votes "no" despite what is in the 7.12 statement, the Provost really has no choice other than to reverse the department. When a case like that reaches the Provost, it is usually not "clean," and there may be variance at different levels of decision. If the department votes "no" but the college P&T committee votes "yes," the dean will have to disagree with one of them, and the Provost ultimately will have to disagree with someone, as well. The Provost can also establish a special committee to obtain additional information.

Professor Clayton said that on the basis of the data one must suppose that the departments are doing a good job. Dr. Carney agreed and said she was impressed with their performance. They would do even better jobs if they all had unambiguous 7.12 statements; the tough cases often come from ambiguous statements. In one case, a department has defined, with specified standards, what "good" and "excellent" mean and requires that a candidate be "good" in both teaching and research and "excellent" in one of them. Sometimes a tough call is required, but the department is able to make the right decision because it has clear 7.12 standards. Professor Flink commented that it would be valuable to have that 7.12 statement available as a best practice.

Dr. Carney said that the Provost may disagree with a unit but that he consults with deans and department heads—he does not take the decision lightly and he knows the cases. Professor Flink said that faculty must understand that a department "no" vote is not an indication that they do not like the person, it is a vote to say the candidate does not meet the standards. Dr. Carney agreed and observed it is difficult to make a judgment to say "no" to a colleague. Departments need to be sure that the candidates received assistance, mentoring, and all the help needed, so that it can feel comfortable with its decisions. Professor Clayton is right, she said: departments *are* doing a good job, and she is impressed with the care and attention faculty give to promotion-and-tenure decisions.

Professor Clayton thanked Dr. Carney for the information, and she departed for another meeting. The Committee concluded that the data raise no significant questions and that the process in general seems to be working very well.

4. Post-Tenure Review, Again

Professor Clayton then read tenure-code Sections 7a2 and 7a3 to the Committee:

"7a.2. Annual Review. Each academic unit, through its merit review process (established in accordance with the standards adopted by the senate), annually reviews with each faculty member the performance of that faculty member in light of the goals and expectations of the academic unit established under section 7a.1. This review is used for salary adjustment and faculty development. The faculty member will be advised of the evaluation and, if appropriate, of any steps that should be taken to improve performance and will be provided assistance in that effort. If the head of the unit and a peer merit review committee elected for annual merit review within that unit both find a faculty member's performance to be substantially below the goals and expectations adopted by that unit, they shall advise the faculty member in writing, including suggestions for improving performance, and establish a time period (of at least one year) within which improvement should be demonstrated.

"7a.3. Special Peer Review In Cases Of Alleged Substandard Performance By Tenured Faculty. If, at the end of the time period for improvement described in the previous paragraph, a tenured faculty member's performance continues to be substantially below the goals and expectations of the unit and there has not been a sufficient improvement of performance, the head of the academic unit and the elected peer merit review committee may jointly request the dean to initiate a special peer review of that faculty member. Before doing so, the dean shall independently review the file to determine that special peer review is warranted. (In the case of an academic unit that is also a collegiate unit, the request shall be made to and the review conducted by the responsible senior academic administrator.) The special peer review shall be conducted by

a panel of five tenured faculty members of equal or higher rank, selected to review that individual. The faculty member under review shall have the option to appoint one member. The remaining members shall be elected by secret ballot by the tenured faculty of the unit. The members of the special review panel need not be members of the academic unit. The special review panel shall provide adequate opportunity for the faculty member to participate in the review process and shall consider alternative measures that would assist the faculty member to improve performance. The tenure subcommittee may adopt rules and procedures regulating the conduct of such reviews. The special review panel shall prepare a report on the teaching, scholarship, service, governance, and (when appropriate) outreach performance of the faculty member. It will also identify any supporting service or accommodation that the University should provide to enable the faculty member to improve performance. Depending on its findings, the panel may recommend:

- "(a) that the performance is adequate to meet standards and that the review be concluded;
- (b) that the allocation of the faculty member's expected effort among the teaching, research, service and governance functions of the unit be altered in light of the faculty member's strengths and interests so as to maximize the faculty member's contribution to the mission of the University;
- (c) that the faculty member undertake specified steps to improve performance, subject only to future regular annual reviews as provided in Section 7a.2;
- (d) that the faculty member undertake specified steps to improve performance subject to a subsequent special review under Section 7a.3, to be conducted at a specified future time;
- (e) that the faculty member's performance is so inadequate as to justify limited reductions of salary, as provided in Section 7a.4;
- (f) that the faculty member's performance is so inadequate that the dean should commence formal proceedings for termination or involuntary leave of absence as provided in Sections 10 and 14; or
- (g) some combination of these measures.

"The panel will send its report to the dean, the head of the academic unit, and the faculty member. Within 30 work days of receiving the report, the faculty member may appeal to the Judicial Committee, which shall review the report in a manner analogous to the review of tenure decisions (see Section 7.7)."

What can the Committee do to add to what has already been written, Professor Clayton inquired? Professor Gaugler said he didn't see that the Committee could add much; Professor McLoon agreed. Does the Committee have any recommendation for departments other than "see the tenure code"? Professor McLoon pointed out that this Committee has no policing role; that is up to Dr. Carney; Professor Clayton agreed.

Professor Porter recalled that Dr. Carney said the goal is that people understand the process. To whom does a chair go with questions—Dr. Carney? (Yes.) To whom does a faculty member go—the chair? Yes, Professor Clayton said, or elsewhere if the person cannot get an answer. New faculty need to be given information, Professor McLoon said; Professor Clayton said there should be no doubt in their minds what will happen.

Professor Simon agreed that new faculty should clearly understand the 7.12 statement, but added that he does not know what "substantially below" standards means (Section 7a3), and

interpretation of that phrase could cause someone to litigate. Professor Clayton agreed that someone could litigate if he or she did not believe a/the performance was "substantially below" the standards but said he believed most departments are careful about the decision. They are grappling with what standards should be, Professor Miksch said, and it would help to hear Dr. Carney talk about the elements of what must be done. The onus is on departments and colleges to be as clear as they can about "below standards" but the decision must be left up to departments because that will vary with the field.

Is the Committee's role a technical one, to deal with language, Professor Flink asked? He said he is troubled by close cases and has not seen the documents on process. How can the Committee help to ensure that problematic situations do not arise? He has known of cases that were more bitter and confused than they should have been—and those involved did not have these documents. The information level in personnel decisions varies by individual, Professor Clayton observed, but everyone should be provided with the tenure code and the Procedures.

Professor McLoon said she thought the question of "substantially below" was addressed by Dr. Carney: if the chair and the department committee conclude that someone is "substantially below" standards, that is a collective decision that is difficult to argue with. She reported that she serves on the Academic Health Center P&T committee; every dossier they review contains the department 7.12 statement. They could not make decisions without the 7.12, and they require that the candidate have seen it. It appears that what is needed is an educational effort. This includes both the candidate and those who make decisions, Professor Anderson added. The Committee can say that individuals must be given the relevant documents, including the tenure code and the 7.12 statement. It is one thing to get the code and another to interpret it, Professor Porter commented; people may need help from Dr. Carney's office.

The Committee concluded that the problem is largely one of getting the information out; Professor Clayton said he would draft a statement for use by Dr. Carney's office, including provisions about who should read what.

The Committee also agreed that it should examine what has happened in those instances of special post-tenure review in order to advise the Provost's office about any changes in the procedure and practices associated with post-tenure review. There should be panel reports that the Committee could study. Professor Clayton said he would inquire whether Minnesota law would allow the Committee to review personnel documents.

5. Code of Conduct

Professor Clayton said he would draft for the next meeting a proposed revision to the Code of Conduct, in response to the points made in discussions at earlier meetings of the Committee.

He adjourned the meeting at 11:00.

-- Gary Engstrand