

Minutes\*

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

Present: Barbara Elliott, Karen Miksch (co-chairs), Tracey Anderson, Arlene Carney, William Craig, Joseph Gaugler, Christine Marran, Paula O'Loughlin, Gary Peter, Paul Porter, Terry Simon, Carol Wells

Absent: Yusuf Abul-Hajj, Barbara Loken, Linda McLoon

Guests: none

[In these minutes: (1) report on the March 4 Senate meeting; (2) the Regents Policy Code of Conduct; (3) statement on academic freedom to all faculty; (4) annual conference on academic freedom; (5) syllabus statement on academic freedom; (6) data on faculty appointments; (7) article on the COACHE survey]

**1. Report on the March 4 Senate Meeting**

Professor Elliott convened the meeting at 9:40 and asked Professor Miksch to report on the Senate meeting the previous day and on the procedures for voting on furloughs at the Faculty Senate on March 25.

Professor Miksch noted that the Committee had approved by email an Interpretation to the tenure code providing that only tenured and tenure-track faculty are eligible to vote on furloughs if a proposal were brought to the Faculty Senate under the terms of Section 4.5 of the code. In a discussion with the Provost, Vice Provost Carney, and Tracy Smith from the General Counsel's office, she and Professor Elliott (along with Professors Gonzales and Oakes from the Faculty Consultative Committee) concluded that the proposed Interpretation might violate the Senate constitution, which provides only three reasons why voting would be limited to tenured and tenure-track faculty—and arguably none of them apply in the case of voting on furloughs. As a result, all members of the Faculty Senate will be eligible to vote, including the faculty-like P&A members and the term faculty, because they do not want to disenfranchise any members of the body and because the vote required by Section 4.5 applies to term faculty as well as tenured and tenure-track faculty. In any event, the Regents could not review and act on the proposed Interpretation by the time of the March 25 Faculty Senate meeting, so they are recommending a separate vote by the faculty and by the faculty-like P&A members of the Faculty Senate so that the vote can be defended if challenged later.

The University Senate discussed the budget at the meeting, Professor Miksch next reported, one element of which (furloughs for faculty) must come to the Faculty Senate for a vote, as required by the tenure code. There were questions about whether the furloughs would recur, but the code is clear: This is a one-time approval, and if the administration were to propose another furlough, that would require another vote.

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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.

Vice Provost Carney noted that Section 4.5 of the code talks about financial stringency, which is defined in Interpretation 3 of the code:

3. Interpretation of Section 4.5: Financial Stringency.

Financial stringency in section 4.5 is understood to mean financial difficulties that are unusual in extent and require extraordinary rather than ordinary responses. Section 11 may be invoked if the regents are "faced with the necessity of drastic reduction in the University budget," reductions so severe that they may "threaten [the] survival" of the University. It is understood that the financial difficulty that would permit the president to propose temporary reductions or postponements in compensation under section 4.5 is less severe than the "fiscal emergency" outlined in section 11, but it is also understood that "financial stringency" should not be invoked to respond to foreseeable fluctuations in the University's budget and finances.

Interpretation 3 is important, Dr. Carney said, and people should read it. This is not a normal fluctuation when the situation requires the budget cuts that are being proposed. Members of the Faculty Senate asked about the implications for tenure; those only arise under Section 11, the first section of which reads as follows:

Section 11. Fiscal Emergency.

11.1 Faculty Rights. The Board of Regents, if faced with the necessity of drastic reduction in the University budget, has the power to suspend or abolish positions, or even entire departments, divisions, or other administrative units. If confronted with such adverse contingency, the board will consult with and secure the advice of faculty representatives, as provided in this section. Faculty members have the right to full access to information about the situation and the alternatives being considered. In effecting retrenchment because of financial necessity, the regents will make reductions in faculty positions only to the extent that, in their judgment, is necessary after exploring various alternative methods of achieving savings. The regents fully intend that the tenure system as a whole and the tenure rights of each individual faculty member be protected in every feasible manner during periods of such retrenchment.

Section 11 would be invoked only quite a way down the road, Dr. Carney said; Section 4.5 has nothing to do with tenure.

Professor Elliott noted that Provost Sullivan will join the Committee at its next meeting, on March 26, to discuss Section 11 and what "fiscal emergency" means because, Professor Miksch added, they have had questions from faculty members about what a fiscal emergency would look like.

Professor Gaugler said it is interesting to see what other universities are doing, including eliminating departments with tenured faculty. Vice Provost Carney pointed out that here, at this university, one does not hold tenure in a department; tenure is held in the University. When colleges and departments were merged as a part of strategic positioning, no tenured faculty member lost his or her job,

nor did any probationary, tenure-track faculty members. That is an important difference. Professor Miksch agreed that the University's tenure code is strong on that point and it may need to be clarified for members of the Faculty Senate. Vice Provost Carney reported that even at Michigan State, where they are closing departments, they are not laying off tenured and tenure-track faculty, and Iowa is closing graduate programs but not cutting tenured and tenure-track faculty. But there are institutions that are doing so.

Professor Simon reported that several members of the Faculty Senate wanted transparent financial data about the University—and they were blunt about the requests. Professor Miksch said that Civil Service and bargaining-unit staff also spoke at the meeting, and all appeared to believe that the proposed three-day furloughs were reasonable. A number of them questioned the wisdom of the proposed 2% salary increases. Dr. Craig said people were willing to forgo the 2% increase if it would help the University get through the current financial situation; that view appeared to be voiced by representatives from all employee classes. Professor Miksch agreed, and recalled a point made by one member of the Senate that it is difficult to justify 2% salary increases at the University when the state is cutting medical coverage for the homeless. The President explained the reasoning behind recommending the salary increases but the floor comments suggested that people did not support it.

The President also said he would prefer not to have to pay the 27th pay period, Professor Simon recalled, but it appears that legal opinion is clear that the University must do so. Were the 27th pay period not paid, the likelihood that the University would successfully be challenged is high, Dr. Carney said, and not everyone agrees that salaries next year should be divided by 27 pay periods instead of 26. Employees have actually been paid slightly more each year, so this would be an adjustment, but not everyone on 12-month appointments has been here for 11 years. It is simply an unusual characteristic of the biweekly pay cycle. Since everyone on a 12-month appointment will be receiving pay for the 27th pay period, that is all the more reason to forgo the 2% salary increase, Dr. Craig commented.

The Senate Committee on Faculty Affairs has discussed the 27th pay period a number of times, Professor Miksch noted, and believes the proposal is a good one. The extra pay period arises every 11 years, because every 11 years employees on a 12 month contract work 54 weeks instead of the regular 52 weeks. So 12-month employees have actually worked a 27th pay period and should be paid for that work. But this one has hit at a particularly bad time.

There was a question about whether the Faculty Senate would vote on the whole budget package or just on the furloughs, Professor Miksch reported. Section 4.5 calls for a vote only on the furloughs, although the Senate could give advice on other elements of the budget proposal. The proposal also calls for executives to take six furlough days, Professor Elliott added, and all employees are eligible to take additional voluntary furlough days, up to a maximum of ten (3 mandatory and up to 7 voluntary). The President also clarified that if one takes a voluntary furlough day, the money stays in one's unit (college).

There was a statement that employees would like to know the number of voluntary furlough days taken before any decisions about cutting staff are made, Professor Miksch reported.

Vice President Carrier is getting ready to post a Q&A online, Professor Miksch said, that will address questions about employees funded by sponsored research, fringe benefits, email, etc. The Faculty Senate wanted as much information as possible before the vote on March 25.

Dr. Carney observed that the University is already closed a number of days in the year but people still have email. She said she did not believe people needed to worry about that. The Office of the Vice President for Research is working on the issues related to sponsored research; there is an advantage to being one of the last institutions to adopt furloughs because other institutions and funding agencies now have experience with them. Dr. Craig pointed out that intercollegiate athletics has a number of tournaments over the holidays and they cannot close; there will need to be flexibility. Much of the campus can be closed, Dr. Carney said, but athletic events can still be held—as they are now even when the University is closed. Labs remain functioning. People have been thinking about and working on these issues for several months, she told the Committee.

There is still confusion about Section 4.5, Professor Miksch said, even though the Faculty Senate had been provided information. This Committee needs to clarify that the vote on March 25 is a Section 4.5 issue, and will clarify with the Provost what Section 11 means. Dr. Carney pointed out that the President made it clear that the University has no intention of violating its contractual obligations to the faculty; while other institutions may do so, the President affirmed that that is not on the menu at the University.

Professor Marran asked if the Committee had any jurisdiction over the six-day furloughs for executives. Professor Miksch said that Section 4.5 does not cover administrators. Professor Marran said she would suggest varying the length of furloughs by salary level. The Committee on Faculty Affairs has talked about that possibility, Professor Miksch responded, and the administration did model them, but decided to bring forward the proposal for a three-day furlough for everyone. Adopting varying furloughs would be administratively very complex, Dr. Carney said. It was noted that the Faculty Affairs Committee observed that it might be necessary to hire people to administer variable furloughs, and there was the problem that someone at \$90,000 would have a salary freeze while someone at \$89,000 would not, and then would make more than the individual making \$90,000. They also modeled how much would be saved, and the President said they concluded this proposal means all share in the burden. But it is not equal, Professor Marran observed; someone making \$60,000 will see a bigger percentage of income required for daily living lost than will someone making \$150,000. Professor Miksch agreed with Professor Marran's point.

The three days proposed for the mandatory furlough fall during research days, Professor Marran said. In academic departments, perhaps, Dr. Carney said, but that term does not mean anything in other units. People often take vacation during that period.

Professor Gaugler said he thought the most compelling document he has read is Professor Luepker's memorandum to the President calling for long-term solutions. Has that been addressed? Professor Miksch said that several members of the Senate asked the same question. Dr. Carney said that the University has to take one-time steps because of the unallotment—that needs a solution as well. She agreed, however, that the point is critical, and said that all universities must do long-term planning, but they are doing it in a strange milieu of state budgets. As Professor Masten pointed out at the Senate meeting, the University is competing for funds with homeless children. The institutions need to develop a higher tolerance for ambiguity (which the Student Learning Outcomes call for students to be taught) than usual, which is not a strong suit in the academy.

Professor Elliott thanked Professor Miksch and Dr. Carney for their report and encouraged everyone who is eligible to attend the March 25 Faculty Senate meeting.

## 2. Code of Conduct

Professor Miksch distributed copies of proposed amendments to the Regents policy Code of Conduct that would go to the Faculty Senate if approved by this Committee and the Faculty Consultative Committee:

### MOTION:

Amend the Board of Regents policy Code of Conduct, as follows (new language is underlined; language to be deleted is ~~struck out~~):

**Subd. 6. Preserve Academic Freedom and Meet Academic Responsibilities.** Academic freedom is essential to achieving the University's mission. Community members are expected to: -- promote academic freedom, which means the freedom to discuss all relevant matters in the classroom, explore all avenues of scholarship, research, and creative expression, and to speak or write on matters of public concern as well as matters related to professional duties and the functioning of the University. ~~including 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 as a public citizen without institutional restraint or discipline;~~ and -- meet academic responsibilities, which means to seek ~~and state the~~ truth, to develop and maintain scholarly competence, to foster and defend intellectual honesty and freedom of inquiry and instruction, to respect those with differing views, to submit knowledge and claims to peer review, to work together to foster education of students, and to acknowledge that when one an individual is not speaking for the institution when that is not clear.

### COMMENT:

In reviewing the Code of Conduct, the Committee on Academic Freedom and Tenure updated the language so that it reflects the current Regents Policy on Academic Freedom and Responsibility. In addition, the Committee had reservations about the stated obligation to "state *the*" truth. "The truth" can be a contentious issue in many disciplines, and no faculty member or any other instructor should be held to the standard of teaching "the truth," whereas it clearly is the obligation of all to "seek truth."

Professor Miksch recalled that the Committee voted on this last year, but with the changes in the language of the Regents policy Academic Freedom and Responsibility, this language needed to be updated as well. She noted that the Committee had had a good discussion about the phrase "state the truth" and observed that there is not always such a thing as one "truth" in a field, so that the injunction in the code should be to seek truth.

The Committee voted unanimously to forward the recommendation with one change: the last clause of the last sentence of the amended Subd. 6 of the Code of Conduct should quote directly the language of the current Academic Freedom and Responsibility policy: "and the candor to make it clear that when one is speaking on matters of public interest, one is not speaking for the institution."

Professor Elliott said she and Professor Miksch would discuss the proposed change with Provost Sullivan.

Professor Miksch reported that the change in the Academic Freedom and Responsibility policy that the Committee approved at its last meeting (moving one clause from one place to another) cannot be treated as a "technical" change, so it will be brought forward as part of a package of changes that this Committee is recommending.

### **3. Statement on Academic Freedom to All Faculty**

Professor Miksch next noted that the Committee had earlier agreed, pursuant to the recommendation of the Task Force on Academic Freedom, that a statement about academic freedom should be sent annually to all faculty in the fall. One possibility was the following language, taken directly from the Task Force report:

Untenured faculty employed in tenure track lines can be stifled by the powerful constraints of disciplinary orthodoxy, even if those constraints are not consciously or intentionally established by senior faculty. This challenge becomes increasingly problematic in the current era of extreme specialization of knowledge. The University should be especially attentive to the prevention of even subtle disciplinary orthodoxies restricting the research programs of junior faculty. Untenured faculty whose research relies on interdisciplinary work that crosses discipline boundaries or involves emerging fields may be especially vulnerable to the orthodoxies of established units. Particularly in times of war, international academic personnel may feel restricted in their academic freedom out of concern for their ability to remain in this country. The University should do everything possible to provide assurance that a delimitation of open inquiry by national identity will be vigorously resisted.

Professor Wells inquired why such a statement is needed. Professor Miksch recalled that the Committee had already decided it would send a fall statement that faculty members need to follow the right procedures with respect to Sections 7.11 and 7.12 of the tenure code, and that this would be a separate statement reminding everyone about academic freedom.

Professor Wells said the language from the Task Force report appeared to address specific issues; once the Committee starts down that path, the list could be never-ending. When one gets into the details of academic freedom, one can actually weaken what the University has. Professor Miksch suggested that an alternative would be to send a message that reminded faculty of the Academic Freedom and Responsibility policy—and include it with the message. The policy could be sent to several lists because it applies to everyone. The idea, and the spirit of the message, is to remind everyone of their rights and responsibilities under the policy.

One thing she looks for when reading personnel files for probationary faculty, Dr. Carney said, is anything that suggests votes might be based on unacceptable factors. Every year she has a number of probationary faculty express concerns to her, confidentially. Her experience suggests that a statement from the Committee about adhering to Section 7.11 of the code, and following the department's 7.12 statement, is an important matter.

Professor Elliott said she supported the idea of distributing the Academic Freedom and Responsibility policy each September, and a separate statement on respecting the requirements of Sections 7.11 and 7.12 of the tenure code. Both the messages should come from the Committee, she said. Dr. Craig said it might be useful to include a brief itemization of current academic-freedom issues or people may just delete the message. The Committee concurred.

#### **4. Annual Conference on Academic Freedom**

Another recommendation of the Task Force on Academic Freedom was that the University sponsor an annual conference on the subject. Professor Gaugler had agreed to look into the possibility.

Professor Gaugler said that he had concluded such a conference would take considerable resources, in a time of shrinking budgets, and that there are ample other resources available (including an annual conference sponsored by the AAUP that includes academic freedom <http://www.aaup.org/AAUP/about/events/anconf/default.htm>). There is also a new AAUP Journal of Academic Freedom (<http://www.academicfreedomjournal.org/>). It is not clear, he said, what the University could add to these resources.

There will also be a state AAUP conference, Professor Gaugler pointed out. He asked if this Committee should interact with the AAUP. (The conclusion was that it should not, at this point, because the Twin Cities chapter of the AAUP is inactive.) He also said it might be worthwhile to draft an article for the AAUP journal holding out the work of this Committee and the University's actions as exemplary. The AAUP often focuses on the basket cases, he observed, and not on the model cases.

Professor Miksch reported that she had presented at the meeting of the Association for the Study of Higher Education about the changes to the University's Academic Freedom and Responsibility, so that it covers professional speech, and also talked with the General Secretary of the AAUP, Professor Gary Rhoades. The AAUP is well aware of the policy changes the University has made and used them as an exemplar around the country. She agreed with Professor Gaugler that it would be useful to submit an article to the journal.

Professor Elliott said that the Committee would set aside plans for an annual conference but that it would learn about and provide information about the AAUP annual conference.

#### **5. Syllabus Statement on Academic Freedom**

Professor Elliott distributed copies of the draft syllabus statements with proposed changes from the Senate Committee on Educational Policy. She recalled that this Committee had voted to approve the statements earlier. The Committee on Educational Policy had concerns that the statements do not identify the decision-maker with respect to course scope and content.

General Syllabus Statement regarding Academic Freedom and Responsibility:

Academic Freedom: Academic freedom is a cornerstone of the University. Within the scope and content of the course as defined by the instructor, it includes the freedom to discuss all relevant matters in the classroom. Along with this freedom comes responsibility. At the University of Minnesota, students and instructors should expect their views to be challenged and

we all have a responsibility to respectfully discuss divergent points of view. Reports of concerns about academic freedom are taken seriously, and there are individuals and offices available for help. Contact the instructor, the Department Chair, your adviser, the associate dean of the college, or the Vice Provost for Faculty and Academic Affairs in the Office of the Provost. [Customize with names and contact information as appropriate for the course/college/campus]

Syllabus Statement for Courses Involving Student Research:

Academic Freedom: Academic freedom is a cornerstone of the University. Within the scope and content of the course as defined by the instructor, it includes the freedom to discuss all relevant matters in the classroom and conduct relevant research. Along with this freedom comes responsibility. At the University of Minnesota, students and instructors should expect their views to be challenged and we all have a responsibility to respectfully discuss divergent points of view. In addition, when conducting research, all institutional approvals must be obtained and the research must be consistent with University policies. Reports of concerns about academic freedom are taken seriously, and there are individuals and offices available for help. Contact the instructor, the Department Chair, your adviser, the associate dean of the college, or the Vice Provost for Faculty and Academic Affairs in the Office of the Provost. [Customize with names and contact information as appropriate for the course/college/campus]

Professor Miksch said that the proposed amendments are in the spirit of what the Committee intended. The Committee made further minor amendments.

It was noted that the Committee on Educational Policy also deliberated briefly on whether to make the first statement mandatory, with the second an optional alternative. Professor Anderson said that it could get lost; it is about the third or fourth required statement that is unrelated to information about when assignments are due and tests will be taken—which is what students pay attention to. She said she values the message but is not sure it should be required. If it is drawn to the attention of departments, it is more likely to be included, Professor Elliott said. Dr. Carney said there is value in having the statement be mandatory; in case an issue arises, the statement can be brought up even if the student has lost it.

Professor Marran said it is an important statement for all classes and should be on the University's web page with a link to the syllabus. An obligatory link, Professor Miksch added. Dr. Carney said the Committee could suggest that there be obligatory links and the most important ones could be highlighted. It would help to have links, Professor Marran said; CLA faculty are not sure whether they are required to put the full text of statements on their syllabi or if a link to a website is sufficient.

Professor Miksch said the statement would be returned to the Committee on Educational Policy with this Committee's suggestions, and with thanks.

## **6. Data on Faculty Appointments**

The Committee reviewed new data on faculty appointments for the fall of 1999 and fall of 2009 from Ms. Lorenz; Professor Elliott suggested she be invited to return to the Committee.

What is the objective, Professor Anderson asked? Some data the Committee considered suggested that the University's trends in faculty hiring were running contrary to national directions—it



appeared Minnesota was hiring more tenured and tenure-track faculty and fewer contract or term faculty, compared to its peers. The more that the Committee members looked at the data, however, the more they realized they could not make those statements from the available numbers. The discussions with Ms. Lorenz and Dr. Goldfine are an attempt to help the Committee understand trends in hiring faculty.

Dr. Carney said that she and Mr. Kellogg in institution research do a report on "who teaches what." If Ms. Lorenz does not define faculty appointments in the same way, there could be a proliferation of different numbers. She said she would want to meet with Ms. Lorenz and Dr. Goldfine to make sure that everyone is using the same numbers before this Committee further discusses these data.

## **7. COACHE Survey Article**

Committee members turned next to an article they had been provided, "New Challenges, New Priorities: The Experience of Generation X Faculty," by Robin Matross Helms, as part of the Collaborative on Academic Careers in Higher Education (COACHE) project, housed at Harvard. Dr. Carney recalled that Dr. Helms worked in her office on faculty awards for over two years. The University is a COACHE participant and did a survey of all probationary faculty in 2005; they hope to do so again in the fall of 2010 to see what effect changes have had on probationary faculty views. This is a more qualitative report, she said, that Dr. Helms started working on while she was still at the University, and it tries to get at cultural differences between Generation X faculty, Baby-Boomer faculty, and those who are older. (Generation X was born from 1964 to 1980.)

When they surveyed the probationary faculty in 2005, Dr. Carney reported, they had about a 65% response rate and the average age of respondents was 39. That seemed high, but the average age at Ph.D. is 32; if one has a postdoc, one could be in one's mid-30s before starting a probationary faculty appointment. Even young faculty members could be 34-35 by the end of their probationary period. "So we are not as young as we think we are," she concluded, and the 2005 survey covered more Generation X faculty than it did Baby Boomers.

Cathy Trower of Harvard has suggested that Generation X faculty may not care about tenure, but that proposition has not been born out, Dr. Carney observed. Nor do they want to hop from job to job; they want to go to one place and stay there. It is also clear they are not eager to work as many hours as the Baby Boomer faculty did. It is an interesting article, and Dr. Helms is very talented, Dr. Carney concluded. The University will have a significant number of Generation X faculty and she is seeing generational differences in their views of work and the amount of time people want to spend on different activities.

Professor Gaugler said a major theme in the article is the search for community, for opportunities for Generation X faculty to interact with each other. Many do not feel that is occurring. Dr. Carney said she has seen that faculty seem to like the new-faculty lunches (which are done very modestly), and they need communities (such as those who are parents). They express a need for less formal communities, more of friends, Professor Gaugler commented.

Professor Miksch recalled that she was hired in a cohort of 8 and another cohort of 6 was hired behind her cohort. That was great because it provided a group of people who learned together and who did things together. When one has been at a place for awhile, one tends to forget what a new colleague needs and to have them for dinner. Professor Gaugler said he could start up a group on meetup.com, for

Generation X faculty at the University. Something like this is clearly needed, Dr. Carney said, especially for faculty who come here as singles and who don't have local friends. Most faculty are not hired in cohorts.

Professor Elliott inquired how many faculty would be hired this year. Dr. Carney said it appeared to be about the same number as last year, about 60. Professor Miksch recalled that the President had said at the Senate meeting that about 150 faculty lines had not been filled in the last two years.

Professor Marran said related questions can be raised about the quality of life, about how to maintain the quality of life and work in light of the budget cuts. It is less a question of salary than of quality of the workplace, especially at the department level. One sees that on a small campus, Professor Anderson said: The same work needs to be done with fewer people. One is asked to do a lot more on top of teaching, research, and service. Everyone is beginning to look like a cornered animal. Professor Marran said she worried about research productivity when people feel like they are under siege. Dr. Carney said these same conversations are taking place in the CIC leadership program. These same kinds of conversations are taking place in business as well, Professor Elliott said. She commended Professor Marran's questions.

Professor Elliott adjourned the meeting at 11:30.

-- Gary Engstrand

University of Minnesota