

Academic Freedom and Tenure Committee (AF&T)
November 8, 2019
Minutes of the Meeting

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 reflect the views of, nor are they binding on, the senate, the administration or the Board of Regents.

[**In these minutes:** Welcome and Introductions; Discussion - Follow Up to October 10, 2019, Equal Opportunity and Affirmative Action Presentation; Office of the General Counsel's Role in Cases of Misconduct; Reaction to Marx for Today Class]

PRESENT: Jessica Larson (chair), Brian Bix, Bruno Chaouat, Nicholas Fischer, Gopalan Nadathur, Gary Peter, Karin Quick, Catarina Saiote, Rachna Shah, George Trachte

REGRETS: Kristin Hickman, Holley Locher, Rebecca Ropers, Cliff Steer, George Weiblen

GUESTS: Meredith Gill, senior lecturer, Department of Cultural Studies and Comparative Literature, College of Liberal Arts (CLA), Douglas Peterson, general counsel, and Brian Slovut, deputy general counsel, Office of the General Counsel (OGC)

ABSENT: Yuichiro Onishi, Timothy Wiedmann

OTHERS: Sumanth Gopinath, acting president, American Association of University Professors (AAUP), University of Minnesota Twin Cities chapter

1. Welcome

Professor Jessica Larson, chair, welcomed committee members and began the meeting.

2. Discussion: Follow Up to October 10, 2019, Office of Equal Opportunity and Affirmative Action Presentation

Larson invited committee members to give their impressions of the presentation given by Tina Marisam, director and Title IX coordinator, Office of Equal Opportunity and Affirmative Action (EOAA), at the October 10, 2019, AF&T meeting. Catarina Saiote said she found the presentation very informative and she added she has invited Marisam to give a presentation to the University of Minnesota Postdoctoral Association (PDA).

Larson made the point that she was concerned for staff on campuses that do not have a designated Title IX director or office. On the Crookston, Morris, and Rochester campuses, a staff member from the Office of Human Resources (OHR) is also the Title IX contact, she said. Larson is concerned that there may be a feeling, on the part of staff who may wish to use the services of the EOAA Office, that the OHR staff person may be too familiar with them as an employee to treat them as a neutral entity. Larson said she believes it would be helpful for faculty and staff on system campuses to have options to seek EOAA / Title IX types of assistance beyond their local OHR representative.

Larson said as a committee that reports to the Faculty Consultative Committee (FCC), she hopes the AF&T can get input from many parties who are vested in the processes of addressing misconduct and then synthesize the material to show where the process works well, where it does not, and advocate for transparency in the way misconduct cases are handled. Once the information is gathered, a report of AF&T's recommendations would be given to the FCC with the hopes that it would make its way through the Faculty Senate and eventually to the Office of the President and other administrators.

Larson said the FCC has expressed interest in having a summary report from the EOAA - *without* personal details - that would give very clear information as to what infraction warrants which type of corrective action. Larson added that Rebecca Ropers, vice provost, Faculty and Academic Affairs, is very interested in the opinions of the AF&T in helping to ensure that, in cases where academic freedom, sanctioning of misconduct (whether it be academic or otherwise), and the promotion and tenure processes intersect, there is a transparent and well-articulated process for moving forward.

Larson noted that more and more frequently, universities are having to examine the behavior of their faculty and staff and ask the question: "Are we excusing behaviors in the university system that would most likely lead to a termination in any other field outside of academia?"

2. Office of the General Counsel's Role in Cases of Misconduct

Next, Larson introduced Douglas Peterson, general counsel, and Brian Slovut, deputy general counsel, Office of the General Counsel (OGC). Peterson indicated that Slovut would talk briefly about how, in the case of an academic misconduct inquiry, character and fitness issues might blend into that process, and how that could intersect with a parallel EOAA inquiry. Peterson added that he would then discuss a broader view of where the University is in terms of its mission as defined by the faculty.

Larson asked if it was an appropriate assessment to say that the OGC works for the University, not for individual employees. Slovut began, in response to Larson's question, by saying first and foremost the OGC represents the institution and the Board of Regents, and depending on the circumstance, *can* represent faculty and other employees. Slovut gave the example of a lawsuit against the institution that names an individual faculty or staff member: if the faculty or staff member was acting within the scope of their employment, then the OGC represents both the institution and the faculty or staff member he said.

In cases where there is a conflict between the University and an employee, Slovut explained, the OGC cannot represent the employee. In *internal* matters, for example if there is a complainant and a respondent, both of whom work for the University, the OGC does not represent either party, but they can advise on process and procedure, he added.

Slovut went on to say in cases where a student is accused of misconduct and retains an attorney, then the OGC presents the case at the hearing. The OGC is careful to set up "ethical walls,"

Slovut added, should one OGC attorney be advising the hearing officer and another OGC attorney is presenting the case in the hearing.

Peterson added that these are common questions around a situation where an attorney represents an organization as opposed to an individual. It's very complicated legal territory, he added, and common for an individual in that situation to wonder in what capacity are their interests being represented. OGC does *not* assist with EOAA investigations nor do they consult with EOAA on their findings or recommendations. He added that OGC would, instead, consult with the dean of a faculty member accused of sexual misconduct and provide guidance to the dean as to appropriate behavior.

Rachna Shah asked if a faculty member feels that their promotion and tenure process has been violated would the faculty member contact the OGC. Slovut said no, if a faculty member believes the process has not been followed, they would file a complaint with the Senate Judicial Committee (SJC) which has its own attorney.

Nadathur asked, can the OGC advise a dean in cases of misconduct by one of their faculty members? Slovut said, yes, the OGC can advise, and if disciplinary actions are required, the OGC would refer back to the tenure code of conduct, as that is what governs the faculty.

Larson next asked what types of sanctions the OGC advises *against*; those that deans should avoid imposing if possible? Slovut said that before a dean takes any action toward termination or suspension, they should insure that the conduct in question aligns with the conducts listed in the Faculty Tenure Code. He added that there are numerous checks and balances prior to the determination that a termination or suspension is imposed; the dean makes a recommendation, but that recommendation must then go to the faculty in the unit for evaluation. Larson asked if the OGC oversees the process to ensure that deans are not making egregious, partisan recommendations that may be used in a punitive manner. Again, Slovut said there is a process in place, through governance (the SJC), to guard against that type of behavior.

Chaouat asked if, in cases of disciplinary action recommending suspension, termination, or tenure revocation, the OGC is always consulted or notified. Peterson said that yes, usually the OGC is consulted in such instances to carefully consider the following:

- Due process questions - procedurally, has everything been compliant with the law?
- Substantive questions - what is the spectrum of proportional disciplinary action that could be taken by the dean or the administration, that, should it be necessary, the OGC could stand in a courtroom and defend?

Peterson said the OGC does not make the judgment but tries to outline choices that would be lawful, fair, and appropriate for a given situation.

Larson said the University of Minnesota is not the only university grappling with these issues. She asked if bringing more attention to sexual misconduct on university campuses leads to a greater number of reported incidences, and if so, how has this affected the work of the OGC?

Peterson said with recent societal shifts, the University may need to begin asking questions such as:

- To what extent should character and fitness issues be built into the promotion and tenure process?
- Is evaluating character and fitness along with academic integrity essential to the University's mission of defining what it means to be a tenured faculty member?
- How inherent is character and fitness in the execution of one's duties in teaching, research and service?
- If and when character and fitness begin to be considered in cases of promotion and tenure, how should the University inform faculty of the changed parameters?

Peterson noted that issues of character and fitness are being more closely looked at in the corporate world as well; businesses are now engaging in self reporting activities as accountability to society becomes part of a business's broader mission. As a component of such changes, Peterson added, it is important that the institution attend to the well-being issues of its employees.

A conversation followed regarding the difficulties associated with assessing character. Peterson noted that the focus should be on conduct rather than character. In assessing an employee who has depression, for example, Peterson added that it is a person's *conduct* that should be assessed, not an employee's *condition*.

Larson asked if Peterson thought that the University would have to follow the path he had described earlier regarding changes in the way the corporate world does business. Peterson said that society has self-regulated professions (faculty members, attorneys, physicians, for example) and that there is more and more pressure on them to break down the self-protection mechanisms and be more transparent.

Larson thanked Peterson and Slovt for their time, and they left the meeting.

3. Reaction to Marx for Today Class

Next, Larson invited Meredith Gill, senior lecturer, Department of Cultural Studies and Comparative Literature, College of Liberal Arts (CLA), to share her experiences teaching the class titled Marx for Today at the University during the Spring Semester of 2019.

Gill gave a history of her experience teaching the "Marx for Today" class which she developed with colleagues on the Curriculum Committee in the Department of Cultural Studies and Comparative Literature. She described on-line threats that she began receiving after the class was listed in the [Young America Foundation's Comedy and Tragedy Report](#), which lists classes taught at American universities that the group finds objectionable. Gill's name was soon published on Breitbart which precipitated two death threats in comment sections of the article.

Gill gave a list of ways in which she felt unsupported by either her department, or the University as a whole, and how that has negatively impacted her life:

- On November 15, 2018, before the Spring 2019 course began, Gill and other instructors received an email from the Chair urgently requesting content for flyers in response to a push for higher enrollments. The Department of Cultural Studies and Comparative Literature (CSCL) made what Gill felt to be an incendiary flyer (featuring a masked male figure) promoting the class, and circulated it on the internet despite her protestations and ideas for other content. Gill stated, “I don’t have tenure. I have no say. That’s the absolute truth.”
- When a Young American Foundation representative reached out to University Relations asking for a comment, the request to University Relations was sent to Gill’s department chair, who forwarded it to her. She said it felt as if the University was saying “We don’t have a comment, we want to make this go away.”
- A University of Minnesota student, Megan Olson, vice chair of College Republicans, and journalist for Campus Reform, continually tried to reach Gill and her department to ask for comments for a piece on “potential bias.” Gill stated that in the entirety of her career in teaching, she had never been accused of bias in a formal complaint.
- Gill’s department held a faculty meeting to discuss her situation and how it should be handled in public to which she, not being a tenure-track faculty, was not invited. She objected to not being invited to the meeting and found it condescending that her department colleagues would discuss the situation and who should speak about it without her input.
- The Campus Reform group filed a Freedom of Information Act (FOIA) request for Gill’s teaching materials and were able to obtain all materials that were non-exam related.
- As online stories became further disseminated, and the negative emails and stories continued and grew in number, the University moved Gill’s class to a secret location. Gill asked for personal and digital protection from the University and was told that was outside the University’s scope.
- Gill was given no personal legal information or guidance from the Office of the General Counsel; she was told the OGC provides assistance only to the University itself.
- Her personal computer was doxed (doxing means searching for and publishing private or identifying information about a particular individual on the Internet, typically with malicious intent.) Her phone number and email address have been added to a number of right wing listservs and suspicious “reviews” from non-students were added to her “Rate My Professors” page. Viruses were sent to her personal computer which irreparably damaged the computer.
- Gill’s identity was compromised as were most of her credit cards.
- Gill’s reputation has been severely damaged; her work situation is untenable, yet she feels she cannot leave her current position due to a damaged reputation. She worries she is unable to get work at other schools or universities because of the negative commentary now associated with her online profile. Gill requested that the University provide an anti-doxing service; she was denied.

Gill recommended that, in the country’s very toxic, political environment, the Office of Information Technology should create an anti-doxing department. She added that she would like to see the employee contracts for non-tenure track faculty be adjusted so they align better with contracts for similar positions at peer institutions.

The committee members then discussed possible solutions to address Gill's situation. Gopalan Nadatur said since this is affecting Gill's ability to teach, that *does* interfere with the University's mission of teaching, research and service. Therefore, he added, the University should take responsibility. Shah wondered how the University responds to a faculty member who is physically harmed and what the protections are in those situations? Shah said the emotional and mental harm Gill has experienced should be considered on the same spectrum. Gill said she was told she could get mental health assistance at Boynton. Larson noted that this is another example of the large and pervasive question at the University: "Where do non-tenure track (or contract) faculty fit?"

Bruno Chauat pointed out that Gill was not needing legal support, as she was not being sued by anyone; she was needing institutional support and protection. Gill said there were a number of people that were trying to be helpful; her students were, for the most part, supportive. She reiterated how strongly she feels that the University needs to implement an anti-doxing department in OIT because, she said, doxing is the method most pervasively used by the alt-right, and currently the University is simply underprepared.

In the interest of time, Larson thanked Gill for her presentation and adjourned the meeting.

Geanette Poole
University Senate Office

Addendum

Professor Gill felt the following information should be shared with committee members though this information was not originally presented at the November 8, 2019 AF&T meeting.

At the time she taught the course, she was the only instructor to have done so in the course's existence.

The language of the death threats was: "Soon a day is going to come where people like myself are going to have to start lynching these communists"; and a second saying "people like" Gill should be used as target practice, a post which now appears to be deleted.

Regarding the image used on the flyer created by the CSCL department: This "Guy Fawkes" mask was first used in 1605 in association with a plot to blow up the House of Lords and reinstate the Catholic Head of State. In recent years, the mask has become affiliated with figures such as hacktivists, Julian Assange, Anonymous, anti-vaccination activists, and other protest movements. She felt that this flyer in no way represented the courses she was teaching.

Eventually Gill was added to a working group with the executive officers of the Department to discuss ongoing strategy, but the committee disintegrated without any warning or explanation to Gill. While on this committee, Gill was told that the Dean of CLA was preparing an op-ed about these events for publication after students were out of the classroom and danger. No one ever

followed up with Gill about this op-ed and she spent her entire summer wondering if, when, and where this piece would appear and how she should prepare for the personal backlash.