

Minutes*

**Academic Freedom and Tenure Committee
Friday, September 21, 2012
10:00 – 12:00
238A Morrill Hall**

Present: Carl Flink, Karen Miksch (co-chairs), William Bart, Phil Buhlmann, Arlene Carney, William Craig, Brian Horgan, Teresa Kimberley, Jessica Larson, Gary Peter, Carol Wells

Absent: Barbara Elliott, Karen Ho

Guests: Becky Hippert (University Senate Office); Professors Vernon Cardwell and Joanna O'Connell (Committee on Committees)

[In these minutes: (1) changes to the Senate Judicial Committee Rules of Procedure; (2) Committee on Committees evaluation; (3) subcommittees on policy and data]

1. Changes to Senate Judicial Committee Rules of Procedure

Professor Flink convened the meeting at 10:00 and called for a round of introductions. Professor Miksch then called on Professor Horgan to review the changes proposed for the Senate Judicial Committee Rules of Procedure.

Professor Horgan, chair of the Senate Judicial Committee (SJC) and ex officio member of this Committee, began by reporting that the SJC about a year ago decided to review its procedures; he extended thanks to his predecessor as chair, Professor Paula O'Loughlin, for spearheading the effort. They tried to streamline the process and eliminate provisions that bogged SJC down as well as add clarifications.

Dr. Carney said that she had received the proposed changes a while ago and discussed them with Provost Hanson, but has not had a chance to meet with her and Professor Horgan together to review them. She has also asked the Office of the General Counsel to review them. Inasmuch as she is usually the respondent in cases that come to the SJC, she has a considerable interest in the Rules of Procedure.

Professor Miksch inquired about the role of this Committee in reviewing the proposed changes. Professor Horgan said this Committee must approve the changes; they then go to Provost Hanson for final action and to the Faculty Senate for information.

Dr. Carney, Committee members, and Professor Horgan proceeded to a point-by-point discussion of the proposed changes. Some highlights:

-- The process of discovery is often confusing for the complainant; there are supposed to be 30 days for discovery but often people ask for information in the midst of a hearing (a request SJC usually grants and which she almost always provides, Dr. Carney said). The timeline in the Rules is misleading because

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discovery frequently takes place as the hearings proceed, not before they start. She has gotten used to the requests, Dr. Carney said, but sometimes the information cannot be produced immediately. She suggested the Rules not say that discovery will be completed in 30 days, because it often is not—and the difference is that all the other dates in the Rules are firm. This one is not. She said she would like complainants to know about their right to discovery, to do something about it, and know that they can do more later if they need to; she will sometimes advise complainants about their right to request information because she is concerned about due process. She does not play the role of opposing attorney; she wants to ensure fairness. She observed that she knows the Rules while a complainant may not. (If a complainant has an attorney, he or she will know about the Rules, but most have a faculty adviser, not an attorney, and the sophistication of the advisers varies.)

-- The Rules have a lot of legal language in them, Professor Flink said, and they could be impenetrable for some people. He encouraged development of a timeline in plain English, if one goal is to help complainants understand the process. Professor Horgan said they would need to be sure that the plain English timeline does not become the reference document; there are legal terms in order to ensure that the process does not have procedural errors. Professor Flink agreed but said it should be possible to improve the process as well as give the users more clarity. Such a document can make it clear that it is not a substitute for the Rules. It might also be helpful to have a brief orientation for complainants to review the Rules and timeline and what will happen, Dr. Carney suggested. Professor Bart commented that from a psychological standpoint, both sides have to understand the rules of the game or it is not fair, so he agreed that complainants should have help. Professor Horgan noted that if a complainant asks for an adviser, they refer the individual to former members of SJC.

-- The typical complainant is a probationary faculty member who was denied tenure, Professor Horgan said in response to a question. SJC investigates a claim that there was a procedural error that led to the person being denied tenure. There have not been complaints about the wording of the Rules but sometimes they can sense confusion on the part of complainants because it is a very stressful environment for them. As stressful as it is, hearing panel members and chairs will help a faculty member if he or she is veering in the wrong directions, Dr. Carney added. She said she believes the process is very well done.

-- The typical case is tenure denial or promotion? It is, but the number of non-traditional cases is increasing (e.g., cases about salary, post-tenure review, programmatic change, or benefits), Professor Horgan said. Use of the wrong 7.12 statement will be an issue in the future as most departments manage dual 7.12s.

-- The SJC does refer matters to the Office for Conflict Resolution—and vice-versa, Professor Horgan said. They have a good working relationship with the office.

-- Dr. Carney noted that when someone is denied tenure or promotion, the letter informing them always indicates the person may file a complaint with the SJC and provides the contact information. This is not a secret process, she emphasized, and people are told about the option right from the start. Are there any best practices about dealing with the receipt of the information, Professor Flink asked? Have the department chair sit down with the person? Or do they receive the letter at home? They receive a certified letter, which is required by the tenure regulations, Dr. Carney said, with copies to the chair and others. But there are many steps along the way and the letter is not normally a surprise. There is the departmental vote, and candidates can add material to the file. She said that her counterparts in the CIC

were surprised to learn that candidates can add to the file; other institutions do not allow that. It is extra work, but she has rigorous procedures and many receive copies of them.

-- Professor Miksch said it may be comforting to know that the provost has never denied tenure to someone when the votes and recommendations have been positive all the way along. Dr. Carney agreed and said the most difficult cases are those with deeply split votes. The chair must reveal his or her vote (because the chair makes a recommendation), and the dean must make a recommendation. If there are split views along the way, the case is more difficult. Professor Horgan said that the SJC will sometimes advise the president on how a case could have been handled better, even if the SJC finds no procedural error.

-- Dr. Carney said that she provides information about procedures to chairs and to the faculty at the Crookston, Morris, and Rochester campuses.

-- It was agreed that certain missing references in the tenure regulations could be handled by an Interpretation from this Committee until there are other amendments to the regulations that are needed.

Professor Flink asked that the Committee see a plain English timeline before it gives final approval to the Rules changes. Dr. Carney said that Provost Hanson will take up the proposed changes once they have been approved by the Senate Judicial Committee. Professor Miksch thanked Professor Horgan and his colleagues for all the work they did to revise the Rules.

2. Committee on Committees Evaluation

Professor Flink welcomed Professors Cardwell and O'Connell from the Committee on Committees. Professor O'Connell began by noting that one charge of the Committee on Committees is to identify people to serve on Senate committees; another, which has not been carried out in recent years, is to review committees. The Committee on Committees has developed a process it is now following to review the performance and effectiveness of Senate committees.

Professor Cardwell said that they were interested in hearing the views of Committee members about the composition of the Committee, the array of activities that it is charged to carry out, and the degree to which the charge and composition are in alignment. He also informed Committee members that they were free to email either him or Professor O'Connell after the meeting if they had comments they did not wish to make in the meeting; the messages will be considered confidential, he said.

Committee members offered several comments.

-- The Committee generally receives the data and information it requests to meet its charge.

-- The Committee does deal with questions of post-tenure review, at the policy level, not at the level of individual cases. There is a difference between reviewing and monitoring the process; the Committee has review of the process on its agenda this year.

-- Although promotion of understanding of the concepts and exercise of academic freedom across the University may be an aspirational goal, because the Committee does not have the resources to do so

literally, it did seek to do so through its White Paper, for example. The Committee cannot offer workshops but it can recommend that the administration do so.

-- There is a fear of imperial deans and department heads that inhibit academic freedom because of a fear of reprisals, it was said; the Committee took action to counteract the impact of the Supreme Court case by recommending to the Regents that academic freedom at the University extends to discussion of the business of the University. One can ask whether people know about it. It can also be difficult to get assistant professors to express opinions about department policies.

-- The Committee believes its size is appropriate; it might be beneficial to add a graduate student to the membership. A student who is doing work in higher education or on issues related to academic freedom would be a very good match.

-- Coordinate campus representatives to committees (not just this one) have basically received the message that they should only come to meetings if they have to, with the implication that the money will run out if they attend in person too much. The University needs to encourage faculty from the other campuses to participate; they are more effective when they are present at meetings.

-- It should be clear that the P&A members of the Committee could be any P&A staff member, not necessarily one who is only engaged in teaching or research.

-- It would help if the committee chairs knew what their responsibilities were, including service on other committees, and a thumbnail sketch of what the committee does.

-- The Committee does appoint subcommittees, or subcommittee members, as needed.

Professor O'Connell commented that often what committees do seems bureaucratic but their work is what underlies shared governance. Maybe other offices are responsible for carrying out policy, and the work of the committee may have limits, but it should not just see its work handed off. Nor should they wait for items to come to them; they should take up issues they believe important. She emphasized that the work of this Committee is very important.

-- In terms of the purpose of the review, it is to be hoped that the Committee on Committees not only helps to clarify committee roles and responsibilities but also does not just add committees but also considers whether to merge or eliminate them. Professor O'Connell related a brief history of recommendations to eliminate committees and the role that the Committee on Committees now plays in evaluating them; They have recommended elimination of standing subcommittees and are now going through Senate committees, over a five-year period, but they do not see any problems at present.

Professor Flink thanked Professors Cardwell and O'Connell for the visit.

3. Subcommittees on Policy and Data

Professor Flink noted that the Committee needs to appoint members to two joint ad hoc subcommittees (with the Senate Committee on Faculty Affairs), one to make recommendations on the policy on college personnel plans and the other to develop recurring data needs for the Committee.

Professor Ho was to be asked [and later agreed] to serve on the subcommittee on the policy, which Dr. Craig also agreed to serve on. Professors Bart and Miksch agreed to serve on the subcommittee on data needs.

Professor Miksch noted she had distributed the AAUP statement on graduate students and said the Committee would take up the question of academic freedom for them at a later meeting.

Professor Flink adjourned the meeting at 12:00.

-- Gary Engstrand

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