

Minutes*

**Academic Freedom and Tenure Committee
Friday, September 9, 2011
10:00 – 12:00
300 Morrill Hall**

Present: Barbara Elliott, Christine Marran (co-chairs), Yusuf Abul-Hajj, Arlene Carney, William Craig, Joseph Gaugler, Teresa Kimberley, Jessica Larson, Paula O'Loughlin, Gary Peter, Carol Wells

Absent: Terry Simon

Guests: none

[In these minutes: (1) section 6 of the tenure code; (2) status of 7.12 statements; (3) white paper on academic freedom]

Professor Elliott convened the meeting at 10:00, called for a round of introductions, noted that two Committee members need to be replaced because of schedule conflicts, and reviewed the charge to the Committee.

1. Section 6 of the Tenure Code

Professor Elliott turned now to Vice Provost Carney to report on an issue that has arisen as a result of the recent changes to the tenure code.

Dr. Carney distributed copies of two memoranda, one to tenured and tenure-track faculty in units WITH recently-approved 7.12 statements and one to tenured and tenure-track faculty in units WITHOUT newly-approved 7.12 statements. Every tenured and tenure-track faculty member at the University (except those in the Duluth bargaining unit) will receive one of the two memos. The topic of concern is section 6.3, which was changed this year to require that for assistant professors up for promotion and tenure, there be only one motion and one vote on both promotion and granting tenure. Everyone involved in the process of revising the code thought this was a great idea.

A question has been raised by the faculty at Crookston, however, about tenured assistant professors, of which there are a few across the University (appointments that have not been made for many years and that will not be made in the future). The question is whether those individuals are disenfranchised from voting on the now-required single motion (in the past, when there were two votes, one on granting tenure and one on promotion, they could vote on whether to grant tenure but would not vote on promotion). It was not the intent of this Committee, the Faculty Senate, the administration, or the Board of Regents to disenfranchise anyone, Dr. Carney said.

Section 6.3 makes the tenure and promotion vote inextricably bound together, but because they do not wish to disenfranchise anyone, Dr. Carney said, she is recommending that because these assistant

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professors are tenured, they be permitted to vote. This will be an exception that will last for only a few years; most of the tenured assistant professors are close to retirement. It would be difficult to tell them they cannot vote now on granting tenure, when they could in the past, so she recommends granting a variance for the next few years. This is also a matter that cannot wait, because departments will begin to vote this year on promotion-and-tenure recommendations in the near future.

The memos that the faculty will receive are not about assistant professors, they are to make sure that everyone knows there is only one vote, Dr. Carney told the Committee.

The memo also includes other information. Dr. Carney wanted to be sure that everyone knew immediately about the extension of the probationary period provided in section 5.5—and also wanted to make sure people know what did NOT change with the amendments to the tenure code (e.g., section 7.11, setting out the general standards for tenure, and the Memorandum of Understanding (MOU) that faculty members may have signed. This can be very confusing, Dr. Carney commented, and she has spent a lot of time talking individually with faculty members and also had a retreat with college faculty associate deans and covered the issues associate with the MOUs.

The issue for the Committee today is whether tenured assistant professors should be extended the vote, Dr. Carney said. When it is decided she will send a memo only to departments that have tenured assistant professors to clarify what is to occur.

Professor O'Loughlin thanked Vice Provost Carney for getting the information in the two memoranda out to individual faculty members because that will help them know what to do, and lead to fewer procedural errors—and so fewer cases before the Senate Judicial Committee [which Professor O'Loughlin chairs].

So in the new situation, when a probationary assistant professor comes up for tenure and promotion, the tenured assistant professor would vote on the one motion, Professor Abul-Hajj clarified? That is correct, Dr. Carney responded; the tenured assistant professors would vote on whether to promote the probationary faculty member to associate professor with tenure. Professor Abul-Hajj said that making an exception for the tenured assistant professors in these cases seems fair. Dr. Carney said that if the Committee approves the exception, she will incorporate it in the Procedures document and indicate that the Provost and this Committee approved it.

Professor Abul-Hajj moved that the Committee accept the proposal from Vice Provost Carney to allow tenured assistant professors to vote on the single question of promotion and tenure for probationary assistant professors. The motion passed unanimously. Dr. Craig suggested that Dr. Carney make it clear that this provision is temporary, in place only as long as there remain tenured assistant professors on the faculty.

[NOTE: This issue is to be revisited at the 9/23/11 meeting of the Committee.]

2. Status of 7.12 Statements

Professor Wells asked Vice Provost Carney if there are many units without approved 7.12 statements. There are, Dr. Carney said, primarily in the Academic Health Center, and the reasons for the lack of approval of the statements are complicated. She said she expected significant progress in approving

7.12 statements for Medical School departments very soon, and she is also following up with other units in the Academic Health Center without approved statements.

In response to a query from Professor Abul-Hajj, Dr. Carney said the units do not report through the Academic Health Center on the 7.12 statements—they deal directly with her.

3. White Paper on Academic Freedom

Committee members turned their attention to the draft white paper on academic freedom. Professor O'Loughlin suggested that Professor Elliott review, for the benefit of new Committee members, why the white paper is being prepared.

Professor Elliott recalled that as the film *Troubled Waters* became an issue, the Faculty Consultative Committee asked this Committee to respond to a number of questions because there were several issues of academic freedom at the center of the controversy. This Committee spent a number of meetings discussing academic freedom and responding to the questions; the report went to the University Senate last spring. In the course of the discussions, the Committee learned a number of other things that went beyond what had been presented to the Senate and beyond what had been written about academic freedom in the past. The Committee offered to write a summary of what it had learned; hence the white paper.

The suggestion received a very positive response, Dr. Craig recalled. Professor Elliott agreed and noted that Provost Sullivan has said he would post the white paper on the Provost's website.

Dr. Craig said that a major item for him is that the PI for *Troubled Waters* was not a tenured faculty member and he appreciated the clear statement that she was covered by the Regents' policy on academic freedom—that coverage was not determined by job classification.

Professor Marran said that three matters had come up: (1) where academic freedom extends (not just to faculty members); (2) how to interpret academic responsibility, which is part of academic freedom; and (3) what procedures are in place if one believes one's academic freedom is being infringed. The white paper also deals with the academic freedom of administrators, which is made clear in the language, Dr. Carney added.

Professor O'Loughlin noted that the paper also observes the need for continuing education about academic freedom for administrators who are not faculty members or lawyers. Dr. Carney reported that she reviewed academic freedom in detail at the New Faculty Orientation and has also reviewed it in the sessions with new department chairs this year.

What is more important to recall, Professor Abul-Hajj said, is that individuals who are administrators but not faculty members may be the ones who create problems with academic freedom, because they have not been properly advised about the limits of their authority.

Professor Elliott pointed out that the Regents' policy is contained in the white paper—and that it is titled "Academic Freedom and Responsibility." Most of the discussion has been about academic freedom, but academic responsibility is what arose as an issue as well. Dr. Craig recalled that there was debate in the Senate, many years ago, about putting academic responsibility into the document.

Professor Elliott reported that she had provided a draft of the report to Provost Sullivan, who had suggested only a few very minor edits. Dr. Carney said she and the Provost had discussed the draft and thought it very good. It appears to capture the Committee's discussions and is clear—even if a reader knows nothing about the events surrounding *Troubled Waters*.

Professor O'Loughlin suggested that the white paper be more explicit about academic freedom and post-tenure review. It should affirm that tenure provides protection, and that post-tenure review is not arbitrary nor is it to be a threat to academic freedom. That thought could also be incorporated in the Procedures, Dr. Carney said. Professor O'Loughlin said that as one goes through the process, there is concern when one is pre-tenure (one feels vulnerable), then again when one goes up for promotion to professor (again one feels vulnerable), and only again if one faces post-tenure review. Dr. Carney pointed out that unlike academic freedom, post-tenure review is about performance, not about the topics on which one works. No one should be able to start a post-tenure review because of the subject matter the individual deals with; any post-tenure review must fall within the definitions of performance established by the department.

Professor O'Loughlin also recalled that the Committee discussed academic responsibility with respect to when statements and academic debate cross the line. She said she believed the Committee and white paper did a good job in that matter as well. The white paper does provide people with the sense of academic responsibility. The Committee talked last year about when one feels that someone's academic freedom has been infringed, there is a responsibility to speak up. Professor Gaugler asked who should be contacted if someone feels academic freedom is being infringed; Professor Elliott agreed that the information should be clearly described in the white paper. What the Committee told the Senate last year was that one should go to the Provost, Dr. Carney said. The Provost has system-wide responsibilities, and one could appeal to the chancellor on one of the coordinate campuses. Or the Office of the General Counsel, Professor O'Loughlin added. The report should, however, say more strongly that faculty members have an obligation to stand up for academic freedom.

Professor Marran inquired how academic freedom arises in post-tenure review—because of teaching? Research? It can be either, Professor O'Loughlin said. Dr. Carney explained that it could come up with a person who has been unproductive in scholarship but who claims a violation of academic freedom because he or she is working on a longitudinal project that could take 30 years. That is a performance standard: Departments can require that there should be some evidence of work completely apart from the subject matter. She said she did not believe it a violation of academic freedom if a department asks for evidence of the work a faculty member is doing. Department standards can provide what one must do, and if someone is doing nothing, that is not an academic-freedom issue, it is a performance issue. Someone could invoke academic freedom to move attention away from performance—but the allegation of a violation of academic freedom could also be real, so one must proceed carefully. Professor O'Loughlin said a number of faculty members see post-tenure review itself as a violation of academic freedom and take the position that after one is tenured, one should be left alone (this is not a view that she endorses). Academic freedom questions have arisen about research, teaching, and also about external engagement. Professor Elliott agreed that the general point should not be lost in the white paper.

Professor Marran said one of her concerns about the draft is the discussion of the limits of academic freedom for administrators. She noted the draft language:

In addition, administrators have a specific limit on their ability to state their opinions about University positions publicly. In recent years, the federal courts have established a limit to the

protections afforded by academic freedom for administrators. The courts have recognized that administrators have the responsibility to engage in vigorous, robust discussion up to the point an administrative decision is made and University policy is defined. Once the decision is made, administrators do not have a First Amendment right to criticize the decision, and they can be terminated if they do so. This court decisions reflect the opinion that as a public employee in a position of authority, an administrator relinquishes certain free speech and academic freedom protections as part of the employment bargain. This extends to statements that might be made before the legislature, to the media, etc.

She suggested, first, that the paper cite the court cases. She also said that she had the position of department chair in mind when she read this. The chair is in an interesting position, especially because in some units the chair is elected.

Dr. Carney said she did not believe this language applies to department chairs. They are also faculty members who are serving as a faculty chair. The language should refer to administrators as deans, the provost, and so on, and extensions of those positions (associate/assistant dean, vice provost, etc.). Chairs are not appointed as P&A staff members but deans, provosts, etc., are. The latter are administrative positions. She does not own the copyright to anything she writes about tenure, promotion, and the like, in her capacity as vice provost—it is not her own work, she is doing it as work for hire.

It was also noted that under the provisions of Minnesota labor law, when the faculty were voting on collective bargaining, department chairs were considered part of the bargaining unit.

Dr. Craig observed that he is an administrator, in a center. Dr. Carney said that the white paper language is about administrators who have University-wide or college-wide functions. The discussion is often about deans and above, Dr. Craig said, but this language is about University policy. The University has decided on its stance—it does not want senior administrators making public statements contrary to decisions that have been made. That should not stop department chairs from saying that they do not believe their department should have a budget cut.

Professor Marran said that deans may meet and have disagreements on funding. One would want to hear from a dean on how the funding works in his or her college. The dean can speak in the deans' meeting, Dr. Carney said, but if a dean writes an op-ed piece that says the President or Provost is wrong, that dean could be fired. Her approach is that if there is something she fundamentally disagrees with, she will talk to the Provost. If the decision that she disagrees with is not changed, she must resign. And if she goes to the newspaper about something before that, she should expect to receive a termination letter.

Professor Marran said she understood that administrators at the level of dean and above serve "at the pleasure of" the appointing authority, so perhaps no language is needed in the white paper. Many may not know of the status of administrators, Dr. Carney said, and that it is a fundamentally different life from that of a faculty member—and that, for example, when she speaks, she speaks on behalf of the Provost. If, however, she is writing a journal article as a faculty member, then she does have the protection of academic freedom. Professor Kimberly said it is important for faculty to understand that administrators do not speak for themselves. Dr. Carney agreed; she is part of Provost Sullivan's administration, and while she is a free agent as a faculty member, she is not when she is acting as vice provost. Many may not understand that distinction.

Professor Abul-Hajj said that a chair can disagree with a dean and not be fired; an associate or assistant dean cannot. Although, it was observed, a dean can also remove a chair. If a dean says he or she does not want someone as a chair because of something the chair said, is that a violation of academic freedom, Professor Gaugler asked? The dean cannot remove the person's faculty appointment, but can remove the person as chair. It depends on the college, Professor Abul-Hajj said; in his, it requires a two-thirds vote of the department to remove a chair. The vote is advisory to the dean, but it would be difficult for a dean to remove a chair without faculty support. Dr. Carney agreed with Professor Gaugler that it's an interesting question and one that perhaps the Committee should address. She said she has not talked with the Provost about the position of chairs vis-à-vis the white paper.

Dr. Craig observed again that there are many administrative titles at the University and the positions are occupied by individuals who are not faculty members. Dr. Carney said many of them should not be considered "administrators" for the purpose of the white paper.

The Committee agreed that the white paper should make clear that when it refers to administrators, it is referring to "deans and above," those with decanal, provostal, presidential, and associated appointments, not department chairs.

Professor Kimberly asked, in looking at one passage in the draft, how one defines who's work it is.

The protections of academic freedom are extended to all University employees who engage in scholarly work, which is also identified as original intellectual and artistic content, as part of their employment. Anyone—of any employment status or rank—who designs, creates, or discovers content as part of their University employment enjoys the protections of academic freedom, including professors, museum directors, artists, etc. regarding that work.

If a graduate student is working with her, she is the PI and she is the one who obtained the funding, but the student is working with her and contributing to the scholarly work.

Professor Elliott said it's an interesting question. Some graduate students are doing their own work as well as work with a faculty member. She related that she had recently attended an outstanding Responsible Conduct of Research session on invention, ownership, and corrections issues led by a patent attorney. She came away with an understanding of how technical this part of the law is and that documentation of original creative input is often found in laboratory (and other research) records.

It was agreed that the white paper would not try to address Professor Kimberly's question because, as Dr. Carney pointed out, there are regental and administrative policies on ownership of intellectual property.

Professor Elliott adjourned the meeting at 12:05.

-- Gary Engstrand