

Minutes\*

**Academic Freedom and Tenure Committee  
Friday, February 5, 2010  
9:30 – 11:30  
300 Morrill Hall**

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

Absent: Paula O'Loughlin

Guests: Leonard Goldfine, Linda Lorenz (Institutional Research)

[In these minutes: (1) local and national data on faculty appointments; (2) the budget and the tenure code; (3) revisions to Regents policy on academic freedom and responsibility; (4) statement on the College of Education and Human Development]

**1. Local and National Data on Faculty Appointments**

Professor Elliott convened the meeting at 9:30 and welcomed Dr. Goldfine and Ms. Lorenz to discuss faculty data. She recalled that as the Committee was trying to develop a statement for public use in response to an article and data about the declining percentage of faculty who hold tenured and tenure-track appointments. The data about trends in faculty appointments at the University seemed to be running contrary to national trends (i.e., more tenured/tenure-track appointments), but the more they discussed it the more Committee members realized that they did not fully understand the data. Ms. Lorenz was kind enough to provide the Committee with data, and now she and Dr. Goldfine agreed to meet with the Committee to explain it.

Ms. Lorenz distributed a handout containing several pages of data indicating trends in appointments from 1997 and 2007. She explained the weaknesses in IPEDS data (Integrated Postsecondary Education Data System, the most reliable national data) and reviewed the elements of the data for the University and its peers. She also provided institutional data for 2009 as well (for which there is not yet any corresponding IPEDS data).

Committee members commented on several of the data elements related to their own colleges. It appeared that the significant increase in the percentage of appointments at the University that are tenured or tenure-track faculty is an artifact of the fact that the IPEDS data include graduate assistants in the number of those with teaching appointments, which skews the percentages, especially when some institutions had significant changes in the number of GAs reported and when there are large variations among institutions in the number of GAs they have. So it may appear that Minnesota had a lower percentage of tenured and tenure-track appointments when in fact it simply had more graduate assistants than other institutions, thus apparently changing the denominator and reducing the percentage of appointments that are tenured or tenure-track. It also appeared that the trend toward an increased number

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\* 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.

of tenured and tenure-track appointments may have been reversed in the last two years (perhaps as a result of retrenchments). Professor Elliott wondered if the same change in the trend line is occurring at other institutions as they also are affected by the financial situation. Dr. Goldfine said that they only have national data through 2007; the 2009 data are being collected now.

Ms. Lorenz confirmed that the data do not include anyone with a P&A appointment, although IPEDS will begin collecting data on individuals with non-faculty teaching appointments.

Professor Miksch commented that these data, and additional data it might receive, are very helpful to the Committee in doing its work irrespective of any public statement it might wish to make. The Committee agreed that it wished to receive additional data: National data with graduate-assistant numbers removed (which skew the percentages of various categories of appointments when included with total institutional instructional appointments), corrected versions of the University data for 1999 and 2009 in order to permit more accurate ten-year comparisons, corresponding data for those on P&A instructional appointments, and a listing of how appointments were mapped to units when departments changed colleges and there were collegiate mergers.

Professor Elliott thanked Dr. Goldfine and Ms. Lorenz for their help.

## **2. The Budget and the Tenure Code**

Professor Elliott noted an email that was being distributed among the faculty expressing concerns about furloughs, possible consolidation of departments, and possible termination of tenured faculty. Professor Wells said that, with the exception of the furlough issue, it reflected nothing more than hearsay and rumor; where are the documents to support the concerns? Professor Elliott said that her first question was where this information had come from—was the email based in fact or only in fear and conjecture? Professor Anderson said that in this climate faculty are uneasy and on the defensive, and the faculty in Morris have raised concerns about the post-tenure review process and its implementation.

Vice Provost Carney responded to Professor Anderson's comment. She pointed out that Section 7a of the tenure code governs post-tenure review, and the first thing to be understood is that the Provost's office has nothing to do with post-tenure review except at the very end of a long process. Post-tenure review must be initiated in the department/unit (some colleges are initial units such as the Humphrey Institute or the Law School). She recalled that she has been a stickler with departments about the goals and expectations to retain tenure in their 7.12 statements; the goals and expectations are up to the department but they must be clear. Post-tenure review starts with the department, she reemphasized.

If the question is whether someone should retain tenure, the department chair/head and an elected, tenured faculty committee in the department must review the record and agreed that the person falls below the goals and expectations set out in the post-tenure review section of the 7.12 statement. If the chair/head and the elected committee agree, a letter is sent to the individual setting out the performance improvement plan to meet the goals and expectations of the department, and the person must be given at least a year from the date of the letter to accomplish them. At the end of the period identified in the letter, the chair/head and the elected faculty committee review the performance. Up to this point neither the dean nor the Provost has any role to play in the process.

At the end of the year/period established in the letter, if there is agreement the person did not meet the goals and expectations in the performance improvement plan, the chair/head and elected committee can jointly ask the dean for special peer review. The dean must agree the person does not meet the department standards, and a special peer-review committee of five is elected (one member appointed by the individual who is subject to the review and the other four elected by the department).

There are only two times the Provost is involved in the process. One is for those few colleges that do not have departments and where the dean serves as the department head for the purposes of Section 7a of the tenure code. In those cases, the "department" (college) head/chair and elected committee jointly request the special peer review from the Provost. The second is much later, after the special peer-review process has concluded that a faculty member is not living up to goals and expectations, and if there is a recommendation for termination; the tenure code has other provisions governing termination in Sections 10 and 14 in which the Provost becomes involved, but only after significant, additional processes at the level of the college by both the and the faculty and the dean. In addition, the outcomes of a special post-tenure review include the decision that the faculty member has met the goals and expectations, that the faculty member receives another time period for performance improvement, or that the faculty member's salary may be reduced by no more than 10%. Post-tenure review is fundamentally a faculty-driven process.

Professor Elliott said it appears there is apprehension about the administration using post-tenure review. They can't, Dr. Carney affirmed; the tenure code has ironclad provisions governing post-tenure review and the administration is not going to violate the tenure code. It can't happen, she said. Post-tenure review has nothing to do with the University's budget situation.

Vice Provost Carney said that the promotion-and-tenure process is underway now and that the University will tenure new faculty this year based on their merit. The Provost's office is not looking at budgets when it makes the recommendations. As far as promotion and tenure is concerned, it is business as usual.

Professor Elliott said that there is concern about termination of tenured faculty and that Section 11 of the code does permit it, under a declaration of fiscal emergency; some see it as what the University is moving toward. Vice Provost Carney said the University is not anywhere near invoking Section 11. It may be that some institutions are a point of fiscal emergency (e.g., some of the California universities), but the University of Minnesota is not at this time. Dr. Carney added that there has been no discussion of laying off probationary faculty, as some institutions have done. The University has tried to handle the situation with hiring pauses and freezes.

Vice Provost Carney drew the attention of Committee members to Section 4.5 of the code:

**4.5 Reduction Or Postponement Of Compensation.** If the University or a collegiate unit is faced with financial stringency that does not amount to a fiscal emergency, the president may propose a temporary reduction or postponement in compensation to be allocated to faculty in accordance with a mathematical formula or similar device. If approved by the Faculty Senate or the appropriate collegiate assembly, respectively, and the Board of Regents, the recurring salary of all faculty members in the University or in the designated collegiate units shall be reduced temporarily in accordance with the formula or device. The reduction may not continue for longer than two years, unless renewed by the same procedure.

This would be the first point within the Tenure code to which the University would turn, not Section 11. Furloughs would come under the provisions of Section 4.5. The language allows the President to consider salary reductions if there is financial stringency, but the reductions would require the approval of the Faculty Senate and the Board of Regents. The President does not have cart blanche authority to act. Professor Marran asked about the college assembly; Dr. Carney said that there could be a college in dire straits, but not the entire University, so Section 4.5 allows financial stringency to be invoked within a college.

Dr. Carney noted that there have been open discussions of furloughs with Senate committees, not something that has always occurred at other institutions. In terms of furloughs, the University is behind other institutions in considering them and does not want to adopt them. But the University is not near Section 11 conditions, she repeated.

Professor Gaugler asked what the Committee should do or say. Dr. Carney said that in her view the administration is acting responsibly and in full accord with the provisions of the tenure code, it is consulting widely, and it has taken no steps precipitously. The Committee on Faculty Affairs has held one discussion already, and this is a complex issue (the proposed 2% salary increase and a proposed furlough can be confusing, but the administration's view is that a furlough is a one-time cut in salary while the 2% increase is on the base and stays in the salary forever). Some faculty have been asking if it is worth adopting a salary increase and a furlough at the same time. The administration is trying to deliver a base increase along with a one-time reduction.

Professor Elliott related that she had received a call from a Twin Cities newspaper some time ago asking about rumors that the University would let tenured faculty go. That is not possible, Dr. Carney responded. Section 11 prescribes a hierarchy of steps to be taken before tenured faculty members are removed. While the budget situation is serious, it does not warrant the fear that the University will invoke Section 11 and certainly not without lengthy, open, and significant discussion and consultation with the Faculty Senate.

Vice Provost Carney also related that she had recently held a workshop with department chairs to educate them about the provisions of Section 7a, on post-tenure review, because she had received a number of questions from different chairs about the process. This workshop is similar to others she has done on promotion and tenure, promotion to professor, and academic leadership. It is intended as a vehicle for education and for answering questions that units have.

Professor Elliott observed that units have cut and consolidated departments and centers; she knew of one center in the Academic Health Center. Professor Wells responded that centers come and go with market pressure; Professor Abul-Hajj agreed and added that they have nothing to do with tenured faculty.

Professor Elliott inquired if there has been discussion, similar to a few years ago, about reorganizing departments. Dr. Carney said there has not been. Each college was asked to set up a blue-ribbon committee of faculty to consult on college priorities. It is possible one of those committees could discuss consolidating departments, but that would be a discussion by faculty as advice to the dean, who could in turn present it to the Provost. Professor Elliott said that Senior Vice President Cerra and Associate Vice President Paller have made it clear that there is not enough money in the Academic Health Center to continue everything they are currently doing, so they will have to be smaller/different in the

future. That is true across the country, Dr. Carney observed; in some cases, institutions have announced they are closing departments, but that is not the style of doing things at Minnesota. They will wait on the faculty committees and recommendations from the deans.

At the end of the special review process, Dr. Carney said, returning to post-tenure review, either all is fine and nothing more happens, or there can be another performance-improvement plan and it would be possible to reduce someone's salary by 10%. After three years, someone's salary can be reduced by no more than 25%. But there have never been any salaries reduced under post-tenure review. To reduce someone's salary, IF a department does everything correctly, is a four-year process. If someone wants a quick fix to the budget problems with personnel changes, post-tenure review is not it. If the University is looking for ways to be nimble in reducing costs, this is not the path. Even more importantly, it would violate the provisions of the tenure code.

Professor Miksch recalled that the Committee looked carefully at Section 7a of the tenure code several years ago, to be sure it is a good process and that there are appropriate protections in place. The Committee talked with a number of deans about the process. The Committee did not find any major problems with it. Post-tenure review is still a source of widespread confusion, Professor Anderson commented. That is why she is spending time on it, Dr. Carney said; Section 7a affords tenured faculty enormous protection. She receives calls about it from around the country from institutions that see Minnesota as a model: There is no rush to judgment and ample opportunity for faculty improvement. There have been happy outcomes from performance-improvement plans. The University doesn't receive a lot of press for the transparency of its system of criteria and its very advanced way to talk about promotion and tenure in the units.

It was agreed the Committee would adopt a statement about the budget and the tenure code for distribution to the faculty. The statement adopted after the meeting read as follows:

The Committee on Academic Freedom and Tenure met with Vice Provost Arlene Carney on Friday, February 5, to discuss matters related to tenured and probationary faculty appointments and the budget decisions that will need to be made in the near future. Three sections of the tenure code bear directly on the discussions. Vice Provost Carney was emphatic in telling the Committee that the University would follow the requirements of the tenure code, which are transparent and ironclad. (The tenure code can be found at <http://www1.umn.edu/regents/policies/humanresources/FacultyTenure.pdf>)

1. Section 4.5 of the code governs salary reductions:

**4.5 Reduction Or Postponement Of Compensation.** If the University or a collegiate unit is faced with financial stringency that does not amount to a fiscal emergency, the president may propose a temporary reduction or postponement in compensation to be allocated to faculty in accordance with a mathematical formula or similar device. If approved by the Faculty Senate or the appropriate collegiate assembly, respectively, and the Board of Regents, the recurring salary of all faculty members in the University or in the designated collegiate units shall be reduced temporarily in accordance with the formula or device. The reduction may not continue for longer than two years, unless renewed by the same procedure. [Emphasis added.]

Vice Provost Carney pointed out that discussions or implementations of furloughs are covered by Section 4.5. Any institution-wide faculty furloughs (for faculty not in a bargaining unit) will need approval by the Faculty Senate. Both Professor Miksch and Vice Provost Carney noted that Vice President Carrier promised that any furlough proposal would be brought to the Committee on Faculty Affairs for discussion as well.

2. Vice Provost Carney reminded the Committee that the University cannot terminate or lay off tenured or probationary faculty without invoking the fiscal-emergency language of Section 11. The University is nowhere near invoking Section 11 and no one is discussing implementation of a "fiscal emergency."
3. Section 7a of the tenure code deals with post-tenure review. It should be clearly understood that neither the Provost nor any other central officer has anything to do with initiating post-tenure review. It must be initiated in a department: A department chair/head and an elected faculty committee must look at a faculty member's record and agree that the performance falls below the department's goals and expectations. If the chair/head and the elected committee agree, a letter goes to the faculty member setting out a plan and allowing at least a year to complete it. After that, if the department chair and elected faculty committee agree the person did not meet the goals and expectations, they may jointly ask the dean for special peer review, which requires appointment of a special 5-member faculty committee, one selected by the faculty member and four by the unit. This process has no involvement of the Provost or central administrators (unless the initial unit is also a college, such as the Law School, and the dean's special review is done by the Provost).

Any claim that the central or collegiate administrations are going to begin using post-tenure review more often or in summary fashion to remove tenured faculty is false, as that is not permitted by the tenure code. The Academic Freedom and Tenure Committee has been reassured that the intent of requiring units to spell out the standards for post-tenure review is an attempt to protect faculty members from vague standards, to make the standards more transparent, and to comply with the due-process provisions of Section 7a of the tenure code.

Anyone who has questions about these provisions of the tenure code should feel free to contact either of the co-chairs of the Academic Freedom and Tenure Committee, Professors Barbara Elliott (belliottd@umn.edu) or Karen Miksch (miksc001@umn.edu).

Adopted unanimously February 8, 2010. This statement has been endorsed by Professors Marti Hope Gonzales and Michael Oakes, chair and vice chair of the Faculty Consultative Committee.

### **3. Revision to the Regents Policy on Academic Freedom and Responsibility**

Professor Elliott next reported that Professor Clayton, the previous chair of this Committee, had worked with Professor Chomsky to recommend a change in the Academic Freedom and Responsibility policy adopted by the Board of Regents. The change is a simple one.

The current language reads as follows:

Academic freedom is the freedom to discuss all relevant matters in the classroom, to explore all avenues of scholarship, research, and creative expression, and to speak or write without institutional discipline or restraint on matters of public concern as well as on matters related to professional duties and the functioning of the University.

Professor Clayton has pointed out that as written, the phrase "without institutional discipline or restraint" syntactically applies only to "to speak or write." What inadvertently happened was that the text was disambiguated in the wrong direction. After some exchange between Professors Chomsky and Clayton, they are recommending to this Committee the following language:

Academic freedom is the freedom without institutional discipline or restraint to discuss all relevant matters in the classroom, to explore all avenues of scholarship, research, and creative expression, and to speak or write on matters of public concern as well as on matters related to professional duties and the functioning of the University.

Professor Miksch suggested this was a "whoops" and that perhaps, as with federal legislation, it could be considered a technical correction. She said she attended the Regents' meeting when the last amendments were considered, and the administration and Board clearly meant what the Committee did. Is it necessary for this to go to the Board?

Dr. Carney suggested sending it to Provost Sullivan. If he agrees, perhaps it can be a technical correction or a consent-agenda item at a Board meeting. The Committee voted unanimously to do so.

#### **4. Statement on the College of Education and Human Development**

Professor Elliott reported that the Committee's statement on the teacher-education program had been unanimously approved by the Faculty Consultative Committee as well as this Committee and that it would go to the Faculty Senate for information. She has, in the meantime, transmitted it to the President and the Provost. While the President is not in a position to respond right now, the Provost thanked the Committee for its thought and time. Dean Quam also appreciated the support.

Professor Elliott adjourned the meeting at 11:20.

-- Gary Engstrand