



Minutes of 20 April 2015
Circulated 21 September 2015
Approved 21 September 2015

THE UNIVERSITY OF MICHIGAN
UNIVERSITY SENATE MEETING
SENATE ASSEMBLY MEETING
20 April 2015

Present: Adunbi, Adler, Battacharrya, Beck, Biteen, Casida, Cervetti, Cohn, Custer, Dolins, Fagerlin, Garcia, Grosh, Holland, Jones, Kuperschmid, Lavoie Smith, Lehman, Lim, Liu, Malek, Masten, Mondro, Oey, Princen, Raphael, Shafer, Schloss, Smith, Swain, Wang, Weineck, Young, Zeisberg

Alternate Requested: Baker, Broglio, Burrow, Danzinger, Ellis, Fraser, Gocek, Hayes, Jacobsen, Kilney, Krishner, Nielsen, Rothman, Veatch, Winful

Alternates: Eden (Rothman,) Hopkins (Krishner), Lehnert (Veatch), Prygoski (Ellis), Csankovszki (Nielsen)

Absent: Adlerstein Gonzalez, Atchade, Barolo, Bradley, Bertacco, Brown, Campbell, Chen, Cotera, Danziger, Friesen, Hershovitz, Johnson, Katapodi, Kee, Keshamouni, Mitchell, Mutschler, Pandey, Primus, Ro, Ryan, Schultz, Silveira, Turnley, Ziff

MATERIALS DISTRIBUTED

1. Agenda for University Senate and Senate Assembly
2. Draft Minutes of the 16 March 2015 Senate Assembly meeting
3. Report for the 2014-2015 Administrative Evaluation Committee
4. Response to the SACUA Report on Office of Institutional Equity Procedures and Conduct, dated 9 February 2015 from Martha Pollack

ANNOUNCEMENTS

1. New Faculty Senate Assembly website goes live
2. Michigan's policies on Freedom of speech are incorporated in the Statement on Academic Freedom in the Faculty Handbook and in SPG 601.01: Freedom of Speech and Artistic Expression
3. New SACUA chair is Professor Weineck and new Vice Chair is Professor Schultz.
4. Professor Potter will serve as interim Senate Secretary until such time as an election can be held

SENATE ASSEMBLY

Chair Masten convened the meeting of the Senate Assembly at 3:18 P.M and discussed the announcements while awaiting a quorum.

- 3:25 A quorum having arrived the meeting called to order and agenda approved
- 3:26: The draft minutes of 16 March 2015 were approved
- 3:28: Consideration of Senate Assembly Committee Reports

Professor Masten indicated that the reports of the General Counsel Advisory Committee and AEC are available for members to consult and invited questions on those reports. There was a question about the response rate to the AEC survey. Professor Lehman said the response rate was 30% as it had been in previous years. Professor Masten said there had been discussion of inducements to faculty to respond.

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One suggestion was that the University provide contributions to the Undergraduate Scholarship Fund, but that cannot be done as the fund targets underrepresented students. As an alternative, SACUA and the AEC accepted President Schlissel offer to send an e-mail urging faculty to answer the survey was this year's answer. Professor Garcia noted that the response rate might be connected to lack of faculty regard for/understanding of the Senate. Professor Weineck indicated that she will address this issue and explore ways to draw people to Faculty Senate meetings to meetings, she is also aware that there are many competing meetings. Professor Masten noted that people do not know they are on the Senate and what Senate Assembly does. He hoped that the newsletter will draw more attention to the Senate Assembly.

Alicia Davis Chair of General Counsel Advisory Committee spoke to the report on the activities of the committee pointing out that the committee will be reviewing issues connected with the grievance process and communication. One major issue is connected with the new mandatory reporter SPG which requires faculty to report violations of policy including the Student Sexual Misconduct Policy. General Counsel Lynch is willing to come and discuss policy changes with Senate Assembly.

Galip Ulosoy speaking for the CESF said that they had asked for, and obtained, two things from Provost Pollack:

1. That a CSEF member be included in policy-making meetings.
2. Provost Pollack has agreed to distribute further data on total compensation

3:40 Replacement of a SACUA Member: Professor Richstone has stepped off SACUA as he is becoming LSA Associate Dean for the Natural Sciences. Past practice has been to approve the next highest vote recipient. Article 3 section 1 of the SACUA/Senate Assembly rules state that "A temporary or permanent vacancy [on SACUA] shall be filled by any method approved by the Assembly," and the Assembly has followed this practice in the past.

The next highest vote recipient in the February election was Professor Szymanski Professor Holland moved that the Assembly follow previous practice. The motion carried and Professor Szymanski will replace Professor Richstone.

3:42: Status Report on OIE Procedures and Conduct

Professor Masten stated that since the release of the report SACUA had received the Provost's written response (March 24); SACUA discussed the report with President Schlissel and Provost Pollack;

Professor Masten discussed the report with the Regents on April 16

Professor Masten referred to the article in the *Chronicle of Higher Education* "Accusations of Student Harassment Leave Professors Feeling Vulnerable" (April 2, 2015), noting that the emphasis of the article on charges of harassment by students and faculty "feelings of vulnerability" was misplaced and missed the central issue of lack of due process.. He pointed out that the identification of one of the complainants to SACUA in the Chronicle occurred because the faculty member provided his name to the *Chronicle*; SACUA has not and will not release complaints names.

Professor Masten reviewed the written response from the Provost's Office:

1. In the future, initial contacts by OIE with respondents will occur in two stages: At the first, the respondent will be informed of the allegations and the process to be followed. The interview with the respondent will occur at a second meeting.
2. The response affirms "our confidence in the professionalism and competence in the staff and leadership of both Academic Human Resources and the Office of institutional Equity," and denies lack of due process in current procedures, and cites need for professional staff to investigate sexual harassment and discrimination claims.
 - a. SACUA has indicated that there needs to be an appeal process and faculty assessment when there are academic issues. Professor Garcia agreed that there was need for



professional staff, but, depending on the nature of the allegations, they are set within the University context and people need to have an understanding of that climate. An example would be a complaint that a graduate student has about mentorship; if one does not understand the process and what is standard, it is almost impossible to assess the complaint. Someone well versed in the culture needs to be involved in making these assessments. Professor Masten noted that the point at which the faculty assessment is heard, whether in the first stage or in an appeals process, is significant. Professor Garcia said the best scenario would be a good robust investigation in the first place so that the report would be as well founded as possible. He noted that the same OIE staff member gathered the information, made the assessment and made the judgment; he stated that this is not due process and a huge flaw.

3. The response stated that there would be no reconsideration of existing cases.
4. The written response said that the provost's office would come up with something before the end of the semester. SACUA said that more faculty input would be needed on that point. Professor Masten stated that SACUA reaction to verbal communication with the President and Provost was more optimistic than to the written response. He indicated that the Provost is committed to working with SACUA over the summer to craft a process. Professor Masten hoped that SACUA would pull experienced people together over the summer to work on the issue. Right now there is little specific other than a willingness to report to faculty. He notes that this will be going on to next fall

3:55: Status Report: Proposed SPG on Temporary Removal of Faculty for Lack of Fitness for duty
SACUA had raised five issues with the policy:

1. That the policy be limited to medical conditions
2. That the policy be voluntary rather than mandatory
3. Clarity with respect to a Deans authority and role
4. Continuation of compensation
5. Coverage until retirement

The Provost's response to SACUA's communication incorporated language limiting Fitness for Duty evaluations to cases involving medical conditions. Professor Masten noted that the Provost's office had originally removed the language, SACUA had argued to have the limitation to medical issues restored to the policy. SACUA was pleased that the language had been restored. Under the policy, medical professionals will perform evaluations. There are provisions for up to three evaluations in contested cases. Professor Garcia stated that in some of these cases where the policy says "physically and mentally" should read "physically or mentally." Professor Masten agreed that this should be brought to the Provost's attention. He also noted that a number of the SPGs SACUA has reviewed are poorly crafted. Professor Fiore said that when the Fitness for Duty policy was presented to the Senate at Dearborn, a question arose about how we review these policies in the context of similar policies in other Universities. Professor Masten said we did look at other University policies. He also noted that Provost Pollock has made it clear that she is not interested in engaging with remaining concerns at this point. Professor Lehman said that it is important that Assembly members know that the application of this policy in its current form is very rare, less than one a year, and because they are rare, aspects are idiosyncratic. Our concern would be if we suddenly see these cases increase.

Professor Masten noted that SACUA had received a case from LEO in which a lecturer had had fitness evaluations, presumably under the LEO contract. There were three or four evaluations saying the person was ready to work but the lecturer was still dismissed.

Professor Masten confirmed Professor Lehman's observation that it was expected that these cases would be rare. He noted that SACUA was concerned that the policy makes evaluations requested by the administration mandatory, meaning that a person can be terminated for not participating. He observed that



it probably does not matter greatly whether the policy is mandatory given that an individual could be induced to participate by the University initiating a 5.09 termination. He also noted the period of University contributions to benefits under the policy are based on long term disability (LTD) rules and that, as a result, the coverage period is quite short for more senior faculty. Regarding compensation, he observed that, under the proposed policy, a person could have as little as three months compensation whereas faculty terminated for misbehavior under 5.09 received compensation throughout the hearing process plus one additional year.. SACUA continues to be concerned that the Deans make the decisions. Finally, there are problems in relationship to LTD, which only kicks in if a person is permanently and totally disabled. Under the proposed fitness for duty policy, a person who might recover or who is deemed only partially unfit for duty would not qualify. Professor Garcia wondered how a Dean in a big unit would know a faculty member who was being put forward for evaluation. Since there is a process through which a name is passed up, he notes that a Dean may not be actually initiating a process as a result. Professor Weineck stated that she is concerned that the policy is crafted particularly with mental illness in mind and she would like to hear from someone who is trained in issues connected with mental disability.

4:15 Professor Masten introduced the issue of a student request for consideration of a Resolution to support the formation of an ad hoc committee to determine the propriety of the University Investments in Oil and Coal.

Professor Masten discussed the appropriate role of faculty in public policy issues and, the University's current policies with respect to institutional positions on public policy issues as described in CFO's statement on University Investment Policies , Nov. 17, 2005 is as follows:

In 1978, the Board of Regents adopted a resolution including the following language (the relevant section of which is as follows):

If the Regents shall determine that a particular issue involves serious moral or ethical questions, which are of concern to many members of the University community, an advisory committee consisting of members of the University Senate, students, administration and alumni will be appointed to gather information and formulate recommendations for the Regents' consideration.' Such a committee would be ad hoc, appointed only after the Regents determine that a particular issue might require a deviation from the normal investment policy.

The 1978 faculty committee that reviewed possible divestment from apartheid South Africa wrote that the University has some responsibility to consider the ethical implications of its investments 'in those cases in which **an extraordinary social evil is apparent and a broad consensus develops within the University community concerning the moral shortcomings of a particular firm or type of investment.**' ... It went on to say that the University "**must make strenuous efforts to avoid making commitments, as a corporate body, to political positions that may intimidate its members, produce an atmosphere of distrust and suspicion, or create obstacles to free inquiry.**" ...

"According to the committee, in order to justify divestment, "the magnitude of both the misbehavior in question and the harm caused by that misbehavior must be so extreme that the company or industry would be a clear outlier in the corporate community."

In the future, such exceptions will continue to be rare. We will ask the Regents to appoint an ad hoc committee to investigate the ethical and moral implications of our investments only when the following conditions have been met:

- 1) The concern to be explored must express the broadly and consistently held position of the campus community over time;



- 2) There must be reason to believe that the behavior or action in question may be antithetical to the core mission and values of the University.
- 3) There must be reason to believe that the organization, industry or entity to be singled out may be uniquely responsible for the problems identified.

Professor Masten noted that there is a broader debate about the appropriate role of universities as corporate bodies and of faculties as a whole in political and public policy debates. The Kalven Committee considered whether Universities should take a role in political and social action. In the Kalven Committee's report it is stated that:

The mission of the university is the discovery, improvement, and dissemination of knowledge. Its domain of inquiry and scrutiny includes all aspects and all values of society. A university faithful to its mission will provide enduring challenges to social values, policies, practices, and institutions. By design and by effect, it is the institution, which creates discontent with the existing social arrangements and proposes new ones. In brief, a good university, like Socrates, will be upsetting.

The instrument of dissent and criticism is the individual faculty member or the individual student. The university is the home and sponsor of critics; it is not itself the critic. It is, to go back once again to the classic phrase, a community of scholars. To perform its mission in the society, a university must sustain an extraordinary environment of freedom of inquiry and maintain an independence from political fashions, passions, and pressures. A university, if it is to be true to its faith in intellectual inquiry, must embrace, be hospitable to, and encourage the widest diversity of views within its own community. It is a community but only for the limited, albeit great, purposes of teaching and research. It is not a club, it is not a trade association, it is not a lobby. Since the university is a community only for these limited and distinctive purposes, it is a community, which cannot take collective action on the issues of the day without endangering the conditions for its existence and effectiveness. There is no mechanism by which it can reach a collective position without inhibiting that full freedom of dissent on which it thrives. It cannot insist that all of its members favor a given view of social policy; if it takes collective action, therefore, it does so at the price of censoring any minority who do not agree with the view adopted. In brief, it is a community, which cannot resort to majority vote to reach positions on public issues.

Professor Masten said that his view is close to that of the Kalven committee:

In principal he asked if it is appropriate for the University, and more specifically, for faculty governance to be instruments for taking collective positions on political and public policy matters

On a practical level he noted that even if one were to take a position that this is an appropriate function for faculty governance, any action faces a number of hurdles:

1. Senate Assembly debate and recommend to form an ad hoc committee
2. President's and Regents' creation of an ad hoc committee
3. Regents' acceptance of ad hoc committee recommendation

Professor Garcia stated that Universities are now dependent on endowments than they were in the past, we have a moral obligation to not profit from bad things.



Professor Masten responded that Chicago has continued to follow the Kalven report. If one accepted the Kalven view one would not investigate the possibility of taking up a public policy issue. If one rejected that view, then an investigation would be needed. Professor Oey pointed out that the Kalven statement did not preclude the possibility of divestment. She feels that this is the same as the University's policy. Professor asked whether the apartheid case met the standard of broad consensus. Professor Masten responded that the University did divest from apartheid and tobacco related investments. There were debates about whether engagement would be more effective than divestment. The problem is how people would feel about a University adopting a moral policy Professor Zeisberg said that she was not clear that the moral issue was properly framed since the University is taking a position in terms of investment whether it divests or not. Professor Weineck noted that Universities had to take a stand on un-American Activities because they were forcing people to be fired. She noted that an investigation should be held by a sub-committee should be formed to investigate whether the oil and gas issue raises to the level required.

Professor Lehman said that the Senate Assembly played a big role in Tobacco divestment, but the question is whether it is possible to change behavior by maintaining an investment position. It was clear in the case of tobacco companies that Universities could not change behavior.

Professor Zeisberg noted that Universities taking a moral stand could influence public opinion. Professor Masten said that he does not want the University taking a stand on the basis of a moral judgment; the University's investment is solely based on financial issues rather than moral issues. Professor Hopkins said that we are consumers of oil and gas, it seems hypocritical to divest from oil and gas companies when we use the products and those companies were seeking cleaner solutions. Professor Garcia stated that there was a difference between being a user of a product and profiting from it. Professor Zeisberg state this is the conversation that the request is trying to provoke, she stated that arguments about responsibility are the ones one should be having. The issue is then what is the proper context for this discussion?

4:45: The question of how the Assembly should respond to the student request for consideration of a resolution to support the formation of an ad hoc committee to determine the propriety investments in oil and coal became the focus of discussion.

Professor Oey said that the proposed topic is about global climate change and that this is the major crisis of our time and is morally relevant, and this meets the level of concern, though she feels that the focus on oil and coal defines the issue poorly. She feels that discussion of global climate change is an issue that the University should be educating the public about. Professor Cohn stated that she felt that University should show leadership on this topic, but worried that focusing on divestment would hamper useful discussion of climate change. Professor Smith said he agreed with professor Cohn said that creating a more productive climate for discussion of climate change would be more valuable than discussing divestment. Professor Zeisberg said that the smoking and apartheid issues were obvious in the retrospect, but that there were debates about how advisable those measures were at the time. She stated that any step that anyone could take would be partial, so to her it is easy to support the proposal to create a committee to investigate the issue. She pointed out the importance of supporting student interest.

Professor Oey suggested an emended resolution to create a committee to explore the University's connection with investments connected with climate change. Professor Lehman said that he did not feel that the Assembly was ready to act on this issue and reminded the Assembly that it has a committee that advises the CFO and it could charge the committee with engaging with the CFO on this issue. Professor Weineck agreed with Professor Zeisberg's comments. Professor Holland suggested forming a committee to look at the propriety of the University's investments.

Professor Masten pointed out that the Senate Assembly had lost its quorum.

Professor Oey pointed out that no one had expressed support for climate change.

Professor Masten said that SACUA could continue to discuss the issue over the summer.

UNFINISHED BUSINESS

Professor Lehman asked the Senate Assembly to express its appreciation for the retiring SACUA member.
General applause

NEW BUSINESS

There was no new business.

The meeting was adjourned at 5:02 P.M.

Respectfully submitted

David Potter
Senate Secretary Pro Tempore

University of Michigan Bylaws of the Board of Regents, Sec. 4.01:

The University Senate

The senate is authorized to consider any subject pertaining to the interests of the university, and to make recommendations to the Board of Regents in regard thereto. Decisions of the University Senate with respect to matters within its jurisdiction shall constitute the binding action of the university faculties.

University of Michigan Bylaws of the Board of Regents, Sec. 4.04:

The Senate Assembly

The Senate Assembly shall serve as the legislative arm of the senate.

The assembly shall have power to consider and advise regarding all matters within the jurisdiction of the University Senate which affect the functioning of the university as an institution of higher learning, which concern its obligations to the state and to the community at large, and which relate to its internal organization insofar as such matters of internal organization involve general questions of educational policy.

Rules of the University Senate, the Senate Assembly and the Senate Advisory Committee on University

Affairs: In all cases not covered by rules adopted by the Senate, the procedure in Robert's Rules of Order shall be followed.