

Minutes\*

**Academic Freedom and Tenure Committee  
Friday, March 14, 2008  
9:30 – 11:00  
300 Morrill Hall**

Present: Tom Clayton (chair), Yusuf Abul-Hajj, Tracey Anderson, Arlene Carney, Joseph Gaugler, Linda McLoon, Paul Porter, Thomas Scott, Terry Simon, Carol Wells

Absent: Carl Flink, Karen Miksch,

Guests: none

[In these minutes: (1) copyright issues; (2) Senate Judicial Committee Rules of Procedure; (3) draft policy on University responsibility to researchers; (4) associate professor time in rank; (5) an academic freedom matter]

**1. Copyright Issues**

Professor Clayton convened the meeting at 9:30 and turned first to Professor Wells to discuss briefly copyright issues (that will probably be referred to the Senate Committee on Faculty Affairs).

Professor Wells reported that she was made aware, by accident in two cases and because of her own experience in a third, of online courses where the University has claimed copyright and the faculty member involved in the course may not know what the University had done. Two of the instances are courses and the third is a set of video clips that are part of new course development. Many questions arise, including the copyright ownership of lecture materials that may have already been copyrighted by the lecturer before the University assumed copyright ownership, the ability of a faculty member to include unpublished personal research within a lecture without surrendering copyright of this unpublished research to the University, etc.

When she has raised questions with the administration, she has been told that administrative procedures are being written and these situations will be clarified—but the Regents' policy is being enacted in the absence of such procedures. She said she wants to know how many courses are being copyrighted without the knowledge of the faculty member.

Professor Abul-Hajj asked if these kinds of things are happening only in the Medical School or in other colleges as well. Professor Wells said she did not know because she only discovered the situation by accident.

Professor Anderson said that she is aware of pressure to teach college classes developed by college faculty in the high schools. She wondered if this should be examined in light of the new copyright policy.

---

\* 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.

The Committee agreed without dissent that the Committee on Faculty Affairs should be asked to take up these issues.

## **2. Senate Judicial Committee Rules of Procedure**

Professor Scott next reported to the Committee on the Rules of Procedure for the Senate Judicial Committee (SJC, which he chairs). This Committee (Academic Freedom and Tenure) represents the final step in the process of approval of the Procedures before the Provost adopts them. The Committee saw and approved the Procedures earlier, with the exception of one provision. He related that he was on SJC last year but not involved in the development of the Procedures, but SJC is anxious to have the new Procedures approved this spring so that if cases arise, it can operate under them.

One issue has festered the last 2-3 years, and that is the questions of whether an “attorney” is a lawyer licensed to practice law or anyone with a law degree, and how the two sides are to be represented during a hearing. They have operated on what has been known as the “Yudof principle” and that practice is incorporated in the Procedures. (The “Yudof principle” is that if the complainant is represented by an advisor who has a law degree, irrespective of whether the advisor is licensed to practice law, the respondent—the Provost's office—has the right to be represented by an attorney from the General Counsel's office.) They discussed this issue in SJC, met with representatives of the General Counsel and the Provost's office, and also had discussions with the attorneys that represent SJC; they understand the Provost feels strongly about this issue.

From participating in the process as a panel member and a hearing officer, Professor Scott told the Committee, he has found that the “Yudof” system works pretty well. Neither party suffers under the proposed language, although some feel more strongly about it than he does. The hearings can go differently, depending on who is representing the complainant and the respondent, but generally the system works well whether both sides are represented by an attorney or if the Provost is represented by Vice Provost Carney alone and the complainant by himself/herself or by a non-lawyer advisor.

Professor Clayton asked what is at stake. In the previous drafts, one had to be a licensed attorney to count as an attorney for the complainant, Dr. Carney explained. The original language was as it appears today, but at one point SJC changed it to *licensed* attorney. A number of faculty members have law degrees but are not licensed attorneys. Under the language now proposed, if the complainant has an advisor with a law degree, she (as the Provost's representative in the hearings) is entitled to have as advisor an attorney from the General Counsel's office. When the complainant has an advisor who does not have a law degree, then she does not have an attorney or other advisor. The Provost is committed to a fair and equitable process, Dr. Carney said, and does not want to compromise the complainant's rights. The process has worked well the last couple of years that she has been involved, she said.

Professor Scott agreed. The hearings are really not a courtroom setting, he said. The most important consideration is that the hearing panel has wide latitude in how it works with the complainant and respondent. The panel also has a skilled attorney who helps keep things on track, so he is less concerned, he said, than many are about the apparent imbalance in representation (if the complainant has a faculty member with a law degree but no license to practice and Dr. Carney has a lawyer from the General Counsel's office). It is his understanding that the same General Counsel representative has been assigned to SJC hearings for a number of years and has learned to represent the University's position with fairness and equitability. If there were bad actors on either side, there could be problems.

If there were a different person in her job, Dr. Carney said, someone who had a law degree, then any complainant should be represented by an attorney. But her job does not require a law degree. Professor Wells asked, whether the faculty member would have to get a lawyer, if the person in her position were a lawyer. No, Dr. Carney said, but they would want to be sure not to stack the deck against the complainant. SJC would work to see that did not happen.

It is also clear, Professor Scott commented, that one who has a law degree is not necessarily a good attorney in this setting. This is a specialized area and a practicing attorney may not know much about the process.

The Provost can designate someone other than her, Dr. Carney observed, but has designated her so there is predictability in the process, something the SJC appreciates. The Provost could assign a dean (e.g., from the college of the complainant), but the Provost believes her position is the best one to handle the cases.

All of the other changes in the Procedures recommended by SJC and approved by this Committee the Provost strongly supports, Dr. Carney told the Committee. If things are going smoothly, and we assume that if things were going wrong SJC would recommend a change, it is reasonable to accept and approve these Procedures, Professor Clayton commented.

Professor Scott related that when a recommendation has been made by SJC and a decision made by the President, and the decision has been appealed to the courts, the courts have held that the SJC process is good enough to be considered a first-level court review. As a result, any appeals go directly to the Minnesota Court of Appeals. He said he can understand why, because it is a long and complicated procedure, one that works in part because of the skill of the panels.

Professor Porter asked if people know when they should use SJC and when they should go to the Office for Conflict Resolution. There is language in the tenure code that clarifies when one has recourse to SJC, Dr. Carney said. If it is a promotion or tenure case, it goes automatically to SJC. If it is work-related, it goes first to the Office for Conflict Resolution, and the SJC office would refer it. The two offices work to refer people appropriately.

The Committee voted unanimously in favor of the revised Procedures.

### **3. Draft Policy on University Responsibility to Researchers**

Professor Clayton next drew the attention of Committee members to a draft policy statement he had circulated earlier, the applicable provisions of which read as follows. He reminded the Committee that the genesis of the draft was the predicament in which a faculty member found himself when his research facility was closed as a result of the collapse of the I35W bridge.

#### The University of Minnesota's Responsibility to Support the Scholarly Research and Creative Work of Its Faculty Members

1. Faculty members are appointed and tenured for purposes defined in the University policy on Faculty Tenure and on terms spelled out in detail in the contracts they sign when they are

appointed—to teach, engage in scholarly research or other creative work, and perform professional service, in the practice of their profession and on behalf of the University (see Faculty Tenure 7.11, 9.2). The University provides the means—facilities, equipment and supplies, and assistance—for these activities to be undertaken, in accordance with the needs of the individual professor(s), the norms of the professional areas he or they work in—ordinarily an academic discipline or combination of academic disciplines—and the ability of the University to provide the necessary support.

2. All facilities, equipment, and supplies used in scholarly research and other creative work should be adequately insured to provide for replacement.

3. In the event of catastrophic loss of facilities and/or equipment, faculty members affected must be indemnified against loss of occupation or support while their resources are being restored and replaced. In particular, no faculty member should be denied a salary-increase when unable, for reasons beyond his control, to perform the work on which merit increases are normally based. In addition, the faculty member and his work should be accommodated as near normal working conditions as possible until the facilities and/or equipment are restored.

4. The particular extent of these normal expectations—of professional effort by the faculty member and support by the University—together with the individual exceptions will be specified in documentation of appropriate kinds at appropriate administrative levels. They might include the expectation that the individual professor(s) will provide resources for some or all of his or their scholarly research or other creative work, possibly including salary, as considered reasonable in the particular areas of specialization. These resources would come from successfully applying for grants from government, otherwise non-profit, or profit-making sources approved by the University. Such expectations must be specified in University regulations and/or in individual contractual agreements between the professor(s) and the University, with the understanding or explicit provision that if funding conditions change, of whatever kind they are, the expectations must or may change accordingly. If external funding of the work of one or more professors decreases drastically, for example, he or they cannot be expected to provide self-support at the same level as before. In such cases, if the work continues viable in itself, the University's responsibility is to support the scholarly research or other creative work according to its ability to do so. If the University cannot provide adequate compensatory support, the faculty member(s) scholarly research or other creative work will have to be redesigned accordingly.

Professor Anderson said it had been a long time since she had signed a contract; is it consistent with the tenure code? Professor Abul-Hajj said the only contract he had seen was a letter from the dean offering him his position; he said he did not believe there was a formal contract. There is an annual reappointment, Dr. Carney said.

Is this policy designed to address the problems that faculty have when bad things out of their control happen to them, Dr. Carney asked? It is, Professor Clayton said. Dr. Carney suggested the Committee work with Vice President Mulcahy; he is dedicated to making sure that faculty have the capacity to continue to do their work, although one can envision situations where it might difficult to restore working conditions immediately. The policy tries to allow for that, Professor Clayton observed.

What about insurance, Professor McLoon asked? It would be prohibitively expensive, Dr. Carney said; the University is self-insured and would replace the equipment or facilities. Professor McLoon recalled that the animal-rights activists did damage a number of years ago; what would be her expectations in a situation like that? Dr. Carney said that Vice President Mulcahy could best answer the questions. Some situations are so unpredictable that the University is vulnerable; Vice President Mulcahy can look at the issues from a University-wide perspective and inform the Committee how he would work with deans and others.

Professor Wells suggested the draft creates more confusion. She has an office and a lab, each full of equipment and material. If something wipes out her lab, is she out of business? Again, Dr. Carney said, that is a question Vice President Mulcahy can answer. But the University cannot insure every piece of equipment—that would be enormously expensive. It is cheaper to replace an item when something happens than to spend millions of dollars to insure all equipment.

Professor McLoon said the University does not do for her what is called for in one part of the draft: "The University provides the means—facilities, equipment and supplies, and assistance—for these activities to be undertaken. . . ." Point number four specifies that there are exceptions, Professor Clayton noted. Professor Abul-Hajj said that even if something is bought with University funds, the University could not insure it. One department had an explosion, which led to a change in the process for distillation, and the University bought new equipment to make the process safer, but it did not replace items lost in the explosion—that was up to the dean. Events do happen.

So point number two in the draft is untrue, Professor McLoon said.

When someone starts at the University, he or she is provided lab space, heat, light, equipment, and so on, Dr. Carney said—faculty would not receive grants as private citizens. When she receives an NIH grant, Professor McLoon said, she is taxed for indirect costs, which go to the college. Dr. Carney again urged the Committee to speak with Vice President Mulcahy about the topic. It is not widely understood that indirect cost funds do not cover the University's research costs and that it costs the University money to be a research university, costs it pays because it is a research university. Where do the dollars come from, Professor Abul-Hajj asked? Many come from indirect cost funds, Dr. Carney said, but they do not cover full costs. The University receives state funds, most of which are not designated; the administration looks at all funding streams.

When the University signs off on a grant, it promises to provide space and utilities, etc., Professor McLoon observed. How much would be covered by this draft policy? Is this a real commitment? What if a lab is not adequately maintained? Vice President Mulcahy can best respond, Dr. Carney said.

This draft could help start a dialogue about indirect costs, Professor Gaugler said, because many wonder where the dollars go. The policy could be a springboard for discussion within the units. Dr. Carney pointed out that the Senate Research Committee frequently discusses indirect costs, as does the Council of Research Associate Deans. She serves on both, she noted.

Does the Research Committee have this draft, Professor McLoon asked? Should this Committee take the lead on it, Professor Gaugler asked? Very likely it should; at any rate, he was asked by this Committee to write a draft, Professor Clayton said. There are academic freedom issues involved, Professor Gaugler said; if one needs a computer, it should be covered by indirect-cost funds, but the

college might say it does not have the money. This is an issue with external funds and the pressure to put items on as a direct cost. Professor Abul-Hajj said there is much that cannot be put on a grant as a direct cost. The faculty can ask the dean how indirect-cost funds are distributed in the college; his college provides some to departments and some to individuals.

There was general agreement that point number two in the draft will likely need to be deleted. If someone puts insurance in a grant proposal, it is likely that Sponsored Projects Administration will strike it, Professor Simon said. If one loses something due to misfortune, it will have to be replaced with good negotiating skills on the part of the faculty member. He also commented that if other committees have discussed indirect costs, there should be documentation on where the money goes. There should be with the new budget model, Dr. Carney agreed, because its major goal is transparency. Much is on the web, she said. The new Enterprise Financial System seems complicated, but the University has a complicated financial structure. Faculty should be able to track where indirect-cost funds are going. Some costs are outside the University's control, such as increasing energy costs, which consume more indirect-cost funds. That causes a dilemma about expectations about how the money will be used.

Professor Wells said it is fine to put the information on the web but the information is not easy to read and understand. What units receive in indirect-cost funds is inconsistent because it depends on what the units negotiate. Dr. Carney agreed; she noted that all the indirect-cost money goes to the colleges, which in turn decide how to distribute it. Professor Wells said she understood that 75-90% of research costs are paid with indirect-cost funds but that the rest must be funded from other sources. The opportunity to correct that problem is when NIH sets the indirect-cost rates; the University's is low and it is not clear why the University does not negotiate better rates. Dr. Carney disagreed with Professor Wells's comment; the University's indirect-cost rate is about the average for public research universities (although not comparable to that of private universities). What it is in is state funds, Professor McLoon said. Again, Dr. Carney disagreed. The University receives a high level of support compared to other public research universities. The amount may be down, but not down as much as at peer institutions. Is that known, Professor McLoon asked? Dr. Carney said it is; Vice President Pfutzenreuter has presented the information to the Regents and to the Committee on Finance and Planning. There is a sense that the University is poor, but other institutions see Minnesota as very well off by comparison. Professor Abul-Hajj said that state support varies by school but he agreed that as a whole the University is not doing badly.

Dr. Carney said that she could bring to the Committee the slides that Vice President Pfutzenreuter uses to provide the information. Tuition and indirect-cost funds go to the colleges; the state funds go to the President. The President and vice presidents make decisions about the allocation of the state funds and look across the colleges in doing so.

The new budget model makes colleges pay for energy costs, which is a lot of money, Professor Abul-Hajj commented. If the colleges receive the money, they have to pay for things, Dr. Carney commented. A lot of costs have been sent to the colleges, Professor Abul-Hajj said, and they are talking about closing space. The budget model does make units think more about space and resources, Dr. Carney agreed.

Professor Clayton said the issue came to the Committee, and while it is not a central matter of academic freedom, if a faculty member is deprived of the ability to do his or her research, that affects

academic freedom, so it is everyone's business. The Committee will, however, defer further discussion of the draft until Vice President Mulcahy can join a meeting.

#### **4. Associate Professor Time in Rank**

The Committee will take up the issue of associate professor time in rank later, Professor Clayton said. Professor Wells asked what the issue is.

Dr. Carney said that the Provost had asked about the number of associate professors who had served long in the rank. In 2005, they found that about 38% of associate professors were in rank more than 8 years. When the strategic-positioning process started, the question was of interest to the Faculty Culture task force. She said she looked at the distribution of associate professors in rank; it is a graph with a long tail. There are a number of associate professors who have been in that rank for 20-25 years. She also looked at people who spent their careers at the University and the time it took to move from associate professor to professor. The Provost chose 8 years as a cut-off point to look at; as it turned out, the mean time faculty serve as associate professor at the University is 7.9 years. The data are useful for helping mentor associate professors, Dr. Carney said, and gender does not appear to be an issue (although more of the long-term associate professors are male because they were hired earlier). Each year they look at the numbers in rank; there are differences across colleges. In IT, associate professors are in rank about 5 years; in CLA, about 10. But the distributions tend to be bimodal, those who are in rank about six years and those who stay in rank a long time.

Dr. Carney said she was interested in associate professors because they are sort of the forgotten group. The University does a lot for junior faculty, but once tenured, they seem to be on their own. She started workshops last year for associate professors interested in promotion—and within about half an hour after she sent out the email, the session was full. So she offered more sessions. There were about 150 people in them and there was a lot of discussion. Some associate professors asked why they should bother and what was in it for them. At the time the question took her by surprise, but now she can respond to it.

Some associate professors were very interested in promotion; some were not. Now she relies on a panel of faculty recently-promoted to full professor, some of whom were promoted very fast and some of whom were associate professors a long time. In the latter case, individuals went on sabbatical or did something else and were then promoted. They encourage their colleagues, letting them know the door is not closed. Some of the women faculty had children and spent more time as an associate professor. Life happens. She continues to offer the workshops for associate professors because the University needs to think as an academic community and how it can help associate professors.

Professor Gaugler recalled that last year the Committee heard about an associate professor who was doing a lot of things that the chair asked, and delaying advancement as a result. How does that link to Dr. Carney's work? Now a number of faculty see her confidentially for counseling; she looks into cases like that. She said she views herself as an advocate for the faculty member in these situations and does what she can. She is concerned that some faculty become tagged as "the service person" and their career is held up, while others are tagged as the "star" and not burdened with service. The question is how to balance the two. And everyone should ask themselves if they are doing things that will get in their own way.

Chairs and deans should be part of the process because they can cause the problem, Professor Anderson observed. Dr. Carney noted that she holds year-long chair sessions and focuses on problems like this (e.g., the mentoring responsibilities and the responsibility of a chair not to bog someone down).

Is there a difference between chairs and heads, Professor Clayton asked? There is not, Dr. Carney said. There are different cultures across the University, and it can be useful for chairs to learn that things are done differently in different units. What about directors, Professor Wells asked? She has not had sessions for directors, Dr. Carney said, but since the number of people in those positions has blossomed, there is a need to talk about human resources and leadership issues with them as well. Directors do not need to worry about promotion and tenure but there are other issues, she agreed.

Professor McLoon reported that in the Academic Health Center, every department must have a mentoring program. She commented that she could use a mentor; if there were sessions for professors, people could get a lot out of them. Dr. Carney agreed that people do not take the time to reflect on the careers and their responsibility to their colleagues.

Dr. Carney said she also had sessions on faculty interested in being administrators, one just for women, with panels on what administrators do. About 50 people attended each one, and it was interesting to learn that many people do not know what she does. Each session includes a panel on what administrators do, which is very different from the faculty job. One does not get a lot of credit for what one does as an administrator but it takes a lot of people to do the jobs to keep the institution moving.

The most important part of mentoring is educating department chairs about their responsibility to tell faculty what they need to do to help their careers, Professor Abul-Hajj said, and that is not just for the young faculty. Full professors need to be mentored on how to pursue opportunities to excel and be leaders in their fields, and bring recognition to the University.

One person at one of the sessions with associate professors claimed one cannot do service and be on a fast track to full professor; another who did gain tenure quickly rebutted the argument and said he provided a lot of service, obtained grant funding; Dr. Carney said he was also a great teacher. The individual maintained it is a faculty responsibility to provide service.

## **5. An Academic Freedom Matter**

Professor Clayton reported on the recent reaction of the soybean and corn growers to research published by University researchers. The situation worked out to the University's satisfaction and there was no threat to academic freedom.

Professor Clayton adjourned the meeting at 11:00

-- Gary Engstrand